RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100059 DATE OF PLACEMENT ON TDRL: 20031229

BOARD DATE: 20120104

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SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a National Guard SGT/E-5 (62E, Heavy Construction Equipment Operator), medically separated for posttraumatic stress disorder (PTSD). He was diagnosed with PTSD after a February 2003 Iraq deployment. Criterion A combat stressors were documented and the Diagnostic and Statistical Manual of Mental Disorders (DSM IV) criteria for an Axis I diagnosis of PTSD were met. Symptoms of panic, chest pressure, and shortness of breath, palpations, and feelings of doom, flashbacks, nightmares, and avoidance began two weeks after arriving in Iraq. The CI eventually transferred Landstuhl Regional Medical Center (LRMC) and then to Walter Reed Army Medical Center (WRAMC). He was hospitalized in August 2003 for anxiety. The CI initially experienced these symptoms in 1991 after his return from the first Gulf War. The symptoms were resolved after one year; however, the symptoms resurfaced in 1995 and were exacerbated after the death of a fellow civilian law enforcement officer. In all cases the CI was treated with medication and counseling. He did not respond adequately to treatment and was unable to perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. The CI was issued a permanent S4 profile and underwent a Medical Evaluation Board (MEB). The MEB forwarded PTSD, chronic manifested by recurrent on DA Form 3947 to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) packet will be discussed below. An initial Informal PEB (IPEB) determined the CI’s PTSD was unfitting but the level of impairment was unstable and the CI was placed on Temporary Disability Retired List (TDRL) with a 30% rating. A TDRL evaluation completed approximately two years after placement on the TDRL. Although the examining psychiatrist recommended continuation on TDRL, the PEB determined the CI’s condition was sufficiently stable for final adjudication. The PTSD was determined to be unfitting and rated 10%, with application of DoDI 1332.39. The CI appealed and a Formal PEB (FPEB) met on 29 December 2005 and upheld the decision of the IPEB. The CI was separated from TDRL with a final disability rating of 10%.

CI CONTENTION: “I was assigned less than 50% disability rating by the military for my unfitting PTSD upon discharge from active duty. … assign the highest final disability rating applicable consistent with 38 CFR 4.129 and DoD policy…” to the extent such increase will not adversely affect my total compensation, including but not limited to compensation pursuant to CRSC.”

He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

TDRL Rating Chart

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Final Service FPEB – Dated 20051213** | | | | **VA\*– All Effective 20031230** | | | |
| **Condition** | **Code** | **Rating** | | **Condition** | **Code** | **Rating** | **Exam** |
| **On TDRL – 20031107\*\*** |  | **TDRL** | **Sep.** |
| PTSD, Chronic Improved | 9411 | 30% | 10% | PTSD | 9411 | 50%\*\* | 20040126 |
| ↓No Additional MEB/PEB Entries↓ | | | | 0% x 0/Not Service Connected x 0 | | | 20040126 |
| **Combined: 10%** | | | | **Combined: 50%** | | | |

\* VA rating based on exam dated 20040126. \*\* Increased to 100% effective 20080209 and 100% rating continued 20110304.

ANALYSIS SUMMARY:

PTSD Condition. The CI had a long history of PTSD-like symptoms which started in 1991 and were exacerbated in 1995 after the death of one of his fellow police officers. Symptoms reached the point where he would empty his pistol magazine for fear he would impulsively shoot himself. The symptoms remained until the CI sought psychiatric intervention and was started on an antidepressant. He stopped the medication when he was deployed but he brought the medication with him if he needed it in Kuwait. The CI’s PTSD symptoms reemerged in February 2003 approximately two weeks after he deployed to Kuwait. He endorsed symptoms of chest pressure, shortness of breath, palpitations and feelings of impending doom. A worsening of symptoms necessitated an evacuation from theater to LRMC where he was stabilized, diagnosed with PTSD and was transferred to WRAMC inpatient Psychiatry. At the time of the MEB examination two months prior to TDRL entry, the CI was an inpatient on a Psychiatric unit at WRAMC. The CI endorsed symptoms of anxiety surrounding the event along with efforts of avoiding situations that reminded him of the event, a feeling of detachment with a sense of foreshortened future, difficulty staying asleep, difficulty concentrating lasting more than one month, hypervigilance, intrusive recollections, fair insight and judgment, and daily panic attacks (improved from several times a day). In the first 48 hours of admission, the CI was found huddled in a corner sobbing and he was started on medication for depression (Prozac), panic attacks (Klonopin), psychosis (Seroquel), and anxiety (Ativan). The examiner opined that the CI had moderate stress with deployment to Iraq with a severe predisposition from being previously diagnosed with PTSD, marked impairment for further military duty, and definite impairment for social and industrial adaptability. The examiner further opined that the CI would have long term symptoms and require medications. The Global Assessment of Function (GAF) was 65 (some difficulty in social, occupational, or school functioning) but generally functioning pretty well, has some meaningful interpersonal relationships.

The VA Compensation & Pension (C&P) examination 23 months prior to the FPEB documented that the CI had bad anxiety with panic attacks three to four times per week lasting about 20 minutes each; poor concentration; poor train of thought, easily distracted, feelings of being uptight, tense and uneasiness; guilt from leaving Iraq too early on his second tour; apathy; depression; passive suicidal ideations; increased difficulty with organizing or developing a course of action at work; lack of initiation; and feeling pressured and wanting to end work quickly at the end of each day. The CI’s affect was restricted and his mood was anxious, tense, sad, and depressed. He felt paranoid most of the time and was hypervigilant. Cognition was fair to good and short-term memory was fair. He reported chronic anxiety, worry, uneasiness, tense, and chronic depression. His anxiety sometimes drove him crazy and lead to feelings of frustration and helplessness and a fear of losing control. He continued to have problems sleeping, nightmares, social avoidance, and hyperstartle response to loud noises, poor concentration, attention, and short term memory. He had difficulty functioning at work and was afraid he might have a panic attack at work. The GAF was between 35 (major impairment in several areas such as work, or school, family relations, judgment, thinking or mood) and 45 (serious impairment in social, occupational or school functioning).

The TDRL examination four months prior to the FPEB documented that the CI had some improvement in depressive symptoms (a detached feeling or feeling that something’s going to end) although he still felt detached from fellow police officers since his return from Iraq and panic symptoms still persisted 1-2 times per month with insomnia and nightmares. However he had only rare crying spells and no passive death wish or suicidal thoughts. His affect was full-ranging, reactive, and appropriate and his mood was euthymic. The CI did have a propensity to self-medicate with alcohol. He was in treatment and was seeing a psychiatrist monthly as well as taking medications. The examiner noted his return to full-time police work was a good sign but felt his mental health condition had not stabilized enough to make a final determination concerning severity and occupational functioning. The examiner opined that there was a marked impairment for military/psychiatric impairment and a definite impairment for social and industrial adaptability. The GAF was 65 but generally functioning pretty well, has some meaningful interpersonal relationships. The Board notes that this GAF is unchanged from the GAF when the CI entered the TDRL. Although the examining psychiatrist recommended continuation on the TDRL, the IPEB that convened on 2 November 2005 determined the CI’s condition had stabilized to the point that a permanent degree of severity could be determined and they recommended the CI be separated with a 10% rating.

In November 2005, one month prior to the FPEB, the CI had a four day psychiatric admission for suicidal ideation, depression, and anxiety. On admission, the CI exhibited depression, insomnia, anxiety, slowed speech and psychomotor retardation. He had decreased energy and felt sad and hopeless. He reported anxiety when around other people and depression when alone. He had been under psychiatric care and was on medications. He reported feeling stressed because of his upcoming Army hearing and was worried about what the outcome would do to his civilian job as a policeman. Mental status exam noted a depressed and anxious appearing man with slowed speech and psychomotor retardation. No GAF was noted. The discharge summary of 3 December 2005 also noted a depressed and anxious appearing man with somewhat slowed speech and psychomotor retardation. His medications were adjusted and he was not suicidal by the second day of hospitalization. No GAF was noted upon discharge.

