RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: xxxxxxxxxxxxx BRANCH OF SERVICE: Army

CASE NUMBER: PD1100573 DATE OF TEMPORARY RETIREMENT: 20010801

BOARD DATE: 20120508 Date of Permanent SEPARATION: 20050127

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (75B, Personnel Admin Specialist), medically separated for anxiety disorder, with associated attention-deficit hyperactivity disorder (ADHD). The CI first developed psychiatric symptoms and manifested cognitive features of ADHD during a deployment to Hungary in 2000. These worsened and resulted in a psychiatric hospitalization and redeployment. Outpatient medications and therapy did not result in adequate improvement to meet the requirements of his Military Occupational Specialty (MOS); and, he was issued an S3 profile and referred for a Medical Evaluation Board (MEB). Anxiety disorder and ADHD were forwarded separately to the Physical Evaluation Board (PEB) as medically unacceptable conditions IAW AR 40-501. The PEB adjudicated the anxiety disorder as unfitting and rated 30%, citing criteria of Department of Defense Instruction (DoDI) 1332.39. The ADHD condition was determined to be ineligible for service rating, referencing the DoDI 1332.39 (E5.1.3.4) provision that it does not constitute a ratable physical disability. The CI was placed on the Temporary Disability Retired List (TDRL) for 43 months, at which point the psychiatric condition was considered to be stable but still unfitting. The anxiety disorder was then rated 10% under criteria of DoDI 1332.39, and the ADHD condition was not readdressed. The CI appealed to a Formal PEB (FPEB), which affirmed the PEB decision, and he was permanently separated with a 10% service disability rating.

CI CONTENTION: The application simply references VA documentation of the service-connected conditions, codes and ratings as charted below; and, additionally lists each VA condition documented in the chart below. It is presumed that the CI is requesting a review of all VA conditions identified at the time of temporary retirement.

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in DoDI 6040.44 (4.a) is limited to those conditions which were determined by the PEB to be specifically unfitting for continued military service; or, when requested by the CI, those condition(s) “identified but not determined to be unfitting by the PEB.” None of the conditions requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview; except for anxiety disorder and ADHD which are addressed below. Any conditions or contention not requested in this application, or otherwise outside the Board’s defined scope of review, remain eligible for future consideration by the Army Board for the Correction of Military Records (ABCMR).

RATING COMPARISON:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Final Service PEB - 20050111** | | | | **VA (42 Mo. Prior to Adjudication Date)\* – All Effective 20010802** | | | |
| **On TDRL - 20010801** | **Code** | **Rating** | | **Condition** | **Code** | **Rating** | **Exam** |
| **Condition** | **TDRL** | **Sep.** |
| Anxiety Disorder, NOS | 9413 | 30% | 10% | ADHD with Anxiety Disorder | 9499-9513 | 50% | 20010829 |
| ADHD | Non-Ratable\*\* | | |
| No Additional MEB Entries | | | | Neurologic Integrative Disorder\*\*\* | 6299-6204 | 30% | 20010830 |
| Sural Neuropathy, L Ankle | 8521 | 10% | 20010906 |
| Broken L Great Toe | 5299-5283 | 0% | 20010906 |
| Bronchitis | 6600 | 0% | 20010906 |
| L Wrist Condition | 5215 | 0% | 20010906 |
| Not Service-Connected X 3 | | | 20010906 |
| **Combined: 10%** | | | | **Combined: 70%** | | | |

\* Represents VA rating proximate to TDRL placement; no VA rating proximate to permanent separation**.**

\*\* MEB forwarded as EPTS with service aggravation; PEB adjudicated as a non-ratable condition IAW DoDI 1332.38.

\*\*\* Derived from dyscoordination/dysequilibrium symptoms not addressed by MEB.

