RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: xxxxxxxxxxxxxxxxxx BRANCH OF SERVICE: air force

CASE NUMBER: PD1100621 SEPARATION DATE: 20091127

BOARD DATE: 20120320

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 (2A531 / Aerospace Maintenance Apprentice), medically separated for anxiety disorder not otherwise specified (NOS). The CI’s main stressor was his worry that “people’s lives were dependent on the accuracy of his work.” After intense outpatient psychotherapy and trials of various psychiatric medications, the CI did not respond adequately to treatment and was unable to perform within his Air Force Specialty (AFS) or meet physical fitness standards. The CI was issued a duty limiting condition report and underwent a Medical Evaluation Board (MEB). The MEB forwarded “anxiety disorder NOS” on AF Form 618 to the Physical Evaluation Board (PEB) as medically unacceptable IAW AFI 48-123. 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 “anxiety disorder NOS” as unfitting, rated 10% with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). The PEB also adjudicated “schizoid personality disorder” as a category III (“conditions that are not separately unfitting and not compensable or ratable”). The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: The CI states: “The US Air Force separated me with Severance Pay based on a 10% rating for “Anxiety Disorder." I immediately filed my claim with the VA and was awarded a 50% disability rating for Major depressive disorder and obsessive compulsive disorder. This is the same disability that the US Air Force labeled as "Anxiety Disorder" and assigned a 10% rating for. The VA reviewed the same medical records that the Air Force used. I believe that the US Air Force did not fully assess and accurately rate my disability when they only assigned a 10% rating. As evidenced in the VA Rating Decision, a review of my Service Medical Records showed a number of diagnoses related to my mental health condition. The Air Force took the simplest diagnosis and assigned the minimum rating. VA reviewed the same records and conducted an examination within approximately 3 months of my release from service and assigned a 50% rating. I believe that US Air Force was remiss in assigning only a 10% rating and I feel that the 50% rating should have been assigned which would have resulted in a medical retirement from service.” He additionally lists some of his VA conditions and ratings as per the rating chart below. A contention for their inclusion in the separation rating is therefore implied.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20090831** | | | **VA (2 Mos. After Separation) – All Effective 20091128** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Anxiety Disorder NOS | 9413 | 10% | Major Depressive Disorder and Obsessive Compulsive Disorder | 9434-9404 | 50% | 20100123 |
| Schizoid Personality Disorder | Cat III | |
| ↓No Additional MEB/PEB Entries↓ | | | Tinnitus | 6260 | 10% | 20100203 |
|  |  | | Persistent Tachycardia | 7010 | 10% | 20100114 |
| Hypertension | 7101 | 10% | 20100114 |
|  | | 0% x 0 / Not Service Connected x 1 | | |  |
| **Combined: 10%** | | | **Combined: 60%** | | | |

ANALYSIS SUMMARY: The Board acknowledges the CI’s assertions that he felt the service did not “fully assess and accurately rate his disability.” It is noted for the record that the Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to the CI’s statements in the application 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 based on the fitness consequences of conditions as they existed at the time of separation. The Board also acknowledges the CI's contention suggesting that service ratings should have been conferred for other conditions documented at the time of separation and for conditions not diagnosed while in the service (but later determined to be service-connected by the Department of Veterans’ Affairs (DVA)). 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. The DVA, however, is empowered to compensate all 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.

Anxiety Disorder and Schizoid Personality Disorder Condition. Neither the PEB nor the VA elected to apply VASRD §4.129, with its minimum rating and stipulation for a follow-up evaluation within six months, to the CI’s unfitting mental health condition. The first question that came before the Board is whether this condition meets the §4.129 definition of “a mental disorder that develops in service as a result of a highly stressful event [that] is severe enough to bring about the Veteran’s release from active military service.” The Board noted that the CI’s personal and occupational stresses, although considerable, were not at all comparable with the criterion A stressors for PTSD – a typical mental disorder for which the provisions of §4.129 would apply. The Board also considered that the VA did not apply §4.129 to the CI’s initial rating, thereby reflecting their opinion that this threshold was not met. There was no indication of any specific highly stressful event, though a stressful time period is acknowledged. The Board concludes therefore that application of §4.129 is not applicable to this case.

