RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: air force

CASE NUMBER: PD1100630 SEPARATION DATE: 20051024

BOARD DATE: 20111121

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSgt/E-5 (3E072, Electric Power Production) medically separated for anxiety disorder. The CI reported being involved in a rocket attack in Iraq during September 2004; he also reported that his friend died during this attack. He did not respond adequately to treatment and was placed in a non-deployable status. He was issued a temporary S4 profile and underwent a Medical Evaluation Board (MEB). Anxiety disorder was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AFI 48-123. Other conditions included in the Disability Evaluation System (DES) packet will be discussed below. The PEB adjudicated the anxiety disorder condition as unfitting, rated 10%, with application of the DoDI 1332.39. One additional condition was listed on the PEB adjudication as Category III: tobacco habituation. This is not a ratable condition IAW DoD and VA regulations and will not be discussed further. The CI made no appeals and was medically separated with a 10% disability rating.

CI CONTENTION: “I should have been medically retired. I was a career airman planning on making the Air Force my career. I feel 10% is unfair considering I’m still suffering from symptoms.” He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20050908** | | | **VA (4 Mo. After Separation) – All Effective 20051025** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Anxiety Disorder | 9413 | 10% | Generalized Anxiety Disorder with Panic | 9400 | 30% | 20060222 |
| Tobacco Habituation | CAT III | | No VA Entry | | | |
| ↓No Additional MEB/PEB Entries↓ | | | Right Shoulder Strain | 5024 | 10% | 20060222 |
| Thoracic and Lumbar Strain | 5237 | 10% | 20060222 |
| 0% x 1 | | | 20060222 |
| **Combined: 10%** | | | **Combined: 40%** | | | |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impact that his service-incurred condition has had on his current quality of life. 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 (VA). 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 VA, 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.

Anxiety Disorder. The PEB rating, as described above, was likely derived from DoDI 1332.39 and preceded the promulgation of the National Defense Authorization Act 2008 mandate for DoD adherence to Veterans Administration Schedule for Rating Disabilities (VASRD) §4.129. IAW DoDI 6040.44 and DoD guidance (which applies current VASRD 4.129 to all Board cases), the Board must consider if the tenant of §4.129 (Mental disorders due to traumatic stress) was applicable. The salient question before the Board is whether the CI’s psychiatric 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.” Should the Board decide that §4.129 is applicable in this case, then, IAW DoDI 6040.44 and DoD guidance, the Board is obligated to recommend a minimum 50% rating for the unfitting mental condition for a retroactive six-month period on the Temporary Disability Retired List (TDRL). The Board must then determine the most appropriate fit with VASRD 4.130 criteria at six months for its permanent rating recommendation. The Board first considered the question of §4.129 applicability. Mental health records indicate the CI witnessed a rocket attack while deployed in Iraq and went to the assistance of a fellow airman who was severely injured with loss of limbs. A medical progress note dated 11 September 2004 from the medical clinic at Balad Air Base recorded, “…witnessed severe trauma of service member struck by mortar here at Balad AB.” On the postdeployment health assessment form (8 December 2004), the CI checked “yes” to seeing coalition wounded killed or dead, and “yes” to feeling in great danger of being killed. He experienced symptoms of anxiety following the incident which resolved quickly with treatment in theater, but then recurred about two months later. He was treated over the ensuing year for persistent anxiety symptoms, but exhibited few other symptoms characteristic of posttraumatic stress disorder. The Board noted that the stresses of deployment to a combat zone, although considerable under the best or circumstances, do not automatically equate to the §4.129 standard of “a highly stressful event” or to Criterion A stressors for posttraumatic stress disorder (PTSD) – a typical mental disorder for which the provisions of §4.129 would apply. The Board considered that the neither the military psychiatrists not the VA C&P examiner diagnosed PTSD, implying that insufficient criteria were met to establish the diagnosis of PTSD. The Board also considered that the VA elected not to apply §4.129 in its rating decision. The Board noted, however, that had the CI met the other criteria for PTSD, the circumstances of the rocket attack event, with the personal danger and loss of life of a fellow airman, would likely have been sufficient for a psychiatric examiner to concede Criterion A. After deliberation and consideration of reasonable doubt, the Board concludes that sufficient evidence supports that a highly stressful event severe enough to bring about the Veteran’s release from active military service did occur and that the application of §4.129 is appropriate in this case. The most proximate sources of comprehensive evaluation upon which to base the permanent rating recommendation in this case are a MEB psychiatric examination performed two months prior to separation and a VA Psychiatric compensation and pension (C&P) evaluation performed four months after separation. Since the C&P and MEB examinations each occurred close to separation and are the only proximate documents available for review, both are useful in the Board’s effort to arrive at a fair permanent rating recommendation. All Board members agreed that the §4.130 criteria for a rating higher than 50% were not met at the time of separation, and therefore the minimum 50% TDRL rating (as explained above) is applicable.

At the time of the psychiatric narrative summary (NARSUM) on 12 August 2005, two months prior to separation, the CI noted continued anxiety, particularly in the evening hours, but never when home with his wife (his wife was not co-located with him). The extent of his anxiety was characterized as “mild approximately 70% of the total time.” Mental health treatment records from April to July 2005 reflected good control of anxiety symptoms which worsened in the weeks prior to the NARSUM examination. Insomnia was reported but medications which had successfully controlled this symptom prior were not ordered. On clinical examination, he appeared anxious but was mentally alert and oriented to time, person and place. The relationship with the interviewer was reported as cooperative and friendly. He was well groomed and exhibited good eye contact. His speech was well-modulated, non-pressured, and fluent. His mood was euthymic (non-depressed) and his was affect was normal. His thought processes were logical, linear, and goal-directed. His insight and judgment were intact. He exhibited no problems with concentration, no evidence of thought disorder and no psychotic ideation during the interview. He denied suicidal ideation, intent, or plan. Insomnia (unrecorded frequency) was reported. Neither suspiciousness nor memory loss was noted. No panic attacks were documented, although the CI reported “fear of having another attack.” No difficulties relative to the work environment were recorded. There were no relationship problems identified, he enjoyed the close support of his spouse; however, he expressed fears regarding having another panic attack in front of everyone in his unit. Mental health treatment records recorded two panic attacks in July, with none during the prior three months. The NARSUM examiner assigned a global assessment of functioning (GAF) of 60, connoting mild to moderate symptoms. Social-Industrial Impairment was described as “mild.” However, the examiner did opine that the CI’s “condition is likely to follow a chronic relapsing and remitting course. During periods of recurrence, he is likely to experience significant social and occupational impairment. I would expect him to fare exceedingly poorly in the deployed environment.” The MEB history and physical examination on 19 October 2005 documented breakthrough anxiety and mild panic attacks, and that the CI had not experienced moderate panic attacks since starting a new medication (Lexapro). The commander’s statement from 29 August 2005 stated that his condition had not affected his home station duty performance and that he had missed two hours per week due to medical appointments.

At the C&P examination performed four months after separation, the CI reported continued anxiety during the day (very nervous during the day), and worried a lot. He stated some startle reaction and hypervigilance, some avoidance (war movies), minimal isolation, and occasional nightmares and intrusive memories both good and bad. The intrusive memories were said to be getting better. Memory and concentration were “okay,” energy level fairly good, and he denied significant problem with depression. He noted having a panic attack approximately once a month but these were not detailed regarding triggers, severity, duration, or impact on functioning. The CI stated that he enjoyed his job installing generators in commercial buildings (a job similar to his Air Force specialty) and was “doing fairly well.” Socially, he and family will “go out to eat,” and he can “get out socially” although he is a “little nervous.” He lives in apartment with his wife and two children and likes to pay attention to racing circuits and aspires “to get into some racing himself, like go carts.” On examination, the CI was described as alert and oriented, neatly groomed and dressed. Although describing himself as “very anxious,” his attitude was pleasant, spontaneous, cooperative and polite. He behaved normally without belligerence, hostility, irritability, or vagueness. Cognitive memory was within normal limits and judgment was good. He manifested no hallucinations, delusions, paranoia, or ideas of reference. He denied homicidal or suicidal ideations, flashback and depression. The examiner diagnosed generalized anxiety disorder, with occasional panic and assigned a GAF of 60.

With regard to the permanent rating at the end of the constructive period of TDRL, all Board members agreed that the preponderance of evidence of the NARSUM and the post-separation C&P examination did not approach the 50% rating; therefore, the Board deliberations centered on a 10% versus a 30% rating. Social and occupational impairment consistent with a 30% evaluation (“occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks…”) could be surmised from some of the documented symptoms at the time of the post separation C&P examination including, anxiety, monthly panic attacks, and mild problems with intrusive memories, hypervigilance, exaggerated startle response, and mild avoidance (“can go out socially but is a little nervous”). However, the Board noted that the NARSUM, commander’s statement, and the post-separation C&P examination documented the CI’s generally intact interpersonal and occupational functioning with treatment, and the apparently “mild or transient” nature of his symptoms since separation. Although the NARSUM examiner reported the recurring/relapsing nature of the CI’s condition during which significant social and occupational impairment was likely; none were seen during the time leading up to separation or following separation up to the time of the post separation C&P examination. The Board notes its rating recommendation is to be based on the severity of the condition at the time of permanent disposition and not based on possible future worsening. After due deliberation, and in consideration of all the evidence and VASRD §4.3 (reasonable doubt), the Board recommends 10% as the fair permanent separation rating for anxiety disorder in this case.

Remaining Conditions. Other conditions identified in the DES file were low back pain, right shoulder pain and right knee pain. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were significantly clinically or occupationally 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. No other conditions were service connected with a compensable rating by the VA within 12 months of separation or contended by the CI. 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 was operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the anxiety condition, the Board unanimously recommends an initial TDRL rating of 50% in retroactive compliance with VASRD §4.129 as DOD directed, and a 10% permanent rating at six months IAW VASRD §4.130. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as additionally unfitting for rating at separation.

RECOMMENDATION: In the matter of the anxiety disorder condition, the Board unanimously recommends an initial TDRL rating of 50% in retroactive compliance with VASRD §4.129 and DOD direction, and a 10% permanent rating at six months IAW VASRD §4.130.

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| --- | --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **TDRL RATING** | **PERMANENT**  **RATING** |
| Anxiety Disorder | 9413 | 50% | 10% |
| **COMBINED** | **50%** | **10%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110416, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

X

Physical Disability Board of Review

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

X

Dear X

Reference your application submitted under the provisions of DoDI 6040.44 (Section 1554, 10 USC), PDBR Case Number PD-2011-00630.

After careful consideration of your application and treatment records, the Physical Disability Board of Review determined that the disposition at the time of your disability evaluation system processing was not appropriate under the guidelines of the Veterans Administration Schedule for Rating Disabilities. Accordingly, the Board recommended modification of your records to reflect placement on the Temporary Disability Retired List without change to your assigned disability rating and separation with severance pay, upon final disposition.

I have carefully reviewed the evidence of record and the recommendation of the Board. I concur with that finding, accept their recommendation and direct that your records be corrected as set forth in the attached copy of a Memorandum for the Chief of Staff, United States Air Force. The office responsible for making the correction will inform you when your records have been changed.

Sincerely,

X

Director

Air Force Review Boards Agency

Attachment:

Directive

cc:

SAF/MRBR

DFAS-IN

PDBR PD-2011-00630

MEMORANDUM FOR THE CHIEF OF STAFF

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

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

a.  He was not discharged on 24 October 2005 with entitlement to disability severance pay; rather, on that date he was released from active duty and on 25 October 2005 2005 his name was placed on the Temporary Disability Retired List (TDRL), with a diagnosis of Anxiety Disorder, VASRD code 9413, rated at 50%.

b.  On 24 April 2006, he was removed from the TDRL and discharged with severance pay with a final combined disability rating of 10%.

X

Director

Air Force Review Boards Agency