RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXX BRANCH OF SERVICE: air force

CASE NUMBER: PD1100444 SEPARATION DATE: 20030627

BOARD DATE: 20120313

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an Air Force, SSgt/E-5 (3E072, Electrical Power Production Craftsman) medically separated for bipolar II disorder. He responded to treatment and was in full remission at the time of the Medical Evaluation Board (MEB). While he was able to perform within his Air Force Specialty (AFS), he could not deploy. He was issued duty profile restrictions, initially S4, but later S1 with a P4 precluding deployment and underwent an MEB. Two axis I diagnoses, bipolar disorder (BPD) II and generalized anxiety disorder (GAD) were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AFI 48-123, 44-113, 36-3212, and 44-157. Obstructive sleep apnea (OSA) was forwarded on the MEB submission as an Axis III condition. The PEB adjudicated the BPD II in full remission associated with anxiety disorder, social and industrial adaptability impairment mild, as unfitting, rated at 10%, with application of Veterans’ Administration Schedule for Rating Disabilities (VASRD). It categorized the OSA as category II, a condition that can be unfitting but is not currently compensable or ratable and tobacco abuse as category III, not unfitting or ratable. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: The CI elaborates no specific contentions regarding rating or coding; however he identifies the five conditions rated by the Veterans Administration in block 14 of the application: bipolar disorder (BPD), obstructive sleep apnea (OSA, left knee residuals, left clavicle resection with degenerative changes (left acromioclavicular joint [ACJ]), cervical strain.

RATING COMPARISON:

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| --- | --- |
| **Service IPEB – Dated 20030410** | **VA (2 Mo. After Separation) – All Effective Date 20030628** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bipolar Disorder with Anxiety Disorder | 9432 | 10% | Bipolar Disorder | 9432 | 50% | 20030825 |
| Obstructive Sleep Apnea | 6847 | Cat II | Obstructive Sleep Apnea | 6847 | 50% | 20030825 |
| Tobacco Abuse | Category III | No VA Entry |
| ↓No Additional MEB/PEB Entries↓ | Left Acromioclavicular DJD | 5010 | 10% | 20030825 |
| Residuals, Arthroscopic Lateral Meniscus Tear, Left Knee | 5259 | 10% | 20030825 |
| Cervical Strain | 5290 | 10% | 20030825 |
| 0% x 7/Not Service Connected x 3 | 20030825 |
| **Combined: 10%** | **Combined: 80%** |

 VARD of 20041015 granted individual unemployability from 20030628

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. 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 (DVA), operating under a different set of laws (Title 38, United States Code), 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.

Bipolar II Disorder with Anxiety Disorder. The CI first presented to mental health on 24 October 2001 on referral by his supervisor due to mood swings. The CI reported depressive episodes lasting three to seven days occurring twice a month since March 2001 which corresponds with the timeframe when he reports his wife left him while he was deployed (February to May 2001). He also reported symptoms consistent with hypomanic episodes lasting two days occurring once every two months over the prior two to three years. A diagnosis of BPD was made and he was started on medication on 7 November 2001 with significant improvement in his symptoms within a few weeks. By 8 March 2002, his psychologist recorded his symptoms were in “partial remission,” and “resolved” by 14 May 2002. The psychologist also noted that there was full inter-episode recovery. No recurrence of depression or hypomania was documented in the service treatment record (STR). His condition; however, resulted in restrictions from deploying and a recent diagnosis of OSA also resulting in deployment restriction prompted referral to an. MEB. The MEB psychiatry narrative summary (NARSUM), 25 February 2003, four months prior to separation, recorded that the last episode of mood disturbance from the BPD was in October to November 2001 and that the condition was in full remission since that time (full remission recorded in May 2002). The NARSUM psychiatrist also noted more chronic symptoms of worry attributed to GAD that was productive of mild impairment. His mental status exam (MSE) was noted as being normal other than mild psychomotor retardation and a non-specific cognitive exam (a later neurology evaluation in March 2003 documented a normal mental status examination including cognitive functions). Although the BPD was reported to be in full remission, the NARSUM psychiatrist estimated the social and industrial adaptability impairment for civilian occupations as definite and the Global Assessment of Functioning (GAF) as 60 (moderate symptoms). The Board concluded this reflected impairment when the CI was experiencing symptoms as the commander’s letter for the PEB indicated the CI continued to work full time in his AFS and the STR reflected he was in a long term relationship with his girlfriend with whom he had a child (in divorce process from wife; wife had left him in 2001 while he was deployed). A memorandum from mental health provider dated 31 March 2003 stated there were no changes in the CI’s condition. The VA Compensation and Pension (C&P) exam was accomplished 25 August 2003, two months after separation. Although the history obtained was generally similar to that from the MEB, the descriptions of the high energy episodes differed significantly in severity such that the examining psychiatrist concluded criteria were met for mania and a diagnosis of BPD
I. In addition, while the STR documented full remission since May 2002, and absence of recurrent episodes of depression or hypomania, the CI reported recurring episodes. On MSE, there was a slightly anxious affect and slightly pressured speech at the beginning of the interview, but the examination was otherwise normal including mood and cognitive functions. The examiner documented that the CI “feels under control while he takes medication.” Based on the reported clinical history the examiner estimated a GAF of 50 for serious symptoms or any serious impairment in social, occupational, or school functioning.

The PEB and VA both coded the BPD condition as 9432, but rated it 10% and 50% respectively. The PEB based its 10% rating on documentation of full remission since May 2002, while the VA based its rating on the C&P examination report of continued symptoms. The VA rating decision cited anxiety, pressured speech difficulty sleeping and delusions of grandeur; the Board notes that the first two were minimal symptoms noted at the time of the examination and the latter two referred to prior episodes and that the last documented episode was over one year prior to separation. The Board considered both evaluations and the STR in its deliberations. It is clear from the record that the CI responded well to treatment and was in full remission since May 2002 from the BPD at the time of separation. While he did have some symptoms of anxiety, he was in the process of a divorce, and the symptoms were mild. His commander noted that he could work a full shift other than time spent at medical appointments and indicates no problems other than his inability to deploy. After due deliberation in consideration of the totality of the evidence, the Board concluded that there was insufficient cause to recommend a change from the PEB fitness adjudication for the BPD condition.

Other PEB Conditions. The other conditions forwarded by the MEB and adjudicated as not unfitting by the PEB were OSA and tobacco abuse. Routinely OSA is not considered unfitting solely on the basis of field and operational impediments to the use of CPAP. There is no evidence in this case that OSA was associated with any unfitting impairments not corrected by CPAP. Tobacco abuse is not ratable under either DoD or VA criteria. Neither of these conditions were profiled or implicated in the commander’s statement. The OSA was well controlled with CPAP. All were reviewed by the action officer and considered by the Board. There was no indication from the record that either of these conditions 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 either of the stated conditions.

Contended Conditions. The CI also contends for left knee, left shoulder and neck conditions. There are no visits in the STR for the left knee after recovery from surgery for a lateral meniscus tear in 1999. The CI underwent a surgery of the left shoulder in 2000. Again, after recovery from the procedure, he did not seek medical care for the left shoulder. Except for a single encounter for neck pain on the day of a car crash in December 2002 (neck and right shoulder pain, no other injuries, normal examination), there is no record of medical care for the neck in the STRs available for review nor is it in the DES. 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. 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, therefore, has no reasonable basis for recommending any additional unfitting conditions for separation rating.

Remaining Conditions. Other conditions identified in the DES file were headaches, right wrist condition, hydrocoele, anemia and seasonal allergic rhinitis. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were clinically or occupationally significant during the MEB period, none carried attached profiles or were the basis for limited duty (LIMDU) 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, right shoulder tendonitis, erectile dysfunction and several other non-acute conditions were noted in the VA rating decision (VARD) 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. 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 bipolar disorder condition, the Board unanimously recommends no change from the PEB adjudication. In the matter of the obstructive sleep apnea condition, the Board unanimously recommends no change from the PEB adjudication as category II, not separately unfitting. In the matter of the tobacco abuse, the Board unanimously recommends no change from the PEB adjudication as category III, not unfitting or ratable. In the matter of the left knee, left shoulder, neck pain, headaches, right wrist condition, hydrocoele, anemia and seasonal allergic rhinitis or any other condition eligible for Board consideration, the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

RECOMMENDATION: The Board, therefore, recommends that there be no recharacterization of the CI’s disability and separation determination, as follows:

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Bipolar Disorder with Anxiety Disorder  | 9432 | 10% |
| **COMBINED** | **10%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100609 w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

 XXXXXXXXXXXXXXXX

 President

 Physical Disability Board of Review

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

Dear XXXXX:

 Reference your application submitted under the provisions of DoDI 6040.44 (Title 10 U.S.C. §  1554a), PDBR Case Number PD-2011-00444

 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,

XXXXXXXXXXXXXX

Director

Air Force Review Boards Agency

Attachment:

Record of Proceedings