RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: navy

CASE NUMBER: PD1100563 SEPARATION DATE: 20061026

BOARD DATE: 20120213

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty member, E-5 (HM-8485/Psychiatry Technician), medically separated for bipolar I disorder most recent episodic manic, moderate. The CI had a history of attention deficit hyperactivity disorder (ADHD), anxiety, and behavioral problems that apparently became exacerbated during deployment to Iraq in September 2005. He was referred to mental health by his supervisor due to self-aggrandizing falsifications, problems with anger control, intimidation of others including patients, and resistance to following directives. The CI also noted symptoms of dysphoria, insomnia, and intrusive thoughts. He was diagnosed with adjustment disorder, ADHD, and personality disorder, and he was medically evacuated from theater. Shortly after return to CONUS, he was treated for ADHD and insomnia, and he was cleared to return to duty. However, he had persistent irritability, grandiosity, impulsivity (“behavioral dyscontrol”), poor judgment, and decreased need for sleep, as well as depressive symptoms, flashbacks, and nightmares. Due to these symptoms and inappropriate interactions with staff and patients, the CI was removed from patient care and placed on administrative duty. He was diagnosed with bipolar I disorder and treated with psychotropic medications. He did not respond adequately to treatment and was unable to perform within his rating. He was placed on limited duty (LIMDU) and underwent a Medical Evaluation Board (MEB). Bipolar I disorder, ADHD, anxiety disorder, and narcissistic personality disorder were forwarded to the Physical Evaluation Board (PEB) IAW SECNAVINST 1850.4E. No other conditions appeared on the MEB’s submission. The PEB adjudicated the bipolar I condition as unfitting, rated 10%, with likely application of Department of Defense Instruction (DoDI) 1332.39. The CI did not appeal and was medically separated with a 10% disability rating.

CI CONTENTION: “Was/has attempted 2 times to reenter active duty service both from the Navy & US Army. With letters stating that I’m found permanently disqualified from/for entry into the armed forces. Document supporting this claim enclosed.” He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20060824** | | | **VA (8 Mo. After Separation) – All Effective Date 20061028** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bipolar I Disorder Most Recent Episode Manic Moderate | 9432 | 10% | Post Traumatic Stress Disorder (PTSD) | 9411 | 10% | 20070628 |
| Anxiety Disorder NOS (Manifested by Combat Stress Related Symptoms not Meeting Criteria for PTSD) | CAT II | |
| ADHD | CAT II | |
| Personality Disorder NOS with Narcissistic Defenses | CAT IV | |
| ↓No Additional MEB/PEB Entries↓ | | | Tinnitus | 6260 | 10% | 20070327 |
| 0% x 0/Not Service Connected x 10 | | | 20070327 |
| **Combined: 10%** | | | **Combined: 20%** | | | |

ANALYSIS SUMMARY:

Psychiatric Conditions (Bipolar Disorder and Anxiety Disorder). Although the CI experienced psychiatric symptoms prior to entry into the military, the MEB and PEB did not consider the psychiatric diagnoses as existing prior to service (EPTS), and the Board did not have any basis for applying or means of measuring any deduction which might be considered for any pre-existing mental disorder. In addition, there was likely service aggravation of the CI’s preexisting mental condition, as discussed below. Multiple psychiatric diagnoses were identified in the record, including adjustment disorder, bipolar disorder, personality disorder not otherwise specified (NOS), and anxiety disorder NOS with “combat stress related symptoms not meeting criteria for posttraumatic stress disorder (PTSD).” In rating the CI’s mental condition(s), the Board considered his total mental impairment, including other Axis I diagnoses, IAW §4.126 (evaluation of disability from mental disorders) as all are rated IAW the general rating formula for mental disorders IAW VASRD §4.130. Also, IAW DoDI 1332.38, “…in the absence of an underlying ratable causative disorder,” ADHD and personality disorders are, considered “conditions and circumstances not constituting a physical disability.” There was an indication of an underlying causative disorder for ADHD symptoms in this case, so the afore-mentioned DoDI 1332.38 exclusion does not apply to the ADHD diagnosis. The personality disorder, however, was not associated with an underlying causative disorder, and is therefore not subject to disability rating. Any impairment due to ADHD, as well as the other psychiatric diagnoses cited above, is considered in the Board’s §4.130 rating of the CI’s total mental impairment.

The narrative summary (NARSUM) three months pre-separation, reported a history of severe episodes of bipolar disorder, with psychotic features. Symptoms included intense mood swings (“vacillating between happy, angry, and sad”), delusional thinking (grandiose thoughts, “difficulty delineating fact from fantasy”), problems with anger control, irritability, poor impulse control, inappropriate interactions with staff, and “behavioral dyscontrol.” The CI endorsed periods of decreased need for sleep (one to two hours per night), and also reported improving symptoms of “frequent flashbacks and bad dreams related to interactions with wounded and dead american soldiers during his service at Camp Fallujah.” He had been removed from patient care areas due to the severity of his symptoms. The CI had a history of a disciplinary review board for a brief period of unauthorized absence in 2002, and had verbal and written counseling at his current and deployed commands on multiple occasions due to his outbursts. The CI denied a history of violence, although he was “frequently intimidating and verbally assaultive of others.” On mental status exam (MSE), affect was “expansive and labile,” thought process was “periodically circumstantial with occasional flight of ideas,” psychomotor activity was slightly elevated, and speech had increased volume at times. The examiner also noted judgment was fair, insight was somewhat limited, and impulse control was “fair with intermittent impairments.” Global Assessment of Functioning (GAF) was 60, indicating moderate symptoms or moderate difficulty in social or occupational functioning. The examiner stated, “The severity of the patient's condition appears to have been underestimated due to his working in the mental health field and his close proximity to mental health care providers.” In addition to “moderate” bipolar I disorder, the examiner diagnosed ADHD and “anxiety disorder NOS (manifested by combat stress related symptoms not meeting criteria for PTSD and which have gradually improving since his return from combat).”

A Department of Veterans’ Affairs (DVA) Compensation & Pension (C&P) exam, five months after separation, reported a somewhat different constellation of symptoms. The examiner described symptoms of intrusive thoughts, flashbacks, hypervigilance, and sleep disturbance. The CI had apparently run out of his medications, as his post-separation psychiatric follow-up referrals “fell through.” The CI was living with his parents, engaged to his fiancée who was pregnant, and the examiner noted the CI had “no social dysfunction so far.” The CI was unemployed since separation and was looking for work. MSE was significant for mood showing “some anxiety,” but was otherwise normal. GAF was 62, indicating some mild symptoms or some difficulty in social or occupational functioning, but generally functioning pretty well, having some meaningful interpersonal relationships. The examiner noted combat related stressors and stated, “it is at least as likely as not that he meets DSM-IV criteria for post-traumatic stress disorder,” but noted neuropsychological testing could help clarify the diagnosis. The VA deferred decision on the psychiatric diagnosis until after neuropsychological testing and follow-up C&P evaluation. Neuropsychological testing was conducted eight months post-separation, and noted no evidence of cognitive impairment. The examiner stated it was “not clear that he meets the criteria for the full diagnostic syndrome of PTSD, given the absence of symptoms of avoidance in his self-report.”

A second (follow-up) C&P exam, eight months post-separation, noted significant improvement in the CI’s symptoms. The examiner noted the CI’s psychiatric symptoms were “much better,” and stated he had no significant stressors currently. The CI was taking no psychotropic medications. The CI was married, expecting his first child, and working full time for a cable company in door-to-door sales (earning $60k/yr; looking forward to re-entering the Navy Reserve). The examiner stated there was no current social or occupational dysfunction. MSE was normal with “bright” mood. GAF was 75, suggesting symptoms that, if present, are transient and expectable reactions to psychosocial stressors; no more than slight impairment in social or occupational functioning. The examiner stated neuropsychological testing “showed some suggestive evidence” of PTSD, and diagnosed PTSD secondary to Iraq war experiences, in remission. The VA assigned a 10% evaluation based on the two C&P examinations.

The Board directs its attention to its rating recommendations based on the evidence just described. The Board first considered whether the CI’s diagnosis was the result of a “highly stressful event,” IAW §4.129 (mental disorders due to traumatic stress). Stressors noted in the VA exams include taking care of wounded soldiers and civilians, witnessing the death of a Marine, periodic mortar and rocket attacks, and others. During his VA examinations, the CI reported symptoms consistent with PTSD, including intrusive thoughts, flashbacks, hypervigilance, and sleep disturbance. The record does not elaborate any symptoms of avoidance, and neuropsychological testing was not diagnostic of PTSD. There was no PTSD diagnosis in Service and the PEB specifically stated “… combat stress related symptoms not meeting criteria for PTSD.”

Nevertheless, a diagnosis of PTSD is not necessary to apply the tenets of §4.129. Clearly the CI was exposed to combat stressors, and it was during his deployment that his symptoms became severe enough to remove him from duty. The Board carefully evaluated the entire record of evidence and determined that the combat stressors the CI experienced in Iraq, could reasonably be considered a “highly stressful event,” and that the CI’s mental condition and symptoms that led to separation from service were clearly related to, if not precipitated by those events. The Board adjudged that the provisions of VASRD §4.129 should be applied in this case. The provisions of §4.129 require a minimum 50% rating for six month period on the Temporary Disability Retired List (TDRL).

All members agreed that the §4.130 criteria for a 50% rating were not exceeded at the time of separation, and therefore the minimum 50% TDRL rating was applicable. The Board then directed its attention to determining 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 combination of VA C&P exams performed five and eight months after separation. The CI’s condition was clearly on an improving trajectory from pre-separation through the five- and eight-month post-separation exams. The 10% description (“Occupational and social impairment due to mild or transient symptoms which decrease work efficiency and ability to perform occupational tasks only during periods of significant stress, or; symptoms controlled by continuous medication”) is a better fit with the CI’s level impairment interpolated to the six-month timeframe. After due deliberation, considering the totality of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends 10% as the most representative of impairment and the fair and equitable permanent rating for PTSD in this case.

Other PEB Conditions. The PEB adjudicated anxiety disorder and ADHD as category II “conditions that contribute to the unfitting condition,” and personality disorder, NOS with narcissistic defenses, as category IV “conditions which do not constitute a physical disability.” As noted above, IAW DoDI 1332.28, personality disorders are not subject to service disability ratings. Also, as previously stated, any contribution from the ADHD and anxiety disorder conditions was included in the CI’s rating for his primary unfitting bipolar disorder condition for total mental impairment, IAW §4.126.

Remaining Conditions. Other conditions identified in the DES file were a history of seizures (age 7-12 years), hypertension (presumably caused by medications for ADHD), a history of a cyst under left arm (drained), and mild musculoskeletal pain of lower back, shoulders and knees. 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 duty limitations, and none were implicated in the non-medical assessment. 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 tinnitus and several other non-acute conditions were noted in the VA rating decision proximate 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. As discussed above, PEB reliance on DoDI 1332.39 for rating bipolar I disorder was operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the biplolar I disorder condition, the Board unanimously recommends an initial TDRL rating of 50% in retroactive compliance with VASRD §4.129; and a 10% permanent rating at six months IAW VASRD §4.130. In the matter of the anxiety disorder NOS and ADHD conditions, the Board unanimously recommends no change from the PEB adjudications as category II, although they were considered in the VASRD §4.130 rating for the biplolar I disorder condition. In the matter of the personality disorder NOS condition, the Board unanimously recommends no change from the PEB adjudication as category IV. In the matter of 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 separation be modified to reflect that the CI was placed on the TDRL at 50% for a period of six months (a minimum of 50% IAW §4.129) and then permanently separated with severance pay by reason of physical disability with a final 10% rating as indicated below.

|  |  |  |  |
| --- | --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **TDRL RATING** | **PERMANENT**  **RATING** |
| Bipolar I Disorder | 9432 | 50% | 10% |
| **COMBINED** | **50%** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110729 w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

President

Physical Disability Board of Review

MEMORANDUM FOR DEPUTY COMMANDANT, MANPOWER & RESERVE AFFAIRS

COMMANDER, NAVY PERSONNEL COMMAND

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATIONS

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 22 Feb 12 ICO

(c) PDBR ltr dtd 28 Feb 12 ICO

(d) PDBR ltr dtd 24 Feb 12 ICO

1. Pursuant to reference (a) I approve the recommendations of the PDBR set forth in references (b) through (d).

2. The official records of the following individuals are to be corrected to reflect the stated disposition:

a. XXXXXX, former USN, : Placement on the Temporary Disability Retired List (TDRL) with a 50 percent disability rating for the period 26 October 2006 through 25 April 2007 followed by disability separation with a final rating of 10 percent effective 26 April 2007.

b. XXXXX, former USMC: Placement on Permanent Disability Retired List with a 30 percent disability rating effective 30 June 2008.

c. XXXXXX, former USMC: Placement on the TDRL with a 50 percent disability rating for the period 15 July 2008 through 14 January 2009, followed by disability separation with a final rating of 10 percent effective 15 January 2009.

3. Please ensure all necessary actions are taken, including the recoupment of disability severance pay if warranted to implement these decisions, and notification to the service members once those actions are completed.

Assistant General Counsel

(Manpower & Reserve Affairs)