RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXX. BRANCH OF SERVICE: air force

CASE NUMBER: PD1100611 SEPARATION DATE: 20070625

BOARD DATE: 20120321

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Air Force A1C/E-3 (1N651, Electronic System Security Assessment Journeyman), medically separated for depressive disorder, not otherwise specified (NOS)*.* The CI did not respond adequately to treatment and was unable to perform within her Air Force Specialty (AFS). The CI was issued a temporary S4 profile and underwent a Medical Evaluation Board (MEB). The MEB forwarded depressive disorder, NOS and borderline personality disorder on the AF Form 618 to the Physical Evaluation Board (PEB) as medically unacceptable IAW AFI 48-123, 44-113, 36-3212, and 41-210. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) packet will be discussed below. The PEB adjudicated the depressive disorder, NOS as existed prior to service (EPTS), not permanently aggravated by military service, rating using the Veterans Administration Schedule for Rating Disabilities (VASRD). The PEB also adjudicated borderline depressive disorder as a category III condition (conditions that are not separately unfitting and not compensable or ratable). The CI appealed to the Formal PEB (FPEB) who adjudicated the depressive disorder, NOS at 50% with 30% attributed to aggravating factors of the personality disorder and deducted and adjudicated borderline depressive disorder as a category III condition. The FPEB also determined the depressive disorder was not EPTS. The CI was thus medically separated with a 20% combined disability rating.

CI CONTENTION: The CI states: “Initially the results of my MEB were returned with an evaluation of 0%. After receiving this rating, I enlisted the help an Air Force lawyer to represent me. During the subsequent evaluation, I appeared before a panel of medical doctors (0-6) to explain my current/past mental health status and how my military experience resulted in severe mental maladies. After which, I received an evaluation of 20%. I believe that a further in depth analysis of my service medical and VA records could result in a higher evaluation.” She mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service FPEB – Dated 20070509** | **VA (3 Mo. After Separation) – All Effective Date 20070626** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Depressive Disorder, NOS | 9499-9433 | 20% | Bipolar and Depressive Disorders w/Anxiety | 9434 | 30%\* | 20070926 |
| Borderline Personality Disorder | Category III | No VA Entry | 20070926 |
| ↓No Additional MEB/PEB Entries↓ | TMJ Dysfunction | 9905 | 30% | 20070926 |
| Tinnitus | 6260 | 10% | 20070924 |
| 0% x 1/Not Service Connected x 4 | 20070926 |
| **Combined: 20%** | **Combined: 60%\*** |

\*9434 Decreased from 50% to 30% on September 26, 2007, decreasing combined from 70% to 60%. The original 50% rating was based on VASRD §4.129 and the 30% rating was based on the VA C&P examination on 20070926.

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application, that the gravity of his condition and predictable consequences which merit consideration for a higher separation rating. It is a fact, however, that the DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions resulting in medical separation. This role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA). The Board utilizes DVA evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12-month interval for special consideration of evidence after separation. The Board’s authority as defined in DoDI 6044.40; however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Evidence from after separation therefore, is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Depressive Disorder, Borderline Personality Disorder. The CI had a long, well-documented history in the service treatment record (STR) of depression and bipolar personality symptoms. The CI’s self-destructive behavior started in grammar school in the 7th grade and continued to the 11th grade when she engaged in near daily self-cutting to her arms, legs and breast. The CI had a very difficult childhood and was exposed to drugs and alcohol by her mother. The CI had a strong family history of alcoholism along with a family history of suicide. The CI reported this history consistently over various evaluations but there was no mention of any treatment, therapy, counseling, or medication prior to enlistment. The enlistment history and physical contained no information pertaining to mental health concerns or findings. She entered service in March 2005 and obtained a top secret clearance as required for her AFS. She first sought treatment in September 2005. The record contained one Enlisted Performance Report (EPR) and the evaluation period was 15 March 2005 through 15 November 2006 with raters’ signatures dated 5 January 2007. All areas were noted show excellent performance or exceeding standards and there is no mention of any affect of medical conditions on successful performance of required duties.

