RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXX BRANCH OF SERVICE: army

CASE NUMBER: PD1100311 SEPARATION DATE: 20070418

BOARD DATE: 20120123

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E5, (92F, Petroleum Supply Specialist), medically separated for posttraumatic stress disorder (PTSD). He was diagnosed with PTSD consequent of three Iraq deployments in 2003, 2004, and 2005. 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. His treatment included medications and outpatient psychotherapy, without significant improvement. He did not respond adequately to treatment and was unable to perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. He was issued a permanent P3/S3 profile and underwent a Medical Evaluation Board (MEB). Chronic bilateral orchalgia (testicular pain), PTSD, and undifferentiated somatoform disorder were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Four other conditions, as identified in the rating chart below, were forwarded on the MEB submission as medically acceptable conditions. The PEB combined the three medically unacceptable MEB conditions as PTSD, citing overlapping symptoms, and adjudicated the condition as unfitting, rated 10%, with likely application of Department of Defense Instruction (DoDI) 1332.39. The U.S. Army Physical Disability Agency (USAPDA) issued an administrative correction to the PEB (DA Form 18) dated 21 March 2007 with no change to the rating, but a correction to the CI’s disposition from placement on the Temporary Disability Retired List (TDRL) to separation with severance pay. The CI did not appeal for a Formal PEB, and was medically separated with a 10% disability rating.

CI CONTENTION: “The rating I received was not an accurate representation of my many disabilities such as the rating for 10% for PTSD that now is 100% by the VA. This rating is the only one I was given by the army. I would also like to add that I have a service connected rating of 10% for Degenerative Arthritis in right and left elbow, peroneal neuropathy left lower extremity, migraine headaches, tinnitus, tendonitis in left shoulder. 20% for carpal and cubital tunnel syndrome upper right and left extremity, tendonitis with osteoarthritis in right shoulder and 30% for chondromalcia [sic] patella right and left knee with degenerative joint disease.”

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **USAPDA DA Form 18 – Dated 20070321** | | | **VA (~4 Mos. After Separation) – All Effective Date 20070419** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| PTSD (includes MEB diagnoses of somatoform disorder and orchalgia) | 9411 | 10% | PTSD | 9411 | 30%\* | 20070802 |
| Bilateral Orchalgia | 7599-7523 | NSC | 20070802 |
| Hypertension | Not Unfitting | | Hypertension | 7101 | 10% | 20070802 |
| Chronic Headache | Not Unfitting | | Migraine Headaches | 8100 | 10% | 20070801 |
| Lumbago | Not Unfitting | | Low Back Pain w/scoliosis | 5299-5271 | NSC | 20070802 |
| Atypical chest pain | Not Unfitting | | No VA Entry | | | |
| ↓No Additional MEB/PEB Entries↓ | | | R Knee Chondromalacia… | 5014 | 10% | 20070802 |
| L Knee Chondromalacia… | 5014 | 10% | 20070802 |
| L Shoulder Tendonitis | 5024 | 10% | 20070802 |
| R Shoulder Tendonitis | 5024 | 10% | 20070802 |
| Tinnitus | 6260 | 10% | 20070813 |
| LUE Carpal/Cubital Tunnel Syn | 8515 | 10% | 20070802 |
| RUE Carpal/Cubital Tunnel Syn | 8515 | 10% | 20070802 |
| LLE Peroneal Neuropathy | 8522 | 10% | STR |
| 0% x 5/Not Service Connected x 11 | | | 20070802 |
| **Combined: 10%** | | | **Combined: 80%\*** | | | |

\*Multiple rating increases from 20090821 (combined 80%); PTSD 9411 increased to 100% effective 20100621; VA rating based on exam most proximate to date of permanent separation.

ANALYSIS SUMMARY: The Board makes note that some of the CI’s contended conditions are derived from VA evaluations performed after separation, diagnosing conditions which were not addressed by the PEB. By policy and precedent the Board has limited its jurisdiction for recommending unadjudicated conditions as unfitting and subject to additional separation rating to those conditions which are evidenced in the core Disability Evaluation System (DES) file. The core DES file consists of the MEB referral document (DA Form 3947), the PEB adjudication document (DA Form 199), the narrative summary (NARSUM) (including any addendums or referenced examinations), the MEB physical exam, the commander’s statement, the physical profile(s), and any written appeals or internal DES correspondence. Contended conditions which are not eligible for Board recommendations on this basis remain eligible for submission to the Army Board for Correction of Military Records (ABCMR). 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 Department of Veterans Affairs, 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.