ANALYSIS SUMMARY: The Board must note that there is a significant interval (> 3 years) between the submitted Department of Veterans’ Affairs (DVA) evidence and ratings which were proximal to the onset of TDRL, and the date of permanent separation which is the interval to which the Board must apply its recommendations. DoDI 6040.44 specifies a 12-month interval for special consideration to DVA findings, and thus little probative value can be assigned to the clinical evidence rated by the DVA. Since there was no service or DVA outpatient evidence reasonably proximal to the date of permanent separation, the Board must rely heavily on the TDRL revaluation of 30 September 2004 (5 months prior to permanent separation) to assess the severity of symptoms relevant to its rating recommendation.

ADHD. This was the first diagnosis listed on axis I by the MEB psychiatrist prior to TDRL placement. Attendant symptoms as noted in this examiner’s narrative summary (NARSUM) were “inattention, distractibility, difficulty completing tasks, hyperactivity and impulsivity.” The onset of these symptoms was concurrent with those of the anxiety disorder. There was no preceding formal diagnosis of ADHD, although the NARSUM stated, “soldier reported history of inattention since childhood. His grades were poor to mediocre at best.” The ADHD diagnosis was confirmed, and delineated from the psychiatric illness, by neuropsychological testing. As noted it was opined that the condition was EPTS, but with service aggravation (moot given > 8 years of active duty via Title 10). The severity of the ADHD symptoms was assessed as “moderate” and the DoDI 1332.39 defined level of social/industrial impairment was entered as “definite.” The VA rating psychiatrist proximal to TDRL placement formally concurred with the MEB psychiatric opinion, listing ADHD as a separate axis I diagnosis; although, not providing a separate assessment of severity as did the MEB examiner. An equivalent assessment of ADHD was provided by a different psychiatrist on the TDRL reevaluation prior to permanent separation; who also provided a separate assessment of “moderate” severity. The action officer opines that the ADHD condition made a significant and independent contribution to the overall social and occupational impairment, although separate ratings based on VASRD §4.130 criteria are neither permitted nor possible.

The Board’s first charge with respect to the ADHD condition is a determination as to its eligibility for service rating. DoDI 1332.38, as referenced above, unequivocally lists ADHD as one of the “conditions and circumstances not constituting a physical disability” which “are not ratable in the absence of an underlying ratable causative disorder.” The evidence clearly establishes that ADHD was a separate disorder, most likely pre-existing, and not a result of the ratable psychiatric condition. DoDI 6040.44, Enclosure 3, 4.d., specifies that the Board will apply “all applicable statutes and any directives in effect to the extent they do not conflict with the VASRD in effect” in arriving at its recommendations. The VASRD does not offer formal guidance defining conditions which do not constitute ratable disabilities, although VA policy and practices clearly deny ratings for many of the conditions listed in DoDI 1332.38; examples include obesity, alcoholism, and learning disorders such as dyslexia (arguably in the same class of disorders as ADHD). Furthermore VASRD §4.130 does not list or provide a code for ADHD; hence the VA decision to combine it with, and code it analogously to, the concomitant anxiety disorder. As directed by an applicable directive in effect (DoDI 1332.38) which did not conflict with the VASRD in effect, and IAW DoDI 6040.44, the Board cannot recommend a service disability rating for impairment resulting from the ADHD condition. The impairment from ADHD is intertwined with that of the anxiety disorder, and shares some of the §4.130 criteria in common with the ratable condition. A formal deduction from the rating recommendations for anxiety disorder is not practical, however. The action officer opines that only the preponderant impairment linked to cognitive dysfunction, as associated with “inattention, distractibility, difficulty completing tasks, hyperactivity and impulsivity,” should be ascribed to ADHD. All other psychiatric impairment, and the benefit of the doubt for mixed impairment, should fall within the §4.130 ratings recommended for anxiety disorder.

