RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: coast guard

CASE NUMBER: PD1100081 SEPARATION DATE: 20030228

BOARD DATE: 20111129

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty TC2/E-5 (Telecommunications Specialist) medically separated for depression which began in 2000. He did not respond adequately to treatment, was unable to perform within his specialty rating and underwent a Medical Evaluation Board (MEB). Major depressive disorder, single episode, without psychotic feature was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable. No other conditions appeared on the MEB’s submission, and no other conditions with fitness implications were identified in the Disability Evaluation System (DES) file. The Central PEB (CPEB) adjudicated the major depressive disorder condition as unfitting, rated 0% with presumptive application of DoDI 1332.39 (E2.A1.5). The CI did not appeal for a Formal PEB and was medically separated with a 0% disability rating.

CI CONTENTION: The CI states: “The rating should be changed because the percent given to me did not match my condition at the time and my condition now. The original 0% percent given did not address my complete condition appropriately lAW the VASRD. According to my service medical record and my VA medical record I should been given at least 50%. The VA gave me 30%, but after reviewing my military records, VA medical records, and examination they increased my percentage from 30% to 50% due to my MAJOR DEPRESSIVE DISORDER.” He additionally lists lumbosacral strain with spondylolisthesis on his application, implying a contention for its inclusion in the separation rating.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service CPEB – Dated 20021204** | | | **VA (7 Mo. After Separation) – All Effective 20030301** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Major Depressive Disorder | 9434 | 0% | Major Depressive Disorder | 9434 | 30%\* | 20030925 |
| ↓No Additional MEB Entries↓ | | | Lumbosacral Strain | 5295-5010 | 10% | 20030923 |
| 0% x 2 / Not Service Connected x 1 | | |  |
| **Combined: 0%** | | | **Combined: 40%** | | | |

\*Increased to 50% effective 18 May 2004

ANALYSIS SUMMARY: The military services, by law, can only rate and compensate for those conditions that were found unfitting for continued military service based on the severity of the condition at the time of separation and not based on possible future changes. The Department of Veterans’ Affairs (VA) however, can rate and compensate all service connected conditions without regard to their impact on performance of military duties, including conditions developing after separation that are direct complications of a service connected condition. The VA can also increase or decrease ratings based on the changing severity of each condition over time. 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 VASRD standards, based on severity at the time of separation. The Board further notes that the presence of a diagnosis, in and of itself, is not sufficient to render a condition unfitting and ratable. While the DES considers all of the Service member's medical conditions, compensation can only be offered for those medical conditions that cut short a service member's career, and then only to the degree of severity present at the time of final disposition. However, the VA, operating under a different set of laws (Title 38, United States Code), is empowered to periodically re-evaluate Veterans for the purpose of adjusting the disability rating should the degree of impairment vary over time.

Depression Condition. The Board noted that since the only stressors associated with the depression condition were those related to everyday social and work situations (no “highly stressful event” for which provisions of §4.129 would apply), the rating recommendation will be premised on the psychiatric acuity at the time of separation. Symptoms of depression began in 2000 but were initially attributed to marital and job stress. His initial psychiatric evaluation (2 November 2001) reported months of depression, fatigue, insomnia, anhedonia, isolation and guilt feelings. The CI’s symptoms at the time of the psychiatric narrative summary (NARSUM) (2 April 2002, 11 months prior to separation) could best be described as mild to moderate. There was no history of drug or alcohol abuse and he did not require hospitalization. While on sea duty in 2002, he experienced a panic attack and worsening depression in the context of several administrative counseling sessions regarding his inappropriate behavior, immature attitude and work performance issues. Although he threatened suicide so that he could be removed from the ship, his treating psychiatrist stated that he was not actually suicidal. He required short-term treatment with an anti-anxiety medication for symptoms which quickly improved after removal from the ship. Mental status exam (MSE) at the time of the NARSUM, revealed the CI to be cooperative, alert and pleasant. Speech and thought processes were normal, with no evidence of psychosis. Affect was serious and restricted, and there were no suicidal or homicidal ideations. Memory and concentration were grossly intact. The global assessment of functioning (GAF) score was 51 (connoting moderate symptoms or impairment). While medication treatment and removal from the ship resulted in partial remission of his symptoms, the described functional status was still moderate industrial and military impairment and mild to moderate impairment of civilian performance. A follow-up psychiatry note (1 September 2002, 5 months after the NARSUM) reported that the CI had stopped his antidepressant medication 3-4 months prior, had completed psychotherapy which he found very beneficial and was experiencing no depression symptoms. The psychiatrist considered the depression resolved, but opined that return to the ship could precipitate recurrence that would place him at increased risk of suicide. A commander’s memorandum (26 November 2002) reported that the CI was unable to perform his duties since March. He was taken off his ship during patrol for suicidal ideations and was unable to deal with the stresses of underway life, which led to revocation of his security access. The commander further observed that the CI was unable to work or stand watch on the ship, even during in-port periods, and showed no motivation or desire to work through his condition. Two rebuttal letters by the CI, 25 July 2002 and 30 August 2002 stated: “I have not had any episodes of depression or anxiety attacks since I received treatment” and “…I have had no problems and I do not have to take any of my medication”, respectively (since removal from the ship). In December 2002, two months before separation, the CI presented to the clinic requesting resumption of medication due to recurrent depressive symptoms in context of marital separation (wife left with children). At the time of the VA psychiatric compensation and pension (C&P) examination (25 September 2003, seven months after separation), the CI’s symptoms were the same or somewhat better than those reported in the NARSUM exam. He was taking the same antidepressant medication on an intermittent basis and had not sought therapy. He divorced from his wife immediately after separation, but moved in with a girlfriend whom he planned to marry. He was able to find a “good job” with the help of a friend. The Board agreed that the MEB examination generally supported a §4.130 rating of 10% (“occupational and social impairment due to mild or transient symptoms which decrease work efficiency and ability to perform occupational tasks only during periods of significant stress, or; symptoms controlled by continuous medication”), considering the presence of symptoms that at times interfered with performance of military duties while on a ship. The Board noted statements by the CI subsequent to the MEB exam attesting to the fact that his symptoms were absent when he was off his ship and that he did not need medication, as well as the September 2002 clinic encounter documented absence of symptoms off of medication. The Board further debated the extent to which his marital discord and divorce caused his recurrent symptoms in December 2002. Although the C&P examination performed seven months after separation has limited probative value due to the considerable time following separation, it was noted for symptoms about the same or better than the NARSUM, employment in a satisfactory job and having a new girlfriend with plans for marriage. He reported taking his anti-depressant medication intermittently, and that when he did he felt better. Furthermore, while he reported that counseling he received on active duty was helpful, he did not pursue such treatment after separation. All Board members agreed that at the time of separation, criteria for a 30% rating were not present (“occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks”), and debated if the evidence more approximated a 0% or a 10% rating. After due deliberation, and in consideration of all the evidence and VASRD §4.3 (reasonable doubt), the Board recommends 10% as the fair permanent separation rating for major depressive disorder in this case.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for lumbosacral strain with spondylolisthesis. This condition was 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. However, even if its presence in the DES file is conceded, there was no evidence for concluding that it interfered with duty performance to a degree that could be argued as unfitting.

Remaining Conditions. Other conditions identified in the DES file were Bell’s palsy and acne vulgaris. Neither of these conditions was clinically or occupationally significant during the MEB period, neither carried an attached limited duty and neither was implicated in the commander’s memorandum. 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 plantar warts and cervical myalgia 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.

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. As discussed above, PEB reliance on DoDI 1332.39 for rating major depressive disorder was operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the major depressive disorder condition, the Board unanimously recommends a rating of 10% coded 9434 IAW VASRD §4.130. In the matter of the Bell’s palsy and acne vulgaris 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. 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, effective as of the date of his prior medical separation.

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Major Depressive Disorder | 9434 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110210, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXX

President

Physical Disability Board of Review

U.S. Department of

Homeland Security

United States

Coast **Guard**

Dear MrXXXXXXXX:

**Commandant**

**United States Coast Guard**

Mail Stll? 7801

21002 St.

Washington, DC 20593-7801

Staff Symbol: CG-l

MAR 1 2012

I am the Designated Decision Authority for the Coast Guard on applications submitted to the

Department of Defense Physical Disability Board of Review (DoD PDBR). In your case (Case

Number PD-2011-00081), I accept the recommendation of the DoD PDBR to modify your

combined rating of 0% to 10% without recharacterization of the separation. Enclosed is a copy

of the Board's recommendation and record of proceedings for your information. The

modification of your disability rating will result in an adjustment to the amount of severance pay

you received at the time of separation.

A copy of this decision has also been provided to the DoD PDBR and the Department of

Veterans Affairs.

If you have any further questions, please contact the Coast Guard Personnel Service Center at

Sincerely,

Rear Admiral, U.S. Coast Guard

Assistant Commandant for Human Resources

Enclosures: (1) PDBR President memo dated December 19, 2010