PTSD Condition: 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. The Board must then determine the most appropriate fit with VASRD 4.130 criteria at six months 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 VA Compensation and Pension (C&P) examination performed approximately four months after separation and a VA psychiatric outpatient note at approximately seven months post-separation. Especially since the C&P examination and VA treatment note also reflect the stress of transition to civilian life which is a core intent of §4.129, they carry the preponderance of probative value in the Board’s assessment of a fair permanent rating recommendation. The MEB evaluation, nevertheless, serves as a useful reference point and retains relevant probative value.

The NARSUM psychiatric addendum, two months pre-separation, described psychiatric impairment that could best be described as moderate. Symptoms included anxiety, panic attacks (by history, frequency unspecified), insomnia, nightmares, irritability, dysphoria, intrusive thoughts, hypervigilance, emotional withdrawal/detachment, flashbacks, memory problems (when asked what his birthday was, the CI had to look at his military ID), intolerance of crowds, and anhedonia. The examiner also noted “a wide array of somatic complaints” resulting in the CI having 162 appointments in various clinics over the past year; this was associated with a concomitant Axis I diagnosis of undifferentiated somatic disorder. The CI’s treatment included one psychotropic medication and outpatient psychotherapy. Occupational impairment was evidenced in the commander’s statement, citing that, “due to his mental and physical condition,” the CI was “no longer leading soldiers but assisting other NCOs with their task,” and that he was easily irritated and easily angered. Mental status exam (MSE) revealed an anxious and dysphoric mood, and “continued preoccupation with somatic problems.” There was no suicidal ideation, delusional or hallucinatory symptoms, speech disturbance or other abnormalities (cognitive testing not reported). Global assessment of functioning (GAF) was 55, denoting moderate symptoms or moderate difficulty in social or occupational functioning. The examiner characterized the CI’s impairment for social and industrial adaptability as “definite,” while the PEB indicated “the combined social and industrial impairment outside a military environment is mild.” Neuropsychiatric testing performed one month pre-separation to evaluate cognitive complaints revealed the CI “does not have any cognitive difficulties whatsoever,” and the examiner suggested personality disorder was the CI’s only psychiatric diagnosis. The CI’s pre-separation level of functioning was no higher than that described by the 50% VASRD criteria.

The VA C&P exam, approximately four months post-separation, described chronic significant PTSD symptoms (including anxiety, nightmares, irritability, hyperarousal, avoidance), with the addition of physical altercations (“a couple” without legal repercussions) and occasionally “hearing sounds that remind him of people talking.” Anhedonia was not reported, and the examiner stated the CI enjoyed writing music and shooting pool in his basement. The CI had discontinued his psychotropic medications because he had run out, and he had not received counseling since leaving the military. The CI lived alone and was in the process of divorce from his wife of two years; he had no children. He could not name any friends. The CI was employed as a night shift security guard since the month of separation, and reported the job was “going well so far.” On MSE, mood was depressed and affect was “very restricted to the point of being almost flat.” Psychomotor activity is decreased and “mentation seemed slowed.” Memory and concentration were “significantly decreased,” and the CI performed poorly on the St. Louis University Mental Status (SLUMS) examination scoring only 20 out of a possible 30. GAF was 54, the same (moderate) range as the NARSUM addendum (NARSUM GAF was 55). The examiner stated, “he is employable from a psychiatric standpoint and will do best in settings in which he has little or no contact with the public and very loose supervision secondary to his posttraumatic stress disorder symptoms.” The examiner applied the §4.130 30% language, stating the CI’s psychiatric symptoms caused “occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks….” The VA rated the CI’s PTSD at 30%, citing this exam and service treatment record.

A VA outpatient note at approximately seven months post-separation reported the CI was experiencing auditory hallucinations (hearing Arabic voices at night), sleeping one to two hours per night, and experiencing continued flashbacks that he could smell. His one psychotropic medication had improved his irritability such that “he no longer gets into fights,” and had decreased his checking the house and yard from three to four times per night to one time per night. He reported his concentration had worsened, he experienced continued anhedonia, and he did not leave his house other than to work. On MSE, his speech was slow, affect was flat, and thought process was concrete. GAF was 50, indicating serious symptoms or any serious impairment in social or occupational functioning.