The following summary is offered to consolidate the over 2 year historical account of the CI’s mental health condition. Upon arrival at his first duty station, after completing basic training and technical school, the CI presented to the mental health clinic in December 2007 for suicidal ideations (SI). The examiner documented a blunted affect, lack of self awareness, and an apparent indifference about life. The examiner opined that the symptoms may have been due to cluster A personality features or something more serious, however the suicide risk was noted to be mild and he was given a written emergency plan. In March 2008, despite psychotherapy and single agent anti-anxiety medications, his command requested a profile to remove him from the flight line because the CI thought that his mood “might affect his judgment in maintaining the aircraft.” He was given lighter duties off the flight line in a snack bar and appeared to respond to therapy with stability of symptoms. By May 2008, he was back on the flight line working well, had a girlfriend and wanted to cease medications but was encouraged to take medications for at least 6 months. In October 2008, he became acutely symptomatic with depression and anxiety due to marital discord, which then in turned impacted his work, sleep, and ability to do daily tasks. To date the CI had demonstrated a wide variety of mental health symptoms and signs to include bizarre thoughts with pre-occupation, poor hygiene, ritualistic behaviors, ideas of reference, anxiety, poor sleep, indifferent attitude, eating disorder and depression. The lack of a constellation of symptoms manifesting a mental health disorder required the mental health team to consider generalized anxiety disorder, depression, obsessive compulsive disorder and atypical eating disorder as likely diagnoses but recommended formal testing prior to making a final diagnosis. By late January 2009 the CI had responded to both an anti-anxiety medication and an atypical antipsychotic medication and appeared to meet the criteria for Schizotypal personality disorder along with anxiety disorder NOS. Formal testing to date was both invalid. In April 2009, he was given a trial of duty for 2 weeks and became acutely symptomatic and was promptly placed back to light duty. In June 2009 a permanent profile was issued for the CI to be taken off flight line and be classified as non-deployable for his odd thinking and behavior re-emerged and worsened under stress despite medication. The examiner opined he has a low threshold for stress and a moderate degree of functional impairment “not to the point of requiring hospitalization as a danger to self or others, but to the point that he can’t perform his Air Force duties. The commander’s statement noted that the CI could not perform any of his AFS duties due to mental stress yet his performance review of nearly 2 years did not reference any bizarre behavior and actually exceeded his duty expectations.

The MEB examination completed 5 months prior to separation indicated that the CI had been struggling with the adjustment of being away from home and in the service and notated the above historical review. The mental status exam (MSE) was a summary of his prior presentations which included the wear of odd apparel, occasional poor hygiene, intense eye contact, neutral mood, significant obsessive and intrusive thoughts frequently with violent content, suicidal and homicidal ideation without intent and poor level of insight when acutely anxious. At the time of his MEB the examiner documented that he was on time, in uniform, “with a broader and more appropriate affect, low level of anxiety, no SI or homicidal ideations (HI) and no evidence of intrusive thoughts, He demonstrated appropriate realistic thought process and was “having a good day.” The examiner assigned a Global Assessment of Functioning (GAF) of 65 and opined the CI had a severe impairment for military service and a moderate impairment for social and industrial functions. While the GAF suggests mild impairment this was assigned on his “good day” but was incongruent with his overall moderate, clinical signs and symptoms. The CI continued with intense psychotherapy and medical management to include the antidepressant/antianxiety (Prozac), and the antipsychotic medication (Risperidone) for the schizotypal behavior which in and of itself disqualified him for deployments. After this MEB exam and prior to separation the service treatment records (STR) reflected the CI returning to baseline levels of anxiety as when he originally presented and had reemergence of ritualistic behaviors with HI prior to separation.

The VA Compensation and Pension (C&P) examination completed 2 months after separation documented that the CI began having issues with obsessive compulsive disorder during his basic training with intense fear because “people’s lives were dependent on the accuracy of his work.” At the time of his exam, he continued to suffer with severe anxiety, irritability, angry outbursts, feelings of detachment, and difficulty with; concentration, falling or staying asleep, engaging in recreational activities, driving and eating/dressing because he had to check and recheck. The CI underwent psychological testing – Beck depression inventory II and scored 30 out of 63 which indicated moderate depression over the prior two weeks and on the Beck anxiety inventory with a score of 48 out of 63 points which indicated severe anxiety. The MSE demonstrated depressed mood and affect with minimal range. He was well kempt and demonstrated normal speech, thought process and content, memory, impulse control, no delusions or hallucinations, no ritualistic behaviors although noted historical obsessive behaviors and denied SI and HI. The examiner diagnosed major depressive disorder and obsessive compulsive disorder and assigned a GAF of 49 connoting serious impairment. At the time of this exam the CI was unemployed divorced, living with roommates and showed a desire to pursue further collegic education.