Anxiety Disorder. The CI’s psychiatric symptoms began in March 2000 during a deployment to Hungary. He reported to the VA examiner that he was in an isolated and stressful administrative position; and developed symptoms of anxiety, depression and withdrawal. He related to the MEB examiner that this was compounded by family and marital separation stressors which were elaborated. The symptoms escalated to the point that he was unable to adequately function, and were associated with some transient suicidal ideation (equivocal). He consequently underwent a 7 day psychiatric admission in Germany during May 2000; and, was subsequently evacuated stateside. The symptoms improved significantly after the hospitalization and redeployment, and the depressive symptoms resolved. The residual symptoms of anxiety disorder were listed as “general feelings of anxiety, insomnia, ruminative behavior, and hair picking behavior” by the MEB psychiatrist. He was prescribed stimulant type medication for ADHD; and a mood stabilizer and anxiolytic for anxiety. No further hospitalizations were required. He remained assigned to his MOS, but his commander documented that his performance suffered from the need for frequent mental health care and side effects of psychotropic medications. The MEB psychiatrist opined that, “clinically, at least some of his anxiety symptoms seemed to be partly associated with the problems of his ADHD symptoms, particularly in the work setting.” The MEB mental status exam (MSE) noted an “okay” mood and “moderately anxious” affect. His speech was marked by anxious pauses, and psychomotor symptoms of fidgeting and “occasional hair picking gestures” were documented.

Some distractibility and issues with concentration and short term memory were also noted. There was no suicidal ideation, delusional content, signs of psychosis or other abnormalities. The Global Assessment of Functioning (GAF) score assignment was 60, connoting moderate psychosocial and occupational impairment. The VA examiner (4 weeks after initiation of TDRL) confirmed a similar history and noted similar symptoms as documented in the MEB evaluation. The CI was keeping monthly outpatient mental health appointments, and remained on the same medications. He was pursuing educational studies, although half of his courses were on-line. Difficulty with meeting the academic challenges was documented, however, and the examiner opined that the CI would not be able to engage regular work. Significant social isolation was noted, although no marital relationship issues were apparent. The MSE was similar to that described by the MEB examiner, although detailed cognitive testing was normal without memory or concentration deficits. The examiner assessed “moderate difficulty in social and occupational functioning” (applicable to both axis I diagnoses); and, assigned the same GAF score as the MEB examiner (60).

There are no further VA psychiatric evaluations or outpatient records in evidence for the full period of TDRL. The TDRL reevaluation performed proximal to permanent separation noted that it was the second TDRL evaluation, but the preceding one is not on file. The TDRL examination prior to separation, documented that the CI’s “psychiatric illness has continued during this TDRL period.” He remained on two medications (the same mood stabilizer and the same ADHD medication). He reported “frequent anxiety on most days that results in interference with his daily activities,” and “occasional” depression. He also reported “frequent procrastination and difficulty with task completion,” and “lifelong problems with attention and impulsivity.” The examiner documented successful full time employment as a firefighter, without specifying any work loss or performance issues; although, it was noted that preceding college pursuits had resulted in academic probation for poor performance. There was no mention of the earlier social isolation, and the CI was living with his wife and daughter in a “happy marriage.” The MSE described the mood as “a little anxious” and the affect as “appropriate and full range.” The psychomotor component still manifested “moderate fidgety behaviors,” although the previous speech disturbances had normalized. Cognition was described as “intact,” and the remainder of the MSE was normal. The axis I diagnosis of anxiety disorder was manifested by “persistent feelings of anxiety and worry, middle insomnia [inability to stay asleep] and picking behaviors.” The examiner further opined that, “Most of these manifestations appear aggravated by ADHD symptoms.” The severity was characterized as “moderate” and the DoDI 1332.39 defined social/industrial impairment as “definite” (although the PEB insisted that the DoDI 1332.39 derived impairment was more compatible with the “mild” definition, given the full time employment). The axis II diagnosis of ADHD was manifested by “inattention, distractibility, problems with task completion and hyperactivity-impulsivity”. It was also assessed with “moderate” severity and “definite” social/industrial impairment. There was no GAF assignment documented on the TDRL exam.