The CI sought counseling at Brooks Air Force Base and was started in psychotherapy. At the initial life skills intake assessment in December 2005, the CI’s Global Assessment of Functioning (GAF) was 55 (moderate difficulty in social, occupational, or school functioning). Individual therapy was started in January 2006 for anxiety disorder, NOS. Obsessive-compulsive personality traits were noted in February 2006. These therapy sessions occurred approximately monthly and anxiety was noted as the main issue. The GAF was noted to be 55 from December 2005 through May 2006, 65 in early June 2006, and 70 from late June 2006 through the end of July 2006. The CI was seen in August 2006 but no GAF was noted. Medications to control depression were started in August 2006 by the CI’s primary care provider. No visits in September 2006 are available for review. A note dated 3 October 2006 documented the CI was considered as high-risk due to an acute crisis and her unit had been notified of. In October 2006, the CI was brought via ambulance to a local hospital for emergency medical treatment in response to a suicide attempt then transferred to Wilford Hall for continued treatment with a GAF of 31-40 (major impairment in several areas, such as work or school, family relations, judgment, thinking, or mood). The CI was reevaluated five days later and was found to have a GAF of 65 (some difficulty in social, occupational, or school functioning)*.* The CI continued to be closely monitored, remaining on the high risk list, and was followed by mental health (both psychologist and psychiatrist) at Lackland AFB. She continued to have moderate depression and fleeting suicidal ideations and her diagnosis was now considered to be depression. Her top secret clearance was revoked secondary to this mental health diagnosis. In November 2006, the CI requested help to enroll in partial hospitalization treatment due to an increase in both the frequency and duration of her suicidal ideation. The CI was enrolled in a partial hospitalization program at Laurel Ridge from 15 November to 8 December 2006. She was discharged with a diagnosis of bipolar disorder, type II and GAF of 65. She continued with treatment and was seen regularly. She completed a second partial hospitalization at Laurel Ridge in January 2007.

The MEB examination (13 January 2007) 5 months prior to separation indicated that the CI endorsed feelings of sadness; depression; decreased energy; intermittent intense suicidal ideation in the context of marital, occupational and possible legal stressors; interpersonal relationship instability and impulsive behavior. The GAF was 55 (moderate difficulty in social, occupational, or school functioning in social, occupational, or school functioning) and the CI was on medications. The examiner opined that the CI had a moderate military impairment and mild social/industrial impairment for depressive disorder and a marked military impairment and definite social/industrial impairment for borderline personality disorder, EPTS. The CI maintained a GAF of 55 (moderate difficulty in social, occupational, or school functioning in social, occupational, or school functioning) and continued with psychotherapy and a cycle of taking herself off medications and being encouraged to restart these medications.

The CI continued to be seen regularly after the MEB narrative summary (NARSUM) was completed. She cancelled an appointment in late February 2007 stating over the phone that she didn’t want to come in as she had nothing to discuss and no problems other than her MEB not being done and she wanted to be with her husband. She also stated she had stopped her medications. However, she was seen on 6 March 2007 and was seen 2-4 times a month until 8 June 2007. She continued to work in the base chapel. Her symptoms of depression appeared to be significantly decreased and she mainly complained of stress and anxiety. However, she did maintain that she continued to have brief and fleeting suicidal ideation. A GAF of 70 was noted 12 April 2007 and 65 on 18 April 2007. On 26 April 2007, no GAF was reported but she reported she was actively interviewing for jobs, was using her coping skills and denied any current suicidal ideation, plan, or intent. On the phone (10 May 2007) she was “very happy” with the PEB results. She denied suicidal ideation and stated, “I am very excited about my future.” She reported she had found a job and was to begin training in 3 weeks. On 18 May 2007 she informed the psychologist that she had been on medications from her second partial hospitalization but had not discussed these meds with any military provider. She was seen by the military psychiatrist on 25 May 2007 and a normal mental status examination (MSE) was noted. Mood was documented as “better over the past 3 weeks” and her affect was euthymic with a normal and appropriate range of facial and vocal expression. She reported symptoms suggestive of a hypomanic episode and also reported she had filed for divorce and obtained a no contact order after her husband threatened her with a gun. She reported she was currently training for a job in sales in the civilian sector and denied any suicidal ideation or any immediate concerns. Medication prescriptions were provided. The last documented encounter in the record was a telephone consult from 8 June 2007. The CI reported she had completed her job training and was at the top of her class. She reported her husband had not completed his paperwork but had hired a lawyer. She also stated she had stopped her medications because she had realized it was her borderline personality disorder that was causing her to feel bad, not her bipolar disorder. She denied suicidal ideation, intent, or plan stating “I have been too busy and felt too good to think that way, I don’t think about it that much any more.”

The VA Compensation & Pension (C&P) examination 3 months after separation noted that the CI’s psychosocial functioning was borderline with a “rocky” marriage. There was no mention of filing for divorce. The CI continued to endorse feelings of insomnia; nightmares; tearfulness and irritability; anger; and obsessive/compulsive behaviors. The examiner further noted that the CI felt psychologically that she could not handle returning to the workplace. She stated she was unemployed and there was no mention of the job she had trained for. The MSE noted hand wringing and a constricted affect but mood was noted to be happy and good. The GAF was 50 (serious impairment in social, occupational, or school functioning). The examiner noted impairments in thinking, family relations, work, and mood and the presence of reduced reliability and productivity due to mental disorder. The VA C&P examination completed on the same day as the mental health C&P noted the CI was very reluctant to answer questions. She was noted to sit quietly with her husband who also answered questions with yes or no and shortest possible answer. Both appeared uncomfortable and anxious to leave. The examiner noted a very flat affect, depressed mood, and noted the CI did not answer questions or participate in exam to her full ability. No VA treatment records were available for review.

