RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100658 SEPARATION DATE: 20050715

BOARD DATE: 20120719

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSG/E-6 (74D, Chemical Operations Specialist) medically separated for posttraumatic stress disorder (PTSD)*.*  He was diagnosed with PTSD after to a 2003-2004 deployment to Iraq; and, Criterion A stressors were documented. He underwent a trial of medications and outpatient therapy, but failed to improve adequately to meet the operational requirements of his Military Occupational Specialty (MOS). He was consequently issued a permanent S3 profile and referred for a Medical Evaluation Board (MEB). The PTSD condition was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions were submitted by the MEB. The PEB adjudicated PTSD as unfitting, rated 10%, citing criteria of Department of Defense Instruction (DoDI) 1332.39. The CI made no appeals, and was medically separated with that disability rating.

CI CONTENTION: “Service member served nearly fifteen years at time of medical separation, had reenlisted to an indefinite status prior to this time, and was considered a career soldier.” He does not elaborate further or specify a request for Board consideration of any specific conditions.

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in DoDI 6040.44 (Enclosure 3, paragraph 5.e.2) 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.” The rating for the unfitting PTSD condition is addressed below; and, no additional conditions are within the DoDI 6040.44 defined purview of the Board. 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:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20050609** | | | **VA (3 Mo. Post-Separation) – All Effective 20050716** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| PTSD | 9411 | 10% | PTSD | 9411 | 50% | 20051006 |
| No Additional MEB/PEB Entries | | | Residuals, Right Elbow | 8516 | 10% | 20051006 |
| 0% x 1 / Not Service-Connected x 2 | | | 20051006 |
| **Combined: 10%** | | | **Combined: 60%** | | | |

ANALYSIS SUMMARY: The PEB rating, derived from DoDI 1332.39, preceded the promulgation of the National Defense Authorization Act (NDAA) 2008 mandate for DoD adherence to the 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 is obligated to recommend a minimum 50% PTSD rating 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 6 months for its permanent rating recommendation. The most proximate source of comprehensive evidence on which to VA Compensation and Pension (C&P) examination, performed 3 months after separation. There is also some probative VA outpatient evidence specific to the 6-month permanent rating interval.

PTSD Rating. The CI had been treated for PTSD type symptoms following earlier deployments to Kosovo and Somalia, but suffered more acute and protracted symptoms immediately following his 2003 Iraq deployment. The MEB’s psychiatric narrative summary (NARSUM) documented “a very high anxiety level and very irritable with a short temper;” and, the CI endorsed insomnia, nightmares, flashbacks, decreased energy, and impaired concentration. At the time of separation he was being treated with a mood stabilizer (Zoloft) and was compliant with outpatient therapy. No inpatient treatment, alcohol or drug abuse, legal difficulties or other psychiatric complications were in evidence. His marriage was intact, but no other details of social functioning were provided. His commander documented that he was unable to fulfill the field and operational requirements of his MOS because of profile restrictions; but, his platoon sergeant provided a statement to the PEB that he “is working in his MOS and is successfully performing administrative duties and supervising junior Soldiers in a garrison environment.” The NARSUM mental status exam (MSE) described a depressed and “slightly anxious” mood with congruent affect. Although the CI described “dissociative episodes with the flashbacks”; there were no suicidal thoughts, delusional or hallucinatory symptoms, speech disturbance, objective cognitive impairment, or other abnormality. His Global Assessment of Functioning (GAF) score was 60, connoting mild to moderate functional impairment.

At the time of the VA psychiatric C&P evaluation, 3 months after separation, the CI was not under mental health treatment or taking medication. He continued to endorse nightmares and insomnia; and, described hyperstartle response and public avoidance. His marriage was sound, but he described some emotional withdrawal. He had worked for a month after discharge, but had just been terminated because of “some dispute over materials.” The VA examiner’s MSE described a depressed “somewhat dysphoric and extremely intense” mood, with a congruent affect. The MSE was otherwise normal, and there was no cognitive impairment. The GAF assignment was 42, connoting serious functional impairment; although, the action officer notes that this lower score is not easily supported by the history and objective findings as documented. The VA examiner elaborated no rationale for the GAF assignment, although did opine that the psychiatric impairment did not preclude “all employment.” VA mental health notes proximate to the 6 month rating interval document that the CI was commencing treatment with an antidepressant and sleep medication, and was reengaged in therapy. He was working as a volunteer fire fighter and training in electronics. A note from February 2006, 7 months after separation, states that he had published a book on his war experiences. These notes cite continued PTSD symptoms without commenting on acuity or clinical course, and re-stated the previous GAF score without assigning a new one. They did elaborate a somewhat restricted social and recreational life.

The Board directs its attention to its rating recommendations based on the evidence just described. All members agreed that the §4.130 criteria for a TDRL rating higher than 50% at the time of placement on TDRL were not met; and, therefore the minimum 50% TDRL rating prescribed by §4.129 is applicable. Although it is not entirely clear from the rating decision, it would appear that the VA’s 50% post-separation rating for PTSD was based on §4.130 criteria without relying on the provisions of §4.129. As regards the permanent rating recommendation, all members agreed that the lack of evidence for any impaired occupational functioning would no longer support a 50% rating which requires “occupational and social impairment with reduced reliability and productivity.” The deliberation settled on arguments for a permanent rating recommendation of 30% (“occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks”) versus 10% (“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”). Some level of work inefficiency might be expected to result from the reported symptoms; although, there was no documented evidence of such in an occupational capacity commiserate with the CI’s education and experience; and, the evidence clearly suggests that there were no “intermittent periods of inability” relative to occupational capacity. Regarding the 10% criteria, however, the CI’s persistent psychiatric symptoms could not be fairly characterized as “mild,” “transient” or adequately “controlled” (without regard to “periods of significant stress”); and, a significant degree of social impairment was in evidence (relevant to all §4.130 ratings). The Board thus deliberated whether the disability exceeded the 10% threshold sufficiently enough to concede a 30% rating despite the lack of evidence for any significant occupational impairment. Considering the totality of the evidence and mindful of VASRD §4.3 (reasonable doubt), members agreed that a permanent PTSD disability rating of 30% was appropriately recommended 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 PTSD was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the PTSD, the Board unanimously recommends a 30% permanent rating 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 be corrected to reflect a permanent 30% disability retirement as indicated below.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| **PERMANENT** | |
| Posttraumatic Stress Disorder | 9411 | 30% | |
| **COMBINED** | **30%** | |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110713, 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 XXXXXXXXXXXXXXXXXXXXXXXXXX, AR20120012977 (PD201100658)

1. Under the authority of Title 10, United States Code, section 1554(a), I approve the enclosed recommendation of the Department of Defense Physical Disability Board of Review (DoD PDBR) pertaining to the individual named in the subject line above to constructively place the individual on the Temporary Disability Retired List (TDRL) at

50% disability for six months effective the date of the individual’s original medical separation for disability with severance pay and then following this six month period recharacterize the individual’s separation as a permanent disability retirement with the combined disability rating of 30%.

2. I direct that all the Department of the Army records of the individual concerned be corrected accordingly no later than 120 days from the date of this memorandum:

a. Providing a correction to the individual’s separation document showing that the individual was separated by reason of temporary disability effective the date of the original medical separation for disability with severance pay.

b. Providing orders showing that the individual was retired with permanent disability effective the day following the six month TDRL period.

c. Adjusting pay and allowances accordingly. Pay and allowance adjustment will account for recoupment of severance pay, provide 50% retired pay for the constructive temporary disability retired six month period effective the date of the individual’s original medical separation and then payment of permanent disability retired pay at 30% effective the day following the constructive six month TDRL period.

d. Affording the individual the opportunity to elect Survivor Benefit Plan (SBP) and medical TRICARE retiree options.

3. I request that a copy of the corrections and any related correspondence be provided to the individual concerned, counsel (if any), any Members of Congress who have shown interest, and to the Army Review Boards Agency with a copy of this memorandum without enclosures.

BY ORDER OF THE SECRETARY OF THE ARMY:

Encl XXXXXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA

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