The Board directs its attention to its rating recommendations based on the evidence just described. The challenge before the Board was to consider the symptoms of the ratable anxiety disorder NOS and to avoid subsuming the symptoms of the non ratable Schizoid personality disorder. All members agreed that the 10% threshold was met on the day of the MEB, and some elements of the 70% threshold were met when on the flight line while performing in his MOS. However, neither of these rating criteria were approached when considering his entire clinical presentation. Therefore the other challenge before the Board was to evaluate the anxiety evidence, not as a snapshot in time, but as a whole. The Board’s deliberations were centered on arguments for a 50% versus 30% permanent rating recommendation. The general description in §4.130 for a 50% rating is “occupational and social impairment with reduced reliability and productivity” while the 30% general description is “occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks.” Both the MEB and the VA exam found the CI demonstrated moderate psychologic impairment while serving in his MOS which appeared “off-duty” as there was no reference to this in his performance review. His performance review and commander’s statement demonstrated, in spite of his fair psychologic coping skills, that the CI exceeded performance expectations. The vast majority of evidence demonstrated that the CI had a low threshold for stress which led to the emergence of the bizarre behaviors classified under Schizoid personality disorder and moderately impacted his occupational and social life. Physiologically and psychologically the CI did best when he was removed from the highly stressful flight line, working in the snack bar and had no personal stress. While he had not established employment post separation it had only been two months of civilian adjustment and the evidence demonstrated he was seeking further education, was maintaining personal relationships and living with friends. While he had divorced, the evidence bears this was a positive outcome for the CI. After due deliberation, and in consideration of all the evidence and VASRD §4.3 (reasonable doubt), the Board recommends 30% as the fair permanent separation rating for anxiety disorder NOS condition in this case.

Other Contended Conditons The CI’s application asserts that compensable ratings should be considered for hypertension and persistent tachycardia. All of these conditions were reviewed by the action officer and considered by the Board. Hypertension was treated with propanolol to cover both hypertension and or performance anxiety and was noted to be normal on his NARSUM exam. Hypertension was not identified on the limited duty (LIMDU) or in the commander’s statement. There was no evidence for concluding that hypertension interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore that this condition was not subject to a service disability rating. Persistent tachycardia was not in the DES file but was noted in the STR and treated with Propanolol with no residuals. 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.

Remaining Conditions. Other conditions identified in the DES file were lipoma removal and muscle strains and and several additional non-acute conditions or medical complaints were also documented. None of these conditions were clinically 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. Additionally, tinnitus and several other non-acute conditions were noted in the VA rating decision 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. As discussed above, PEB reliance on DoDI 1332.39 for rating anxiety disorder NOS was operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the anxiety disorder NOS condition, the Board by a vote of 2:1 recommends a permanent service disability rating of 30%, coded 9413 IAW VASRD §4.130. The single voter for dissent (who recommended rating 9413 at 50 %) did not elect to submit a minority opinion. In the matter of the hypertension, lipoma removal, muscle strains 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. The Board unanimously agrees that there were no other conditions eligible, including the contended condition persistent tachycardia, for Board consideration which could be recommended as additionally unfitting for rating at separation.

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows and that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of his prior medical separation:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Anxiety Disorder NOS | 9413 | 30% |
| **COMBINED** | **30%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110725, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs Treatment Record

President

Physical Disability Board of Review

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

Dear xxxxxxxxxxx:

Reference your application submitted under the provisions of DoDI 6040.44 (Title 10 U.S.C. § 1554a), PDBR Case Number PD-2011-00621.

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 not appropriate under the guidelines of the Veterans Administration Schedule for Rating Disabilities. Accordingly, the Board recommended your separation be re-characterized to reflect disability retirement, rather than separation with severance pay.

I have carefully reviewed the evidence of record and the recommendation of the Board. I concur with that finding, accept their recommendation and determined that your records should be corrected accordingly. The office responsible for making the correction will inform you when your records have been changed.

As a result of the aforementioned correction, you are entitled by law to elect coverage under the Survivor Benefit Plan (SBP). Upon receipt of this letter, you must contact the Air Force Personnel Center at (210) 565-2273 to make arrangements to obtain an SBP briefing prior to rendering an election. If a valid election is not received within 30 days from the date of this letter, you will not be enrolled in the SBP program unless at the time of your separation, you were married or had an eligible dependent child, in such a case, failure to render an election will result in automatic enrollment.

Sincerely,

Director

Air Force Review Boards Agency

Attachment:

Record of Proceedings

cc:

SAF/MRBR

DFAS-IN

PDBR PD-2011-00621

MEMORANDUM FOR THE CHIEF OF STAFF

Having received and considered the recommendation of the Physical Disability Board of Review and under the authority of Title 10, United States Code, Section 1554a (122 Stat. 466) and Title 10, United States Code, Section 1552 (70A Stat. 116) it is directed that:

The pertinent military records of the Department of the Air Force relating to xxxxxxxxxxxxxx, be corrected to show that:

a.  The diagnosis in his finding of unfitness for Anxiety Disorder NOS, VASRD code 9413, was rated at 30% rather than 10%.

b.  On 26 November 2009 spouse-only coverage under the Survivor Benefit Plan (SBP) based on full retired pay was established.

c.   He was not discharged on 27 November 2009; rather, on that date he was released from active duty and on 28 November 2009 his name was placed on the Permanent Disability Retired List.

Director

Air Force Review Boards Agency