RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXX BRANCH OF SERVICE: air force

CASE NUMBER: PD1100333 DATE OF PLACEMENT ON TDRL: 20050614

BOARD DATE: 20120202 Date of Permanent SEPARATION: 20070312

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty member, SSgt/E-5 (2S071, Supply Management), medically separated for posttraumatic stress disorder (PTSD). He was diagnosed with PTSD after an Iraq deployment from April 2003 to July 2003 with documented criterion A stressors. The CI was treated with psychotherapy and medications, but he did not respond adequately to fully perform within his Air Force Specialty (AFS). He was issued a temporary P2/S4 profile and referred for a Medical Evaluation Board (MEB). PTSD was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AFI 48-123. One other condition, hypertension, was forwarded on the MEB submission as medically acceptable. Two additional conditions listed on Axis III were also forwarded on the MEB submission: obesity and hyperlipidemia. These are not ratable conditions IAW DoD and VA regulations and will not be discussed further. Other conditions included in the Disability Evaluation System (DES) file will be discussed below. The PEB adjudicated the PTSD condition as unfitting, rated 30%, and placed the CI on the Temporary Disability Retired List (TDRL). After 21 months on TDRL, the PEB adjudicated a permanent disability rating of 10% for PTSD citing criteria from Department of Defense Instruction (DoDI) 1332.39. 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 CFR4.129 and DOD policy, to the extent such increase will not adversely affect my total compensation, including but not limited to compensation pursuant to CRSC.” The CI also attached a statement to his application describing events during deployment which he claims were suppressed by the Air Force; and, elaborates physical injuries which were “never recognized” because “they covered up our whole convoy incident [referenced below]” and “they said that [PTSD] was the only thing they were concerned with at the moment.”

RATING COMPARISON:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Final Service IPEB – Dated 20070124** | | | | **VA\* – All Effective Date 20050614** | | | |
| **Condition** | **Code** | **Rating** | | **Condition** | **Code** | **Rating** | **Exam** |
| **On TDRL – 20050614** |  | **TDRL** | **Sep.** |
| PTSD | 9411 | 30% | 10% | Major Depressive Disorder / PTSD | 9434 | 30% | 20050518 |
| Hypertension | | Category II | | Hypertension | 7101 | 0% | 20050531 |
| Obesity | | Category III | | Obesity | 7904 | NSC | 20050531 |
| Hyperlipidemia | | Category III | | No VA Entry | | | |
| No Additional MEB/PEB Entries | | | | 0% x 9 / Not Service Connected x 8 | | | 20050531 |
| **Combined: 10%** | | | | **Combined: 30%** | | | |

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

ANALYSIS SUMMARY: In acknowledgement of the CI’s assertions in his statement, the Board notes for the record that it has neither the jurisdiction nor authority to scrutinize or render opinions regarding suspected Service improprieties in the processing of his case. 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. It must also judge the fairness of PEB fitness adjudications and its assessment of other potentially ratable conditions, based on Service eligibility and the fitness consequences of conditions as they existed at the time of separation.

The PEB 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) performed proximate to the date of temporary retirement are probative to the Board’s TDRL rating recommendation. The only proximate source of psychiatric evidence on which to base the permanent rating recommendation in this case is the Service’s TDRL psychiatric re-evaluation performed two months before permanent separation. No other evaluations or VA/civilian mental health treatment records are in evidence within 12 months of the date of final separation.

PTSD Condition. The CI reported the onset of PTSD symptoms in connection with traumatic events experienced during his Iraq deployment in 2003. The NARSUM documented a reported history of daily combat, deaths of friends and enemies, an ambush of his convoy, and a rocket attack of his transport craft while being medically evacuated for an abdominal hernia (which the CI stated, in the NARSUM and in his Board statement, was exacerbated by the incident). The CI initially avoided mental health treatment due to a fear of “being labeled or losing his career;” and ultimately entered treatment in February 2005 after he realized that his condition was “negatively impacting his family and his ability to do his job.” Symptoms included anxiety, depression, dysphoria, tearfulness, nightmares, sleep disturbance, intrusive recollections, avoidance, guilt, decreased interest, poor concentration, and hypervigilance. The MEB psychiatrist assigned a Global Assessment of Functioning (GAF) score of 50 (connoting serious difficulty in social and occupational functioning), and characterized his DoDI 1332.39-defined social/industrial impairment as “severe.” The commander stated that the CI “is able to work full shifts, but is currently on two profiles… [and] “is not motivated to stay in the Air Force.” The VA C&P evaluation performed one month prior to temporary retirement records moderate to severe major depressive disorder with PTSD symptoms. At this point, he was uncertain of his future plans, and relationships with his family were tense and strained. The VA examiner also assigned a GAF of 50.

The CI reported in his final TDRL revaluation that he had seen a VA psychiatrist once, had some medications discontinued, and was unable to obtain another appointment. At this time (two months prior to permanent separation), the CI was still taking an anti-depressant (sertraline) and reported continued symptoms of nightmares, difficulty sleeping, frequent and severe anxiety, increased startle response, decreased energy and interest, avoidance of memory triggers and crowds, trouble concentrating, irritability, and feelings of hopelessness. The TDRL examiner documented that the CI had supportive family relationships and a stable full-time job, having recently moved from a position as a sales assistant to equipment manager on an air base. He denied “any work difficulty related to his diagnosis.” A normal mental status exam was documented with euthymic mood and congruent affect. The CI demonstrated logical and goal-directed thought processes, clear communication, and good insight and judgment. There were no suicidal or homicidal ideations, and no evidence of psychosis. There were no hospitalizations. The diagnosis was PTSD with DoDI 1332.39-defined “mild” social and industrial impairment and “marked” military impairment. While his condition at this time had definitely improved since the beginning of the TDRL period, the psychiatrist still noted that the CI’s continued anxiety and avoidance symptoms caused “significant distress and impairment.” The CI’s GAF assignment was 60-65, connoting mild to moderate impairment.

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 exceeded. The deliberation settled therefore on arguments for a 10% (occupational and social impairment due to mild or transient symptoms which decrease work efficiency … only during periods of significant stress, or symptoms controlled by continuous medication) versus a 30% (occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks) permanent rating recommendation. Some level of work inefficiency might be expected to result from the reported symptoms; although, there was no documented evidence of such in an occupational capacity that demanded multiple daily interpersonal interactions in a military setting. The evidence clearly suggests that there were no “intermittent periods of inability” relative to occupational capacity. Regarding the 10% criteria under §4.130, the general description is a fit with the documented level of social and occupational functioning that showed minimal if any impairment; and the fact that the CI’s symptoms appeared to have significantly improved. Conversely, the members agreed that the CI’s symptoms at the time of permanent separation could not be fairly characterized as “transient” or “controlled by continuous medication;” although, deliberated as to whether or not there was any presumptive social or occupational impairment to which to attach a higher rating. The Board must also weigh the fact that a high level of functioning was documented without benefit of concurrent psychotherapeutic support. After due deliberation and in consideration of all the evidence and reasonable doubt, the Board recommends no change in the PEB’s permanent separation rating for PTSD in this case.

Other PEB Conditions. One other condition, hypertension, was forwarded by the MEB and adjudicated as not unfitting by the PEB. This condition was profiled, implicated in the commander’s statement or noted as failing retention standards. The condition was reviewed by the action officer and considered by the Board. There was no indication from the record that this condition significantly interfered with satisfactory performance of AFS duty requirements. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for the hypertension condition.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for multiple hernia repairs and a post-separation spinal fusion. While the spine condition is service connected, it was not clinically or occupationally active during the MEB period. There is no evidence therefore that it interfered with duty performance to a degree that could be argued as unfitting. Regarding the hernia condition, the CI underwent three surgical repairs prior to separation. He was first diagnosed with a hernia while deployed in 2003, which as noted above resulted in medical evacuation. He underwent his first repair surgery in Germany at that time. A month later he underwent a revision and second repair; from which he recovered and returned to active duty. In 2004, the CI re-herniated after lifting a heavy object while on duty. Another hernia repair was performed in May 2004. One year before he was placed on TDRL, a follow-up exam noted that he was doing well. He reported no more discomfort, and there was no evidence of any residual hernia. He was released from surgical care, and no subsequent encounters are in evidence. The condition carried a temporary P2 profile at the time of the MEB process, which the commander stated “restricts his ability to lift objects.” In the NARSUM at temporary retirement, the examiner noted “chronic pain in his waist-line,” but did not comment further on the hernia condition nor list it as a diagnosis for PEB consideration. The hernia condition was not rated by the VA from the concurrent C&P evaluation. There is no record of any further treatment of the hernia condition during the TDRL period, and the TDRL examiner did not note hernias as a presently active condition. The spine and hernia conditions were reviewed by the action officer and considered by the Board. It was determined that neither could be argued as unfitting and subject to separation rating.

Remaining Conditions. Other conditions identified in the DES file were ankle pain, appendectomy, and left knee patellofemoral syndrome. Several additional non-acute conditions or medical complaints were documented in the DES file. 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. 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 operant in this case; and, the condition was adjudicated independently of that instruction by the Board. In the matter of the PTSD, the Board unanimously recommends a permanent 10% rating at final separation IAW VASRD §4.130. In the matter of the hypertension condition, the Board unanimously recommends no change from the PEB adjudications as not unfitting. In the matter of the contended spinal and hernia conditions, the Board unanimously agrees that it cannot recommend any 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, therefore, recommends that there be no recharachterization of the CI’s disability and separation determination, as follows:

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Posttraumatic Stress Disorder | 9411 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100826, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

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President Physical Disability Board of Review

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

Dear XXXXXXXXX

Reference your application submitted under the provisions of DoDI 6040.44 (Title 10 U.S.C. §  1554a), PDBR Case Number PD-2011-00333

After careful consideration of your application and treatment records, the Physical Disability Board of Review determined that the rating assigned at the time of final disposition of your disability evaluation system processing was appropriate. Accordingly, the Board recommended no re-characterization or modification of your separation with severance pay.

I have carefully reviewed the evidence of record and the recommendation of the Board. I concur with that finding and their conclusion that re-characterization of your separation is not warranted. Accordingly, I accept their recommendation that your application be denied.

Sincerely,

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Director

Air Force Review Boards Agency