RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: navy

CASE NUMBER: PD1100090 SEPARATION DATE: 20030423

BOARD DATE: 20120105

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty E-3/FN (Fireman) medically separated for posttraumatic stress disorder (PTSD). She was also found unfit for dysthymic disorder and ulcerative colitis.She did not respond adequately to treatment and was unable to perform within her Rating or meet physical fitness standards. She was placed on limited duty and underwent a Medical Evaluation Board (MEB).Left sided ulcerative colitis and irritable bowel syndrome (IBS) were forwarded to the Informal Physical Evaluation Board (IPEB) as medically unacceptable IAW SECNAVINST 1850.4E. PTSD was not on the MEB submission, but was discussed in the Joint Disability Evaluation Tracking System (JDETS) notes. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) packet will be discussed below.The IPEB adjudicated the PTSD, dysthymic disorder and left sided ulcerative colitis conditions as unfitting, rating the PTSD at 10% and determined that the two other conditions existed prior to service (EPTS) and were therefore not ratable, with application of SECNAVINST 1850.4E and Department of Defense Instruction (DoDI) 1332.39 and Veterans’ Administration Schedule for Rating Disabilities (VASRD), respectively. The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: “PTSD, unable to leave my apt, missed doctors apts. Someone will hurt me eventually. I’ve attempted suicide several times without result. Because I’ve become socially inept with constant and feeling panic attack, anxious, guilt, fear, and tearful I just can’t function and depressed. Ulcerative colitis has wreak havoc of my body. The VAMC in Lebanon PA refuses to treat my condition. This is the other reason I’m not able to leave my home. I have constant uncontrolled bleeding bowel movements and reoccurring intestinal blockages at least 10 times a day and if not that daily diarrhea. And I know that if I leave my home someone or something will take my life. She elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB – Dated 20030224** | **VA (1 Mo. Pre Separation) – All Effective Date 20030424** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| PTSD | 9411 | 10% | PTSD with Dysthymic Disorder | 9433-9411 | 70% | 20030328 |
| Dysthymic Disorder | Cat I  | EPTS |
| Rule Out Possible Borderline Personality Traits | Cat III |
| Left-sided Ulcerative Colitis | Cat I  | EPTS | Ulcerative Colitis with Irritable Bowel  | 7323 | 30% | 20030328 |
| Irritable Bowel Syndrome, related to Ulcerative Colitis | Cat II  |
| ↓No Additional MEB/PEB Entries↓ | 0% x 0/Not Service-connected x 0 | 20030328 |
| **Combined: 10%** | **Combined: 80%** |

\* VA rating based on exam most proximate to date of permanent separation. PTSD was continued at 70% until 5-31-08 at which time it was increased to 100% then lowered to 70% on 7-1-08

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which her service-incurred condition continues to burden her. The Board wishes to clarify that it is subject to the same laws for Service disability entitlements as those under which the DES operates. The DES has neither the role nor the authority to compensate Service members for anticipated future severity or potential complications of conditions resulting in medical separation. That role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code). The Board evaluates DVA evidence proximal to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness decisions and rating determinations for disability at the time of separation. 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. The DVA, however, is empowered to compensate service-connected conditions and to periodically re-evaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time.

PTSD Condition. The CI suffered a sexual assault in November 2002 and was referred to mental health for posttraumatic stress symptoms. Initial mental health evaluation was on 15 November 2002, five months pre-separation, with symptoms of detachment, derealization, dissociative amnesia, anorexia, flashbacks, avoidance behaviors, anxiety, insomnia, decreased concentration and hypervigilance. Other symptoms included anhedonia, irritability, decreased libido, and passive suicidal ideation without plan or intent. She reported a history of chronic depressive symptoms for 20 years with depressed mood, feeling helpless and hopeless, decreased motivation and low self esteem. The mental status examination (MSE) showed sad mood with dysthymic affect but was otherwise unremarkable. The axis I diagnoses were acute stress disorder and dysthymic disorder, rule out major depressive disorder. She was found psychologically fit for limited duty, which she had been on for three months for her gastrointestinal condition. A mental health summary note on 12 December 2002 noted ongoing PTSD symptoms over the last month with irritability, anger, anxiety, hostility toward men, and a panic attack. Medications included Celexa and Ambien. Her level of functioning represented a mild improvement in symptoms since last assessment. Axis I diagnoses remained unchanged and the Global Assessment of Functioning (GAF) was 61-70. She again remained fit for limited duty with no specific duty limitations related to her mental health condition.