Although remote from separation, a second VA psychiatric exam at 40 months post-separation showed significant worsening of the CI’s psychiatric symptoms, which included auditory hallucinations, dissociative episodes (losing track of time during the day), near daily panic attacks, and high level anxiety and avoidance behaviors (“near complete agoraphobia”). The examiner also noted the CI was hospitalized for suicidal ideation, although the VA could not verify that in the VA treatment records. The examiner noted the CI was still employed as a security guard, and had been made a supervisor and placed on a three-evening per week shift “in order to decrease his exposure to larger numbers of people and to decrease his stress.” GAF was 48, the same (serious) range as the prior exam. The examiner stated CI had some intermittent problems with maintaining personal hygiene, some disorientation to time and place and that the CI’s symptoms resulted in total occupational and social impairment (“not employable”). The VA increased the CI’s PTSD rating to 100% based on this exam and VA outpatient treatment records. The Board considered this a worsening, not indicative of the CI’s condition at six months post-separation.

The Board noted an addendum to the commander’s statement suggested that the CI was malingering and that he was fully employable in a civilian capacity, based on the commander’s observations of the CI at a local mall. There were also several instances where the CI exaggerated complaints (e.g., sleeping only one hour in three weeks, having performed 280 parachute jumps) documented in the service treatment record. The Board is left to consider that the CI’s accounts of his symptoms and their severity, which constitute most of the psychiatric evidence, are subject to probative value compromise. In such cases, the Board leans more heavily on the well-grounded evidence such as actual performance and functioning, objective elements of the MSE and symptoms which are consistently reported and compatible with clinical expectations. In so doing, however, the Board remains cognizant of VASRD §4.3 (reasonable doubt) and favorably concedes matters which it cannot opine to a “more likely than not” standard.

The PEB appropriately included any contribution from the undifferentiated somatic disorder with the primary unfitting PTSD IAW VASRD guidelines. The multiple diagnoses (which also include depressive disorder, NOS, from the VA exam) do not impact the rating as all psychiatric symptoms are considered in the CI’s overall mental impairment, and are rated IAW §4.130. The Board considered the PEB’s PTSD (9411) diagnosis as administratively final for rating purposes. The Board directed its attention to its rating recommendations based on the evidence just described. The Board first considered that all mental health symptoms from all diagnoses were to be rated IAW VASRD guidelines. The Board evaluated the long-standing symptoms of bilateral orchalgia as only unfitting when combined with the mental health disorder and that it is appropriately combined under the mental health rating.

All members agreed that the §4.130 criteria for a rating higher than 50% were not exceeded at the time of separation, and therefore the minimum 50% TDRL rating (as explained above) is applicable. The VA assigned a 30% rating for the PTSD condition based on §4.130 criteria without relying on the provisions of §4.129. As regards the permanent rating recommendation, all members 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 30% versus a 50% permanent rating recommendation. The VA rater’s rationale for a 30% rating was well-elucidated in the rating decision, although a 50% rating may have been supportable. The 30% description (occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks) was a good fit with the occupational functioning described in the four- and seven-month post-separation exams. The CI’s condition clearly deteriorated by the time of the 40-month exam, but that was not indicative of the CI’s functioning at six months. Pre-separation MSEs conducted during outpatient visits suggest that any impairment from the CI’s psychiatric symptoms was intermittent in nature. The CI remained employed during the entire period, had not missed any days of work by the four-month post-separation VA exam, and reported doing well at that time. The Board deliberated if the auditory hallucinations, and obsessive checking of the house, could have supported a 50% rating recommendation. The hallucinations were not described as “persistent,” rather as “occasional” and appeared to be of little consequence, having little impact on occupational or social functioning. Likewise, the obsessive behavior appeared to be relatively mild and did not appear to significantly interfere with daily activities, a key part of the descriptor. The preponderance of the hard evidence favors a 30% permanent rating strictly IAW VASRD §4.130. After due deliberation, considering the totality of the evidence, the Board recommends a permanent PTSD disability rating of 30% in this case.

Other PEB Conditions: Bilateral orchalgia was considered as part of the CI’s combined unfitting mental disorder rating by the PEB. The VA considered bilateral orchalgia as not service connected (NSC) with a normal exam. The Board considered possible unbundling and separate rating of bilateral orchalgia as 7599-7525 (analogous to epididymo-orchitis) as there was a separate profile and duty limitations. However, the Board adjudged that the CI did not meet the minimal compensable rating criteria (10%) of “long-term drug therapy, 1-2 hospitalizations per year and/or requiring intermittent intensive management.” The Board additionally agreed that PEB-described “preoccupation with somatic complaints of…” was an accurate determination and the orchalgia condition was considered under the mental disorder rating above.

The other conditions forwarded by the MEB and adjudicated as not unfitting by the PEB were hypertension, chronic lumbago, and atypical chest pain. None of these conditions were profiled or noted as failing retention standards, and only low back pain was implicated in the commander’s statement. The NARSUM noted the CI had a 3-4 year history of low back pain, with normal x-rays, and had little improvement from chiropractic manipulation, but some improvement with steroid injection. He had no prolonged profiles due to low back pain, and the condition did not cause him to fall below retention standards. A lumbar spine exam two months pre-separation showed near-normal ranges of motion (flexion to 80 degrees), and x-rays were normal (although thoracic scoliosis was seen on x-rays seven months pre-separation, that finding was not confirmed on physical exam). All of these conditions were reviewed by the action officer and considered by the Board. There was no indication from the record that any of 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.

Other Contended Conditions: The CI’s application asserts that compensable ratings should be considered for the following conditions: degenerative arthritis in right and left elbows; peroneal neuropathy left lower extremity; tinnitus; tendonitis left shoulder; bilateral carpal and cubital tunnel syndrome; tendonitis with osteoarthritis in right shoulder, bilateral knee chondromalacia patella with degenerative joint disease. The knee, elbow, and shoulder conditions were documented in the DES file, either specifically or in the psychiatric NARSUM addendum as “multiple site arthralgias,” and were consistent with the primary unfitting diagnosis of PTSD, which included symptoms from the collateral Axis I diagnosis of undifferentiated somatoform disorder. The tinnitus and left lower extremity peroneal neuropathy 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 arthralgia conditions and upper extremity neuropathies were reviewed by the action officer and considered by the Board. There was no evidence for concluding that any of the conditions interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore that none of the stated conditions were subject to Service disability rating.

Remaining Conditions: Other conditions identified in the DES file were continuous cough, toes locking up, knees giving out and locking up, heartburn (treated with medications), dizziness, headaches, cervical and thoracic back pain, erectile dysfunction, nausea, rib pain, nose bleeds, intermittent unusual gait, and unintended weight gain. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were occupationally significant 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. No other conditions were service-connected with a compensable rating by the VA within 12 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. As discussed above, PEB reliance on DoDI 1332.39 for rating PTSD was likely operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the PTSD with undifferentiated somatoform disorder condition, the Board unanimously recommends an initial TDRL rating of 50% IAW VASRD §4.129 and DoD direction, and a 30% permanent rating at six months IAW VASRD §4.130. In the matter of the hypertension, chronic lumbago, and atypical chest pain conditions, the Board unanimously recommends no change from the PEB adjudications as not unfitting. In the matter of the multiple site arthralgias (bilateral elbows, shoulders, and knees), bilateral upper extremity neuropathies, 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: TDRL at 50% for six months following CI’s prior medical separation (PTSD at minimum of 50% IAW §4.129 and DoD direction) and then a permanent 30% disability retirement as below.

|  |  |  |  |
| --- | --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **TDRL RATING** | **PERMANENT**  **RATING** |
| Posttraumatic Stress Disorder with Undifferentiated Somatoform Disorder | 9411 | 50% | 30% |
| **COMBINED** | **50%** | **30%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110420, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

President

Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

(TAPD-ZB), 2900 Crystal Drive, Suite 300, Arlington, VA 22202

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

for XXXXXXXXXXXXXXXXX (PD201100311)

1. Under the authority of Title 10, United States Code, section 1554(a), I approve the enclosed recommendation of the Department of Defense Physical Disability Board of Review (DoD PDBR) pertaining to the individual named in the subject line above to constructively place the individual on the Temporary Disability Retired List (TDRL) at 50% disability for six months effective the date of the individual’s original medical separation for disability with severance pay and then following this six month period recharacterize the individual’s separation as a permanent disability retirement with the combined disability rating of 30%.

2. I direct that all the Department of the Army records of the individual concerned be corrected accordingly no later than 120 days from the date of this memorandum:

a. Providing a correction to the individual’s separation document showing that the individual was separated by reason of temporary disability effective the date of the original medical separation for disability with severance pay.

b. Providing orders showing that the individual was retired with permanent disability effective the day following the six month TDRL period.

c. Adjusting pay and allowances accordingly. Pay and allowance adjustment will account for recoupment of severance pay, provide 50% retired pay for the constructive temporary disability retired six month period effective the date of the individual’s original medical separation and then payment of permanent disability retired pay at 30% effective the day following the constructive six month TDRL period.

d. Affording the individual the opportunity to elect Survivor Benefit Plan (SBP) and medical TRICARE retiree options.

3. I request that a copy of the corrections and any related correspondence be provided to the individual concerned, counsel (if any), any Members of Congress who have shown interest, and to the Army Review Boards Agency with a copy of this memorandum without enclosures.

BY ORDER OF THE SECRETARY OF THE ARMY:

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA