RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD1100330 DATE OF PLACEMENT ON TDRL: 20041121

BOARD DATE: 20120202 Date of Permanent SEPARATION: 20080408

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty member, SPC/E-4 (31B, Military Police), medically separated for posttraumatic stress disorder (PTSD). The CI was diagnosed with PTSD following an Iraq deployment May 2003 to February 2004. She was hospitalized for her condition twice and treated as an outpatient with medications and therapy. She did not respond adequately to treatment to fully perform within her Military Occupational Specialty (MOS). She was issued a permanent S4 profile with no access to weapons and underwent a Medical Evaluation Board (MEB). PTSD was forwarded to the Informal Physical Evaluation Board (IPEB) as medically unacceptable IAW AR 40-501. Four other conditions, as identified in the rating chart below, were forwarded by the MEB as medically acceptable conditions. The IPEB adjudicated the PTSD condition as unfitting, rated 10%, with likely application of the Department of Defense Instruction (DoDI) 1332.39. The CI appealed for a Formal PEB (FPEB), and was then placed on Temporary Disability Retired List (TDRL) with ratings as reflected in the chart below. After more than three years on TDRL and a third hospitalization (December 2006), the PEB adjudicated a permanent disability rating for the PTSD condition of 10% with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: The CI states: “I was assigned less than 50% disability rating by the military for my unfitting PTSD upon discharge from active duty. In accordance with the class action notice, assign the highest final disability rating applicable consistent with 38 CFR4.I29 and DOD policy to the extent such increase will not adversely affect my total compensation, including but not limited to compensation pursuant to CRSC.” She additionally lists all of her VA conditions and ratings as per the rating chart below. A contention for their inclusion in the separation rating is therefore implied.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Final Service IPEB – Dated 20080220** | **VA\* – All Effective Date 20041121** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| **On TDRL – 20041120** | **TDRL** | **Sep.** |
| PTSD | 9411 | 30% | 10% | PTSD | 9411 | 50% | 20041026 |
| Major Depressive Disorder | Not Unfitting |
| Conversion Disorder | Not Unfitting |
| Headaches | Not Unfitting | Stress Related Headaches | 8100 | 30% | 20050805 |
| Low Back Pain | Not Unfitting | Mechanical Low Back Pain | 5237 | 10% | 20050805 |
| ↓No Additional MEB/PEB Entries↓ | Left Knee Degenerative Joint … | 5003 | 10% | 20050805 |
| 0% x 1 / Not Service Connected x 2 | 20050805 |
| **Combined: 10%** | **Combined: 70%** |

\* VA rating based on exam most proximate to date of permanent separation.

ANALYSIS SUMMARY: The PEB’s initial (pre-TDRL) rating, 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 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 at least a six-month period on the Temporary Disability Retired List (TDRL). Since the Service was in compliance with the §4.129 TDRL requirement, the Board need not apply a constructive TDRL interval in this case. A minimum TDRL rating of 50% remains applicable IAW DoD direction, and as held by Federal court in the *Sabo, et al 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 MEB’s narrative summary (NARSUM) and the Department of Veterans’ Affairs (DVA) psychiatric Compensation and Pension (C&P) exam performed proximate to the date of temporary retirement are probative to the Board’s TDRL rating recommendation. The only probative source of evidence pertinent to the Board’s permanent rating recommendation was the TDRL psychiatric re-evaluation (four months preceding permanent separation), supplemented by a follow-up letter to the PEB from the same examiner.

PTSD Condition. The CI reported the onset of PTSD symptoms in connection with traumatic events experienced during her Iraq deployment in 2003-2004. During the nine months of combat exposure, she experienced nightly mortar and rocket attacks, sporadic small arms fire, proximity to improvised explosive detonations, exposure to violence and death, and a rollover accident while driving an armored vehicle during operations. Symptoms included depression, insomnia, persistent nightmares, intrusive thoughts, anhedonia, poor concentration, avoidance, anxiety, vague suicidal thoughts, and severe panic attacks. In May 2004, the CI was admitted to an Army hospital in Germany for six days, and then medically evacuated to Walter Reed Army Medical Center where she was hospitalized for an additional 13 days. She met Axis I criteria for the diagnosis of PTSD, and was additionally diagnosed with major depressive disorder (MDD) and conversion disorder (manifested by involuntary motor movements which responded to anxiolytics). After discharge, she improved with psychotherapy and medication; but, remained significantly symptomatic and could not function in her MOS. During the MEB process, she experienced numerous panic attacks and voluntarily re-admitted herself to Walter Reed in August 2004 for another nine days. At her MEB psychiatric evaluation, she endorsed occasional suicidal thoughts without intent, depression, anxiety, social withdrawal, strained family relations, and nightmares. The mental status exam (MSE) was positive for mood and affect disturbance, residual involuntary motor movements, and, “clear preoccupation with the events in Iraq;” but, was devoid of active suicidal ideation, delusional/psychotic features or cognitive dysfunction. The MEB psychiatrist characterized the PTSD as “chronic, treated and improved” and assigned a Global Assessment of Functioning (GAF) score of 59, connoting moderate difficulty in social and occupational functioning. A VA psychiatric C&P performed four months later (one month preceding temporary retirement) documented equivalent symptoms and MSE; and, assigned a similar GAF (50).

After the CI was placed on TDRL and returned home, she remained in active treatment with the VA. A TDRL psychiatric re-evaluation performed two years later documented continued psychiatric acuity and recommended continued TDRL stabilization. Shortly afterwards, the CI underwent a third hospitalization (December 2006 - January 2007); reporting “I had a breakdown. I couldn’t take the firecrackers. I couldn’t take the people. I couldn’t take that time of the year. I was out of control.” The discharge summary documented a good response to intervention and a stable condition. At her final TDRL psychiatric re-evaluation a year later, the CI reported improved symptoms over all. She still reported flashbacks and nightmares, but denied suicidal ideation or other acute symptoms. She remained in active treatment, seeing a VA psychiatrist and clinical psychologist on a regular basis, and was still maintained on psychotherapeutic medications. Her MSE was significant for “ill-humored” mood and “annoyed” affect, “frail” impulse control, and “poor” social judgment. The remainder of the exam was normal, and there was good documentation of normal cognitive functioning. The examiner provided no GAF assignment or overall assessment of impairment, stating only, “I do not expect [CI’s] functional status to improve and recommend finalization of her medical retirement.” In a follow-up letter to the PEB, the examiner provided full details of the CI’s concurrent occupational and social functioning. At this time, she was in a stable relationship; she had stable full-time employment in the personnel office of her local VA (as a GS-4); and was successfully pursuing educational goals as a part-time student (carrying 11 credit hours and achieving a 3.3 grade point average).

The Board directs its attention to its rating recommendations based on the evidence just described. As regards to the permanent rating recommendation, all members agreed that the §4.130 threshold for a 50% rating was not approached and that the criteria for a 0% rating were well-exceeded. The deliberation settled therefore on arguments for a 10% versus a 30% permanent rating recommendation. A 10% rating is defensible based on the CI’s relative high level of functioning, both in the workplace and her educational endeavors, and noting an intact marriage of six years. Medication seemed to stabilize her symptoms, and it could be argued that they were “controlled by continuous medication.” The MEB TDRL examination is arguably consistent with the general description for a §4.130 rating of 30%, “occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks (although generally functioning satisfactorily…).” Although the CI was holding a stable job it was a position below the level of her education and training. She was seeking a new degree in business administration following the advice of her treating psychiatrist as a career path with her current degree in criminal justice would likely aggravate her PTSD condition. The MEB examiner still noted impairment of social judgment which would affect performance in her career field. She also had periodic severe psychiatric exacerbations requiring hospitalization, with obvious occupational impact; and, she could reasonably be assumed to have remained at risk for these decompensations at the time of permanent separation. The CI was still experiencing nightmares, panic attacks, and related anxiety which required relatively high doses of potent antipsychotic medications to control. In addition to the medications, she also attended outpatient mental health therapy sessions two to four times per month. Finally, the examiner did not foresee her condition improving in the future. It was ultimately agreed by all members that the factors just elaborated mitigated the CI’s grossly intact occupational functioning to an extent fairly characterized as impairing “work efficiency;” and furthermore, that an ongoing propensity for episodic decompensations constituted a fair characterization as “intermittent periods of inability to perform occupational tasks.” After due deliberation and in consideration of all evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends 30% as the fair permanent separation rating for PTSD in this case.

Other PEB Conditions. The other conditions forwarded by the MEB and adjudicated as not unfitting by the PEB were depressive disorder, conversion disorder, low back pain, and headaches. The depressive disorder and conversion disorder conditions were judged medically acceptable by the MEB. Nevertheless, any disability associated with these conditions is subsumed in the §4.130 rating for the PTSD condition as recommended above; therefore, any discussion of rating based on the appropriateness of fitness adjudications is moot. The CI’s chronic low back pain and chronic headaches resulted from the vehicle rollover in Iraq noted above. She received inpatient physical therapy treatment which drastically improved her back pain, and also resulted in improvement of the headaches. The headaches, furthermore, were not associated with any documented prostrating episodes which would achieve a compensable Service rating. Neither the lumbar nor headache condition was profiled, implicated in the commander’s statement or noted as failing retention standards. Both conditions were reviewed by the action officer and considered by the Board. There was no indication from the record that either of them 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 either of these conditions.

Remaining Conditions. Other conditions identified in the DES file were ovarian cysts and occasional dizziness. Several additional non-acute conditions or medical complaints were also documented. The dizziness was also a result of the vehicle rollover, and was not clinically active at the time of separation. None of these conditions were clinically 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. Additionally left knee degenerative joint disease and several other non-acute conditions noted by the VA proximate to separation 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 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 a 30% permanent rating at separation IAW VASRD §4.130. In the matter of the depressive disorder, conversion disorder, lumbar spine, and headache conditions; the Board unanimously recommends no change from the PEB adjudications as not unfitting. 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 separation be modified to reflect a permanent 30% disability retirement as indicated below.

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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 20110103, 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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

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 recharacterize the individual’s separation as a permanent disability retirement with the combined disability rating of 30% effective the date of the individual’s original medical separation for disability with severance pay.

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 permanent disability retirement 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 date of the original medical separation for disability with severance pay.

 c. Adjusting pay and allowances accordingly. Pay and allowance adjustment will account for recoupment of severance pay, and payment of permanent retired pay at 30% effective the date of the original medical separation for disability with severance pay.

 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:

Encl

 Deputy Assistant Secretary

 (Army Review Boards)