The VA Compensation and Pension (C&P) examination for PTSD on 28 March 2003, one month pre-separation, noted complaints of depressed mood, insomnia, nightmares, anxiety, panic attacks, irritability, intrusive thoughts of the rape incident, exaggerated startle response and hypervigilance, as well as avoidant behavior. It noted that she was not functioning well at work and she had lost her friends. She was not involved in combat, but she was sexually assaulted the previous November while on base which she identified as her stressor. MSE revealed a polite, cooperative, somewhat tense and anxious female who demonstrated no impairment of thought process or communication, no delusions, hallucinations, suicidal ideation or any psychotic symptoms. She maintained good eye contact with normal speech and no memory impairment. There was no obsessive or ritualistic behavior but she did describe severe panic attacks that had been going on since last November and occurred three or four times a week. She was diagnosed with dysthymic disorder at the Fleet Mental Health Center because of her history of low level depressed mood throughout most of her life. She did not meet criteria for major depression, but was chronically depressed with no evidence of somatoform or personality disorder. Axis I diagnoses were PTSD and dysthymic disorder with a GAF of 49, clearly noting that her condition did cause difficulty both at work and with social functioning. The non-medical assessment (NMA), three months pre-separation, noted that she was not able to work within her Rating, could not fire a weapon and was not worldwide assignable. No specific physical or mental conditions are mentioned.

The IPEB found the PTSD condition unfitting, coded 9411, with a 10% rating. PTSD was not on the MEB submission, but was discussed in the JDETS notes. The VA rating decision on 19 June 2003, two months post-separation, service-connected the PTSD with dysthymia condition, coded 9433-9411 (dysthymic disorder-PTSD), with a 70% rating assigned. They assigned a 70 percent evaluation “based on VA psychiatric findings of PTSD with dysthymic disorder with a GAF of 49, with reported symptoms of insomnia, nightmares, anxiety, panic attacks, irritability, depressed mood, intrusive thoughts of the incident, exaggerated startle response, hypervigilance and avoidant behavior, reflecting more than moderate symptoms required for the assignment of a 50 percent evaluation.”

Since the CI was diagnosed with PTSD, the provisions of VASRD §4.129 must be applied to rate this condition. 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 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. In this case we do not have an evaluation or treatment notes that reflect her condition at six months post-separation. There is a VA PTSD evaluation two years after separation that noted an admission from 28 December 2004 until 3 January 2005 for an intentional medication overdose. The diagnosis remained PTSD with depressed symptoms and the GAF was 50-60. The Board directs its attention to its rating recommendations based upon the evidence just described. All members agreed that the §4.130 criteria for a 50% rating (occupational and social impairment with reduced reliability and productivity) were not exceeded at the time of separation; therefore, the minimum 50% TDRL rating is applicable. As regards to the permanent rating recommendation, the deliberation settled on arguments for a 10%, 30% or 50% permanent rating recommendation. Although the narrative summary (NARSUM) found her fit for limited duty with no specific duty limitations related to her mental health condition, the IPEB did find the condition unfitting and the VA C&P evaluation related at least a moderate level of social and occupational impairment, which is consistent with previous DoDI 1332.39 definite language at 30% (greater than mild at 10%). The social and occupational impairment described in the NARSUM and VA C&P exam appeared to the Board to most closely approximate the 30% description IAW VASRD §4.30. Dysthymic disorder was adjudicated by the IPEB as unfitting but it was determined to have EPTS and no rating was applied. Her first mental health visit was in November 2002, almost two years after she entered active duty with no evidence of any visits, treatment, or medications prior to that date. As such she would have a 0% rating at entry with no deduction appropriate from the overall mental illness rating. Separating out dysthymic disorder is also contrary to VASRD rules. All mental illnesses are rated together under the code of the predominant symptom, which is PTSD in this case. The Board recognizes that the symptoms of PTSD and dysthymic disorder overlap and are thus rated as part of the clinical presentation of the PTSD condition. As such the Board does not recommend additional rating for dysthymic disorder but does recommend rating the PTSD with dysthymia condition, utilizing code 9411. After due deliberation, considering the totality of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board unanimously recommends 30% as the most representative of impairment and the fair and equitable permanent rating for PTSD with dysthymia in this case.

Other PEB Conditions. Dysthymic disorder was adjudicated by the IPEB as unfitting but it was determined to have existed prior to service (EPTS) and no rating was applied. The condition is considered above with the PTSD condition. Left sided ulcerative colitis was also adjudicated by the IPEB as unfitting and it was also determined to have existed prior to service. The service treatment records (STR) do document a reported history of hospitalization for ulcerative colitis prior to enlistment; however, there was no evidence she was symptomatic on active duty until May 2002, about 17 months after she entered service. The STR included other clinical histories where the patient reported alternative histories of bowel obstruction and no previous hospitalizations. The CI was not on any gastrointestinal medications from the time of entry into service until May 2002. No military entrance physical is available in the record for review. VASRD §4.22, Rating of Disabilities Aggravated by Active Service (EPTS), states that “in cases involving aggravation by active service, the rating will reflect only the degree of disability over and above the degree existing at the time of entrance into the active service whether the particular condition was noted at the time of entrance into the active service, or it is determined upon the evidence of record to have existed at that time. It is necessary therefore, in all cases of this character to deduct from the present degree of disability the degree, if ascertainable, of the disability existing at the time of entrance into active service, in terms of the rating schedule, except that if the disability is total (100 percent) no deduction will be made.” Without symptoms or medications at entry, the ulcerative colitis would have been rated 0%.

The Board discussed at length whether ulcerative colitis was permanently service aggravated and subject to rating or existed prior to service as a condition that is known to have exacerbations that are not related to service and thus not eligible for rating. SECNAVINST 1850.4E pg 3-56 notes that any injury or disease discovered after a Service member enters active duty, with the exception of congenital and hereditary conditions, is presumed to have been incurred in the line of duty. Any hereditary and/or genetic disease shall be presumed to have been incurred prior to entry into active duty. However, any aggravation of that disease, incurred in the line of duty, beyond that determined to be due to natural progression shall be deemed service aggravated. The presumption that a disease is incurred or aggravated in the line of duty only may be overcome by competent medical evidence establishing by a preponderance of evidence that the disease was clearly neither incurred nor aggravated while serving on active duty or authorized training. Such medical evidence must be based upon well-established medical principles, as distinguished from personal medical opinion alone. Preponderance of evidence is defined as that degree of proof necessary to fully satisfy the board members that there is greater than a 50 percent probability that the disease was neither incurred during nor aggravated by military service. SECNAVINST 1850.4E also notes that a Service member is presumed to have been in sound physical and mental condition upon entering active duty except for medical defects and physical disabilities noted and recorded at the time of entrance. As no entrance physical is present in the record for review and there are no reports of any symptoms until May 2002, the Board must assume the CI had no symptoms at the time of entry into Service.

The Board noted that she had limited duty for, and the MEB was actually started due to ulcerative colitis, not PTSD. She wasn't able to work in her job and wasn't deployable because of the condition. Records documented that she remained on medications for ulcerative colitis continually once she started, providing evidence for permanent service aggravation. Under code 7323 (ulcerative colitis) a 10% rating is assigned for moderate severity with infrequent exacerbations. A 30% rating requires moderate severity with frequent exacerbations. The VA noted two episodes with dates, the initial one in June 2002 and then one in November 2002, with four or five episodes in total. The NARSUM did not specify frequency but said she continued to have ongoing symptoms despite maximal doses of medications. Some ongoing symptoms were likely due to IBS and emotional issues because she was clinically improved on objective measures including labs and follow-up colonoscopy. After due deliberation, considering the totality of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board, by simple majority, recommends a finding of unfitting with permanent service aggravation for the ulcerative colitis condition, rated 10% and coded 7323 with 0% EPTS deduction.

The IPEB also found IBS to be a category II condition related to the ulcerative colitis and rule out possible borderline personality traits to be a category III condition that was not separately unfitting. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for these conditions.

Remaining Conditions. Other conditions identified in the DES file were bronchitis, sinusitis, back pain, indigestion, skin disease and lactose intolerance. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were clinically active during the MEB period, none were the bases for limited duty and none were implicated in the NMA. 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. No other conditions were service-connected with a compensable rating by the VA within twelve months of separation or contended by the CI. 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 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 unanimously recommends an initial TDRL rating of 50% in retroactive compliance with VASRD §4.129 as DOD-directed and a 30% permanent rating at six months IAW VASRD §4.130. In the matter of the ulcerative colitis condition, the Board, by simple majority, recommends a rating of 10%, code 7323 IAW VASRD §4.114. This majority determined the presumption of service aggravation as described in SECNAVINST 1850.4E was not overcome by a preponderance of evidence and there was not a greater than 50% probability that the disease was not aggravated by military service. The single voter for dissent (who recommended finding that the condition EPTS with no permanent service aggravation and thus no rating applied) did elect to submit a minority opinion. In the matter of the irritable bowel syndrome or rule out possible borderline personality traits conditions, the Board unanimously agrees that it cannot recommend a finding 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: TDRL at 60% for six months following CI’s prior medical separation (PTSD at minimum of 50% IAW §4.129 and DoD direction) and then a permanent combined 40% disability retirement as below.

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| **UNFITTING CONDITION** | **VASRD CODE** | **TDRL RATING** | **PERMANENT****RATING** |
| Posttraumatic Stress Disorder | 9411 | 50% | 30% |
| Ulcerative Colitis | 7323 | 10% | 10% |
| **COMBINED** | **60%** | **40%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110220, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

 President

 Physical Disability Board of Review

MINORITY OPINION:

The IPEB found left sided ulcerative colitis to be an unfitting condition and noted EPTS for the reason the condition was not rated. The board members unanimously agreed the Ulcerative Colitis condition was an unfitting condition. However, the Board members were not in agreement on the issue of natural progression of the disease versus permanent service aggravation of the disease. The records reflect that prior to enlistment the CI was hospitalized for a week for a similar episode and diagnosed with ulcerative colitis, thereby indicating this disease was not service incurred. Although the service entry exam was not available, it is noted on the 27 June 2002 treatment note that the CI was diagnosed with ulcerative colitis in the civilian sector and this was not noted on the MEPS Physical Exam. She indicated her last flare was about three years prior, which would have been about 1.5 years prior to entry into the service. Endoscopic findings in June 2002 were consistent with mild to moderate ulcerative colitis and she was started on medication for her acute flare. After four to six weeks of medication therapy, the CI showed clinical improvement and was tapered off her prednisone. A treatment note date November 26, 2002 reported her ulcerative colitis was improved although she still reported some symptoms. During follow-up in Gastroenterology for continued symptoms, testing including CBC, ESR, chem panel and stool studies were within normal limits. Additionally, a follow up colonoscopy showed left sided ulcerative colitis with mild activity (quiescent colitis) only.

Ulcerative colitis is a chronic inflammatory disorder of the GI tract characterized by relapses and remissions. The course of ulcerative colitis varies, with periods of acute illness often alternating with periods of remission. About ninety percent of patients with Ulcerative Colitis will have intermittent symptoms. Twenty to fifty percent will suffer a relapse in any given year. The period between flare-ups can last several months or several years. There is no cure for ulcerative colitis but there are therapies that may reduce the signs and symptoms or even bring about a long term remission. Mild to moderate attacks of colitis are usually treated with tapering course of oral predinisolone and about three quarters of patients will enter remission within weeks of steroid therapy. This is what occurred with the CI. She was treated for her acute flare and then studies conducted were normal and the follow-up colonoscopy indicated quiescent colitis. There was nothing in the record to indicate her condition was anything other than the natural expectations of the disease and therefore no permanent service aggravation. Most patients with Ulcerative Colitis will be maintained on long term therapy with anti-inflammatory agents to reduce the risk of relapse. She was diagnosed with Ulcerative Colitis prior to entry into service, was apparently in remission upon entry into service and had a flare while in service which improved with treatment. This is the normal progression expected of this disease. The majority (2-1 vote) believed the CIs condition was permanently service aggravated because her symptoms resumed and she was started on medications. Concern over that fact that the PEB made no mention of Permanent Service Aggravation was discussed. As the minority member, I did not find this to be a valid argument/issue. I had no reason to doubt that the PEB did not consider permanent service aggravation in their findings. In addition, 10 USC, Chapter 61 Section 1207a was not applicable in this case as the CI only had two years of active service.

After a thorough review and examination of the whole recorded history, I believe the Ulcerative Colitis existed prior to service and the CI suffered an acute flare of her chronic inflammatory disorder. Her symptoms simply followed the typical characterization of the disorder. There was no increase in the severity of her disease.

MEMORANDUM FOR COMMANDER, NAVY PERSONNEL COMMAND

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

Ref: (a) DoDI 6040.44

 (b) PDBR ltr dtd 23 Jan 12

1. Pursuant to reference (a), I reviewed reference (b) and partially concur with the recommendation of the PDBR.

2. The following disposition is directed in the following case:

 Assignment to the Temporary Disability Retired List with a 50 percent disability rating for the period 23 April through 22 October 2003, and placement on the Permanent Disability Retired List with a 30 percent rating effective 23 October 2003.

3. Please ensure all necessary actions are taken to implement the above decision, including the recoupment of disability severance pay, if warranted, and notification to Ms. Tolbert once those actions are completed.

 Principal Deputy

 Assistant Secretary of the Navy

 (Manpower & Reserve Affairs)