RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100039 SEPARATION DATE: 20080918

BOARD DATE: 20111122

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an Army, Specialist / E-4 (19K10, M1 Armor Crewman), medically separated for anxiety disorder on impending re-deployment, following combat operations in Iraq, from January 2006-February 2007. The CI had a 28-day hospitalization for suicidal ideation and was diagnosed with posttraumatic stress disorder (PTSD) and anxiety not otherwise specified. He was placed on multiple psychoactive medications for symptom control. The service psychiatrist diagnosed anxiety disorder and personality disorder without a diagnosis of PTSD. The CI was issued a permanent S3 profile and underwent a Medical Evaluation Board (MEB). Anxiety disorder was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Three other conditions, as identified in the rating chart below, were forwarded on the MEB submission as medically acceptable conditions. Other conditions included in the narrative summary (NARSUM) and Disability Evaluation System (DES) packet will be discussed below. The Informal PEB (IPEB) adjudicated the anxiety disorder condition as unfitting, rated 10%, with likely application of the Department of Defense Instruction (DoDI) 1332.39. The CI made no appeals, and was thus medically separated with a 10% combined disability rating.

CI CONTENTION: The CI has forwarded a detailed supplement to DD Form 294, items three and four, which surmises why his disability rating should be revised upward to at least 50%. This document was reviewed by the Board in its entirety. As a matter of policy, all service conditions are reviewed by the Board for their potential contribution to its rating recommendations.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB – Dated 20080613** | **VA (4 Days Pre- & 6 Mo. Post-Sep) – All Effective 20080919**  |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Anxiety Disorder | 9413 | 10% | Anxiety Disorder | 9413 | 50% | STR |
| Anxiety Disorder and PTSD | 9413-9411\* | 20090302 |
| Personality Disorder | Not Compensable | Personality Disorder | 9499 9440 | NSC | STR |
| L. Mild HF Hearing Loss  | Not Unfitting | Left Ear Hearing Loss | 6100 | 0% | 20080915 |
| Non-cardiac Chest Pain | Not Unfitting | Not in VA Rating |
| ↓No Additional MEB Entries↓ | Lt Retropatellar Pain Syndr | 5099-5014 | 10% | 20080915 |
| Lt Subacromial Bursitis | 5099 5014 | 10% | 20080915 |
| Thoracolumbar Strain/ DDD | 5243 5237 | 10%  | 20080915 |
| 0% x 2 / Not Service Connected x 3 |
| **Combined: 10%** | **Combined: 60%** |

\*Initial 9413 VA rating of 50% based on service records alone, with application of §4.129; VARD of 20090316, after 20090302 VA exam, added PTSD diagnosis (9423-9411) reaffirming the 50% rating IAW §4.130

ANALYSIS SUMMARY: The Board acknowledges the CI’s assertions that he was not treated fairly by the service and allegedly that there was skepticism both on the part of the CI’s commander and on the part of the MEB evaluators, about the authenticity of his PTSD symptoms. It is noted for the record that the Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to the CI’s statements in the application regarding suspected service improprieties in the processing of his case. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to Veterans Administration Schedule for Rating Disabilities (VASRD) standards, based on severity at the time of separation. It must also judge the fairness of PEB fitness adjudications based on the fitness consequences of conditions as they existed at the time of separation.

ANIEXTY DISORDER: The IPEB rating as described above, was likely derived from DoDI 1332.39, and although after the effective date, likely preceded the promulgation of the National Defense Authorization Act (NDAA) 2008 mandate for Department of Defense (DoD) adherence to VASRD §4.129. The CI was hospitalized for 28-day for suicidal ideation eight months prior to separation. The CI had a history of exposure to trauma/critical incidents from Iraq that were verified by the military. Discharge diagnoses were PTSD and anxiety disorder with moderate work and relational discord with a global assessment of functioning in the range of serious symptoms (GAF = 55). The MEB psychiatric exam was conducted five months pre-separation and two months after the CI’s hospitalization. The CI had independently stopped medications and compliant with group/individual therapy. The exam indicated that two mental status evaluations (MSE) were completed due to a report that despite a first exam demonstrating significant anxiety, his escort reported, upon picking up the CI, he had a sunny disposition and was more worried about his wife’s first ultrasound. At the second MSE exam the CI was noted to have good eye contact and a euthymic mood. His memory and recall were intact. He appeared distressed only when discussing deployment to Iraq. He denied homicidal and suicidal ideation and stated he was only suicidal prior to hospital admission because he did not want to go back to Iraq and felt his care providers and command were minimizing his symptoms. He reported no auditory or visual hallucinations. Speech was normal and thought process was goal directed and logical. There were no formal depression or PTSD scales documented in the NARSUM. There was indication of symptom exaggeration, different pictures of symptoms while in clinical vs outside clinical settings and the examiner stated:

“(the CI) has presented as extremely manipulative and self serving in his interactions with treatment providers. He has frequently denigrated one provider to other providers, so often, that he has had treatment limited because of this behavior. He has also told blatant lies about treatment by command in hopes of eliciting sympathy from medical providers.”

The work history noted was two hours per day. The overall assessment was anxiety disorder, with mild impairment for social and industrial adaptability. Axis II diagnosis was personality disorder NOS (passive aggressive, histrionic, and paranoid). The GAF was assessed in the moderate symptom range (GAF=55). Earlier psychiatric treatment notes documented exposure to snipers, explosions, deaths of peers, and some PTSD symptoms. A PTSD checklist-military (PCLM) in the very high range (74), history of traumatic stressful combat exposure, history of sleep difficulties, hyper vigilance, intrusive thoughts, and irritability for which he sought treatment. The psychiatric overall assessment was anxiety NOS, rule out PTSD; with adjustment disorder; and maladaptive behavior traits that could be construed as a personality disorder. There was evidence submitted with the CI’s application for treatment of fatigue, difficulty breathing and difficulty sleeping while serving in Iraq that was otherwise not mentioned in the NARSUM or the STR’s. The overall assessment was chest wall bruising related to trauma (non-penetrating gun shot in chest plate) and a referral to an MD to evaluate the difficulty breathing episodes. This referral was not in evidence for review.

There were two commander’s comments one month apart. The first statement before the permanent profile indicated the CI maintained the ability to perform within his MOS and met physical fitness standards; (the CI’s) performances continued to be acceptable and he believed that the CI was able to perform his MOS duties and responsibilities as a 19K (Tanker); however, the commander recommended that the CI should be evaluated and separated from the Army, since “The unpredictability and decisions this Soldier has demonstrated could very likely put the lives of his fellow Soldiers at risk in a combat environment.” Following the permanent S3 profile, the commander stated “I do not necessarily agree with the permanent profile of anxiety and PTSD because of the Soldiers recent re-enlistment and lack of prior problems.”

The CI failed to show for his initial Department of Veterans’ Affairs (VA) mental health exam and the first VA compensation and pension (C&P) mental health C&P exam was six months post-separation. That exam noted that the CI was not taking medications due to side-effects, and endorsed slight post-separation worsening of symptoms. The CI was unemployed and at home taking care of his daughter. The CI endorsed symptoms of poor sleep, nightmares, recurrent battlefield images, avoidance of people, and “disassociation where he experiences out of body experiences sometimes”, panic attacks on occasion, hypervigilance and hyper startle response. The MSE demonstrated an affect ranging from tearfulness to frustration to anger. Speech ranged from pressured to soft depending on what he was discussing. Thought process was linear, but with some difficulty. There was no indication of psychosis with no reported auditory or visual hallucinations. He had some passive thoughts of suicidal but no plan. The examiner stated that the diagnosis was PTSD and that there was no evidence of personality disorder. The VA overall assessment was PTSD Chronic moderate with a GAF at the bottom of the moderate symptom range (GAF = 51; MEB GAF = 55).

The Board directs its attention to its rating recommendations based on the evidence just described. There was in-service diagnosis of PTSD during extended (civilian) hospitalization and the VA made the diagnosis of PTSD six months post-separation; however, there was not medical certainty of any clear error in PEB diagnosis and all mental health diagnoses are rated IAW the same criteria of VASRD §4.130. The Board adjudged that the PEB diagnosis of anxiety disorder and coding using 9413 was considered administratively final. The Board considered only the applicability of VASRD §4.129 and the appropriate disability rating under VASRD §4.130.

With regards to applicability of VASRD §4.129, the Board noted that the CI’s initial VA rating for anxiety disorder applied VASRD §4.129 based on the service treatment records alone with a VA finding of NSC for the claimed PTSD and depression. The history, symptoms, and clinical findings consistently described in the records indicated that the CI’s psychiatric condition was closely linked to the stresses of combat related military duties and that symptoms were exacerbated by impending deployment. The Board deliberated at length regarding the tenor of the inpatient hospital summary, military treatment notes and VA exam in contrast to the MEB NARSUM and commander’s statements regarding reliance on the CI’s report of symptoms and stressors. The Board majority determined that the CI’s mental health condition met the criteria for “a mental disorder that develops in service as a result of a highly stressful event [that] is severe enough to bring about the veteran’s release from active military service” and that VASRD §4.129 was applicable. Since §4.129 is applicable in this case, then, IAW DoDI 6040.44 the Board is obligated to recommend a minimum 50% rating for a retroactive six month period on the Temporary Disability Retired List (TDRL). The Board must then determine the most appropriate fit with VASRD 4.130 criteria at six months for its permanent rating recommendation. At the time of separation the CI’s mental health condition was described by the NARSUM and addendums as interfering with duty to the point of two hours of work per day, although the commander indicate the CI could perform all duties, the CI “… does not work an eight hour day.” There was no specific apportionment of global functioning disability or impairment in any clinical exam between the Axis I diagnosis of Anxiety Disorder NOS, moderate and the Axis II diagnosis of personality disorder NOS (passive aggressive, histrionic, paranoid). The PEB disability description of “contributing elements of personality disorder cannot be considered for rating purposes.” was therefore not IAW VASRD-only rules for application of the general rating formula for mental disorders IAW §4.130. Independently rating the CI’s condition at the time of separation the Board considered the record supported between a rating of 30% for “occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks (although generally functioning satisfactorily, with routine behavior, self-care, and conversation normal) and the 50% criteria for “occupational and social impairment with reduced reliability and productivity.” The Board majority agreed that the §4.130 criteria for a rating higher than 50% were not met at the time of separation, and therefore the minimum 50% TDRL rating (as explained above) is applicable.

The most proximate source of comprehensive evidence on which to base the permanent rating recommendation in this case is the VA C&P exam at six-month post-separation. Especially since the C&P examination also reflects the stress of transition to civilian life, which is a core intent of §4.129, it carries the preponderance of probative value in the Board’s assessment of a fair permanent rating recommendation. As regards the permanent rating recommendation, all Board majority agreed that the §4.130 threshold for a 70% rating was not approached and that the criteria for a 10% rating were well-exceeded. The deliberation settled on arguments for a 50% versus a 30% permanent rating recommendation. The VA rater’s rationale for a 50% rating was well-elucidated in the rating decision. The general description in §4.130 for a 50% rating is “occupational and social impairment with reduced reliability and productivity.” The Board reviewed the VA exam and found the CI demonstrating moderate impairment, a GAF of 51, and was unemployed due to his psychiatric condition. However, mitigating the employment was the CI’s new child and his childcare responsibilities*.* The Board weighed if providing childcare was just as significant as being employed and agreed that this equated to less than constant occupational and social impairment. After due deliberation, considering the totality of the evidence, the Board majority recommends a permanent PTSD disability rating of 30% in this case.

Other PEB Conditions. The other conditions forwarded by the MEB and adjudicated as not unfitting by the PEB were left mild high frequency hearing loss and non-cardiac chest pain. Personality disorder was adjudged as not compensable by the PEB. Personality disorder and non-cardiac chest pain were discussed in detail under anxiety disorder above. Personality disorder is a condition not considered a disability and is non compensable. Hearing loss or chest pain was not profiled, implicated in the commander’s statement or noted as failing retention standards. Hearing loss was reviewed by the action officer and considered by the Board. There was no indication from the record that these conditions significantly interfered with satisfactory performance of MOS duty requirements. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for any of the stated conditions.

Remaining Conditions. Other conditions identified in the DES file were hayfever, left shoulder pain, back pain, and left knee pain. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were significantly clinically or occupationally active during the MEB period, none carried attached profiles, and none were implicated in the commander’s statement. These conditions were reviewed by the action officer and considered by the Board. It was determined that none could be argued as unfitting and subject to separation rating. Additionally left retropatellar pain syndrome, left subacromial bursitis and thoracolumbar strain/DDD and several other non-acute conditions were noted in the VA rating decision proximal to separation, but were not documented in the DES file. The Board does not have the authority under DoDI 6040.44 to render fitness or rating recommendations for any conditions not considered by the DES. The Board, therefore, has no reasonable basis for recommending any additional unfitting conditions for separation rating.

BOARD FINDINGS: IAW DoDI 6040.44, provisions of DoD or Military Department regulations or guidelines relied upon by the IPEB will not be considered by the Board to the extent they were inconsistent with the VASRD in effect at the time of the adjudication. As discussed above, PEB likely reliance on DoDI 1332.39 for rating the anxiety disorder condition was operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the anxiety disorder condition, the Board by a vote of 2:1 recommends an initial TDRL rating of 50% in retroactive compliance with VASRD §4.129; and a 30% permanent rating at 6 months IAW VASRD §4.130. The single voter for dissent (who recommended no application of VASRD §4.129 [no TDRL rating] and a 30% permanent rating IAW VASRD §4.130) did not elect to submit a minority opinion. In the matter of the personality disorder condition, the Board unanimously recommends no recharacterization of the PEB adjudication as not compensable. In the matter of the hearing loss, and chest pain conditions, the Board unanimously recommends no recharacterization of the PEB adjudications as not unfitting. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as additionally unfitting for rating at separation.

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows: TDRL at 50% for six months following CI’s prior medical separation (PTSD at minimum of 50% IAW §4.129) and then a permanent 30% disability retirement as below.

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| **UNFITTING CONDITION** | **VASRD CODE** | **TDRL RATING** | **PERMANENT****RATING** |
| Anxiety Disorder | 9413 | 50% | 30% |
| **COMBINED** | **50%** | **30%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294 dated 20101207 w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

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 President Physical Disability Board of Review



