RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100073 Date of Permanent SEPARATION: 20051222

BOARD DATE: 20120118 DATE OF PLACEMENT ON TDRL: 20041113

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SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (11B10, Infantryman), medically separated for posttraumatic stress disorder (PTSD). He was diagnosed with PTSD after a February-November 2003 Iraq deployment. The CI was treated with medication and outpatient therapy however he did not respond adequately to treatment and was unable to perform within his Military Occupational Specialty (MOS). The CI was issued a permanent S3 profile and underwent a Medical Evaluation Board (MEB). The MEB forwarded PTSD, chronic and major depressive disorder (MDD) single episode on DA Form 3947 to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Three other conditions were forwarded on the MEB submission as medically acceptable conditions. The PEB adjudicated the PTSD as unfitting, rated 30%, with application of the Veterans Administration Schedule for Rating Disabilities (VASRD) and the CI was placed on Temporary Disability Retired List (TDRL). The CI was separated from TDRL with a final disability rating of 10%. The CI made no appeals.

CI CONTENTION: “Sabo “I was assigned less than 50% disability rating by the military for my unfitting PTSD upon discharge from active duty. The PDBR should assign the highest final disability rating applicable consistent with 38 CFR4.I29 and DOD policy (continuation). Please see attached list of contentions regarding why the PDBR should make the changes request in Item 3.”

RATING COMPARISON:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Final Service IPEB – Dated 20051207** | | | | **VA\* – All Effective Date 20090821** | | | |
| **Condition** | **Code** | **Rating** | | **Condition** | **Code** | **Rating** | **Exam** |
| **On TDRL – 20050616** |  | **TDRL** | **Separation** |
| Post Traumatic Stress Disorder | 9411 | 30% | 10% | Post Traumatic Stress Disorder | 9434 | 30% | 20090821 |
| Major Depressive Disorder | Not Separately Rated | | |
| Back Pain | Not Unfitting | | | No VA Entry | | | |
| Stress Fracture-Left Foot |
| Left Knee Pain |
| ↓No Additional MEB/PEB Entries↓ | | | | 0% x 0 Not Service Connected x 0 | | | |
| **Combined: 10%** | | | | **Combined: 30%** | | | |

ANALYSIS SUMMARY:

PTSD Condition. The CI was deployed to Iraq as an infantryman from February to November 2003 and was exposed to multiple traumatic events. He redeployed early due to worsening nightmares and anxiety that began in October 2003. The CI endorsed symptoms of worsening nightmares, anxiety, intense fear, feeling of helplessness, rapid heart rate and sweating. The MEB examination three months prior to entry into TDRL in November 2004, indicated symptoms of significant startle response; reacting thoughts; feeling of impending doom; rapid heart rate; self-isolation; depressed mood and affect; hypersomnia; decreased interest in normal hobbies and activities; constant thoughts of guilt regarding Iraq activities; decreased energy; poor concentration; irritability; low volume of speech; poor eye contact; and hypervigilance. The mental status examination documented was from a previous evaluation completed 20 May 2004 while he was hospitalized. It noted a low volume of speech and poor eye contact when relating experiences in Iraq. He was easily startled during the interview and both mood and affect were depressed. He had been taking Zoloft and his depression had partially improved but the PTSD symptoms continued. He was engaged but his fiancé lived in Mississippi while he was in Hawaii. The examiner opined that for the PTSD, there was a marked impairment of military/psychiatric impairment and considerable social and industrial impairment. The examiner also diagnosed MDD in partial remission with symptoms of hypersomnia, decreased interest, and constant thoughts of guilt, decreased energy and poor concentration. The examiner opined that there was moderate military/psychiatric impairment and mild social and industrial adaptability impairment related to the MDD. The Global Assessment of Function (GAF) was 50--serious impairment in social, occupational or school functioning. The record available for review by the Board contains two outpatients mental health visits from April 2004, three administrative notes from behavioral health concerned with scheduling visits, no information about the hospitalization, and multiple VA treatment notes from 13 July 2009 to 28 September 2009.

The commander’s statement in July 2004 noted that the CI‘s duty performance had previously been above average however his mental status limited him from performing soldier duties by missing valuable work time and restrictions of no combat, no weapons, no exposure to wounded or exposure to violence.

The TDRL exit examination two months prior to the PEB documented that the CI’s symptoms continued without the benefit of mental health care or medications. The CI had stopped his Zoloft but denied any significant symptoms of depression; however, his PTSD symptoms continued. The CI continued to endorse symptoms of recurrent distressing recollections of events; nightmares of combat experiences about three times a week; feeling detached and estranged from others; impaired memory; insomnia; irritability; hypervigilance; and exaggerated startle response. He had difficulty finding a job but had been working for three months in a tire store, loading and unloading a tire and driving a truck and reported no problems at work. The examiner opined that there was marked military duty impairment and mild social and industrial adaptability impairment. This evaluation documents the CI reported he had completed a packet for treatment at the VA and was going to start counseling there in the near future. However, there are no visits in the record available for review until 2009.

The VA Compensation & Pension (C&P) examination four years after final separation indicated that the CI was still experiencing decreased concentration; hypervigilance; exaggerated startle response; increased arousal; irritability; marked diminished interest in previously enjoyable activities; persistent experiencing of traumatic effects; combat related flashbacks; and intrusive distressing combat related thoughts and memories. The history of his illness reported was consistent with military evaluations. He had married in 2006 and divorced in 2009 and had a two year old son. He maintained good relationships with his siblings and mother and had been in contact with his biological father. His stepfather had died in 2007. He reported using significant amounts of alcohol to help him sleep. He was currently attending community college. He did have some problems with being easily startled. He had had multiple different jobs and his longest period of employment was two years at the tire store. He was fired from that job for inappropriate conduct. He had been working for the previous four months for a family member who was understanding of his issues and not being able to work around a lot of people or with loud noises. He had not received any mental health treatment since the time of discharge except for a few counseling sessions from April to September 2009; notes from these visits are available in the record. He reported these were helpful but he stopped going because he did not have insurance. He was planning to continue treatment at the VA after obtaining benefits. His sister had accompanied him to the VA and she provided input to the examiner about how the CI had changed since returning from Iraq. He also provided four statements in support of claim from his sister, brother-in-law, work supervisor, and a coworker. These statements described difficulties with distancing from others, concentration problems, startle reaction, hypervigilance, talking in a foreign language during his sleep, losing his temper, drinking "to ease the edge and to help him sleep," and nervousness. The examiner noted the CI’s social functioning appeared mildly to moderately impaired. His continued symptoms did limit his work performance as well as job choice. The GAF was 55--moderate difficulty in social, occupational or school functioning. The CI did not file a claim at the VA until 21 August 2009 and as this was more than one year after separation from service, his VA benefits were effective as of the date of application. Although the C&P examination is remote from the time of permanent separation, it is the only C&P examination and demonstrates that the CI’s condition had continued four years later.

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 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 (NARSUM), performed approximately one year after being placed on TDRL and one month prior to the final PEB.

The Board directs it attention to its rating recommendations based on the evidence just described. All members agreed that the §4.130 threshold for a rating higher than 50% were not met at the time of TDRL entry and therefore, the minimum 50% TDRL rating (as explained above) is applicable. As regards for 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 was still experiencing insomnia, impaired memory and concentration, hyper vigilance, increased irritability, and avoidance of crowds. He had limited interactions with anyone outside his family and his symptoms limited his occupational opportunities as well as affecting his performance. Thus the 30% description (occupational and social impairment) with 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 back pain, left foot stress fractures, and painful arches and left knee pain. 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 condition, the Board, recommends a permanent separation rating after TDRL of 30% coded 9411 IAW VASRD §4.130. In the matter of the mechanical low back pain; stress fractures and painful arches; and knee problems 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:

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| --- | --- | --- |
| **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 20101210, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs Treatment Record

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