In December 2007, two years from permanent separation, the CI had a worsening of his depression with suicidal ideation and was hospitalized again for four days. Although this was remote from the time of permanent separation, this reinforces the worsening of the CI’s mental health condition. The GAF at the time of admission was 24 (inability to function in almost all areas). The VA later increased his disability rating for PTSD to 100% effective 9 February 2008 and continued this rating 4 March 2011. The increased rating in 2008 was based on review of the CI’s psychiatric treatment records, both inpatient and outpatient, and an updated VA C&P examination. The CI was also changed to a desk job in early 2006 because of his mental health condition and later that year he was encouraged to retire. He received a disability retirement from the Policemen’s Pension and Relief Fund of City of Parkersburg, WV on 4 February 2008.

The PEB rating at final separation, as described above, was derived from DoDI 1332.39 and preceded the promulgation of the National Defense Authorization Act (NDAA) 2008 mandate for DoD adherence to the Veterans Administration Schedule for Rating Disabilities (VASRD) §4.129. IAW DoDI 6040.44 and DoD guidance (which applies current VASRD 4.129 to all Board cases); the Board is obligated to recommend a minimum 50% PTSD rating for the period on the TDRL. Since the Service was in compliance with the §4.129 TDRL requirement, the Board need not apply a constructive TDRL rating interval in this case; although, the 50% minimum TDRL rating remains applicable as above, as held by the Federal court in the Sabo V. United States class action settlement. The Board must then determine the most appropriate fit with VASRD 4.130 criteria at the end of the TDRL interval for its permanent rating recommendation.

The most proximate source of comprehensive evidence on which to base the permanent rating recommendation in this case is the TDRL narrative summary, performed 21 months after being placed on TDRL and 3 months prior to the FPEB. However, the Board must also consider the hospital admission for suicidal ideation prior to the convening of the FPEB.

The Board directs it attention to its rating recommendations based on the evidence just described. As regards the permanent rating recommendation, all members agreed that the §4.130 threshold for a 50% rating was not approached. The deliberations settled on arguments for a 30% versus a 10% permanent rating recommendation. The Board noted that at the examination most proximate to the end of TDRL that the CI had noted only some improvement in his depression since he had been placed on the TDRL. He still had feelings of detachment from fellow police officers, insomnia and nightmares, and panic attacks now only once or twice a month. Although he was working full time-his job as a Lieutenant on the night shift allowed him to have fewer distractions and he was switched to a desk job within twelve months of separating. He still required medications and as seeing a psychiatrist monthly. His GAF of 65 was unchanged from the time he entered TDRL. Thus the 30% description (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]) aligns with the evidence in this case. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a separation rating of 30% for the PTSD condition

Remaining Conditions. Other conditions identified in the DES file were chronic cough, shortness of breath with panic attacks, history of bronchitis, bilateral eustachian tube dysfunction, rhinitis, left index finger needle puncture, right knee shin splint, dizziness, headaches, heart palpitations, heartburn, chronic ankle and back pain, hemorrhoids lymphangitis left lower extremity, tinea crucis, and tinea pedis. 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.

BOARD FINDINGS: IAW DoDI 6040.44, provisions of DoD or military department regulations or guidelines relied upon by the PEB will not be considered by the Board to the extent they were inconsistent with the VASRD in effect at the time of the adjudication. In the matter of the PTSD, the Board unanimously recommends a 30% permanent rating after removal from TDRL IAW VASRD §4.130. In the matter of the chronic cough, shortness of breath with panic attacks, history of bronchitis, bilateral eustachian tube dysfunction, rhinitis, left index finger needle puncture, right knee shin splint, dizziness, headaches, heart palpitations, heartburn, chronic ankle and back pain, hemorrhoids lymphangitis left lower extremity, tinea crucis, and tinea pedis conditions or any other medical conditions eligible for Board consideration; the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows and that the discharge with severance pay be recharacterized to reflect permanent disability retirement after removal from TDRL, effective as of the date of his prior medical separation:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **PERMANENT**  **RATING** |
| Posttraumatic Stress Disorder | 9411 | 30% |
| **COMBINED** | **30%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20101130, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs Treatment Record

President

Physical Disability Board of Review

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