The Board directs its attention to the question of applicability of §4.129, mental disorders due to traumatic stress, and the rating recommendation based on the evidence just described. The Board noted the CI’s diagnosis of alcohol dependence and depression with marital discord did not equate to the §4.129 standard of “a highly stressful event.” The Board could not identify any discreet “highly stressful” event, and the preponderance of evidence of professional opinion favored that §4.129 thresholds were not met.

The PEB coded the depressive disorder, NOS 9499-9433 and rated 20%. Initially the PEB determined the depressive disorder was EPTS and not aggravated by service, therefore no rating was applied. The FPEB determined the condition was not EPTS. The FPEB concluded that the axis I diagnosis was best rated at 50% but concluded that the axis II condition provided background for the CI’s pervasive pattern of instability in interpersonal relationships and impulsive behaviors and therefore adjudicated a 30% reduction for a 20% final rating. The FPEB was convened on 5 May 2007, prior to the final four treatment notes available for Board review. The VA coded bipolar and depressive disorders w/anxiety 9434 and initially rated 50% based on VASRD §4.129 and then reduced the rating to 30% based on a 26 September 2007 VA C&P examination.

The Board agreed that the symptoms reported on the MEB examination were consistent with a §4.130 rating of 70% (occupational and social impairment, with deficiencies in most areas, such as work, school, family relations, judgment, thinking, or mood) considering the CI’s poor interpersonal functioning and strong history of suicidal ideation. However, the CI was working successfully in the base chapel and there is no evidence of any work related issues. She was unable to work in her AFS due to the loss of her security clearance after her suicide attempt. Her commander also noted her condition prevented her from concentrating and accomplishing required tasks. However, as described above, she received a very favorable performance evaluation that covered time periods in which the CI was undergoing mental health treatment, including inpatient treatment. Additionally, there was no evidence of deficiencies in either judgment or thinking. Also, while the symptoms reported on the MEB NARSUM were also consistent with those noted under the 50% rating, the evidence does not support a generalized assessment of reduced reliability and productivity.

The MEB examiner stated it was difficult to determine if the CI had an independent mood disorder, if her depressive symptoms were a manifestation of her underlying personality disorder, or a combination of both. However, he clearly provided separate assessments of impairments attributable to each diagnosis. Depressive disorder, NOS was noted to cause a moderate military impairment and a mild social/industrial impairment and borderline personality disorder was noted to cause a marked military impairment and a definite social/industrial impairment. He clearly noted the personality disorder caused a majority of the CI’s impairment. The FPEB’s deduction for the contribution of the personality disorder to the overall impairment appears to be consistent with this separation of impairment by diagnosis.

Additionally, multiple treatment notes dated after the FPEB but prior to separation from service document significant improvement in symptoms and the absence of suicidal ideation. These records do not support any rating greater than 10% even without any deduction or separation of impairments by diagnosis. The VA examination performed 3 months after separation does support a rating of 30% as was applied by the VA. The VA examiner noted a personality disorder but stated no opinion as to whether the symptoms or impairments could be separated by diagnosis and the rating is based on the totality of impairment. The VA examination does not contain information regarding when the CI’s symptoms increased and while it is clear this did not occur prior to the latest clinical note of 8 June 2007, it is not clear whether this occurred prior to separation from service on 25 June 2007. The VA examination does not mention any event occurring in June which could have caused a precipitous increase in symptoms. Mental health conditions can wax and wane over time and while the CI had significant impairments at the time of the MEB NARSUM in January 2007 and the VA C&P examination in September 2007, there is no evidence of impairment above the 10% rating level IAW §4.130 at the time of separation from service in June 2007. After due deliberation, and in consideration of all the evidence and VASRD §4.3 (reasonable doubt) the Board therefore unanimously recommends no change in the PEB adjudication at separation or permanently.

Remaining Conditions. No other conditions were noted in the NARSUM, identified by the CI on the MEB physical, or found elsewhere in the DES file. Temporomandibular joint dysfunctional, and tinnitus, and several other non-acute conditions were noted in the VA 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 depressive disorder condition, the Board unanimously recommends no change in the PEB adjudication at separation or permanently. In the matter of the temporomandibular joint dysfunctional, and tinnitus conditions or 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 there be no recharacterization of the CI’s disability and separation determination:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Depressive Disorder, Not Otherwise Specified | 9499-9433  | 20%  |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110726, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs Treatment Record

 XXXXXXXXXXXXXXX

 President

 Physical Disability Board of Review

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

Dear XXXXXXXXXXXXXX

 Reference your application submitted under the provisions of DoDI 6040.44 (Title 10 U.S.C. §  1554a), PDBR Case Number PD-2011-00611

 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,

XXXXXXXXXXXXXXXXX

Director

Air Force Review Boards Agency

Attachment:

Record of Proceedings