The Board directs attention to its rating recommendations for the anxiety disorder, tempered by accommodation for the unratable ADHD contribution to disability, based on the above evidence. The Board first considered if the DoD mandated application of VASRD §4.129 was appropriate to this case, but all members agreed that there was no “highly stressful event” meeting the VASRD definition for application of §4.129. The Board next considered if the TDRL rating of 30%, as assigned by the service under DoDI 1332.39, was consistent with §4.130 criteria. Although a 50% recommendation was entertained (occupational and social impairment with reduced reliability and productivity), support for this rating was mitigated by the fact the CI remained occupationally functional and was on a stable improving treatment course at the time of temporary retirement. All members ultimately agreed that 30% was a fair §4.130 based rating for the period of TDRL. Finally, the Board considered its permanent rating recommendation for anxiety disorder. All members agreed that the §4.130 threshold for a 50% rating was not approached, given the significant continued improvement evidenced in the TDRL reevaluation. The deliberation thus settled on arguments for a 30% versus the PEB-assigned 10% permanent rating recommendation. The §4.130 description for a 30% rating is “occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks;” while that for 10% is “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.” The TDRL examiner documented that there were persistent symptoms, despite treatment, for both anxiety disorder and ADHD. The examiner further stated that the anxiety was near daily in frequency and that it interfered with daily activities. The examiner, however, did not in turn elaborate any impairment of daily activities; nor, for that matter, any specific occupational or social impairment. Although it was opined by the TDRL psychiatrist that even the symptoms ascribed to anxiety disorder were exacerbated by ADHD, members agreed that the impairment from all symptoms within that spectrum should be conceded as ratable (see opening discussion). Given the CI’s failure on the academic front, it must be assumed that occupational impairment existed; albeit not interfering with his employment as a firefighter. It is more likely than not, however, that the impairment manifested in the academic arena was preponderantly attributable to the attention and concentration deficits resulting from the unratable ADHD. It can be reasonably inferred from the CI’s history of learning difficulties and marginal school performance that his adult academic pursuits would have suffered independently of any non-ADHD related psychiatric impairment. Relative to the 30% rating criteria (as quoted above) it may be reasonably argued that some undocumented level of inefficiency on the job could have been present, and associated with the ratable anxiety disorder to the extent that it should be fairly conceded. Given the demands of the CI’s field and his successful negotiation of them; however, a good deal of speculation is required to support such an argument as a basis for a 30% recommendation in this case. Furthermore, the evidence clearly establishes that there were no “intermittent periods of inability” relative to occupational capacity; another important element of the §4.130 criteria for a 30% rating. After due deliberation, considering the totality of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board can recommend no change in the PEB’s permanent service rating of 10% for anxiety disorder in this case.

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 anxiety disorder was operant in this case and the condition was adjudicated independently of that policy by the Board. Since DoDI 6040.44, Enclosure 3, 4.d., directs that all statutes and directives in effect which do not conflict with the VASRD will be followed, the Board’s has determined that the attention-deficit hyperactivity disorder is not eligible for service disability rating IAW DoDI 1332.39 (E5.1.3.4), which was in effect at the time of permanent separation and not superseded by VASRD guidance. In the matter of the anxiety disorder, the Board unanimously recommends no change in the service rating of 30% during the prescribed period of TDRL; and, no change in the permanent service disability rating of 10%, coded 9413 IAW VASRD §4.130. There were no other conditions within the Board’s scope of review for consideration.

RECOMMENDATION: The Board recommends that the CI’s prior determination remain unmodified as follows; with a disability rating of 30% for the prescribed period of TDRL and a final service disability rating of 10%, effective as of the date of her prior medical separation:

|  |  |  |  |
| --- | --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** | |
| **TDRL** | **PERMANENT** |
| Anxiety Disorder | 9413 | 30% | 10% |
| Attention-Deficit Hyperactivity Disorder | Not ratable IAW DoDI 1332.38. | | |
| **COMBINED** | **30%** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110803, 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

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, AR20120008892 (PD201100573)

I have reviewed the enclosed Department of Defense Physical Disability Board of Review (DoD PDBR) recommendation and record of proceedings pertaining to the subject individual. Under the authority of Title 10, United States Code, section 1554a, I accept the Board’s recommendation and hereby deny the individual’s application.

This decision is final. The individual concerned, counsel (if any), and any Members of Congress who have shown interest in this application have been notified of this decision by mail.

BY ORDER OF THE SECRETARY OF THE ARMY:

Encl XXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA