RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXX
CASE NUMBER: PD1100744
BOARD DATE: 20121024

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20080428

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Warrant Officer 1 (WO1) (003A0/Warrant Officer Flight School Student), medically separated for cognitive disorder, not otherwise specified (NOS), status post (s/p) closed head injury associated with posttraumatic stress disorder (PTSD). The CI did not improve adequately with treatment to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent P3/S3 profile and referred for a Medical Evaluation Board (MEB). PTSD, cognitive disorder, and traumatic brain injury (TBI) were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Depressive disorder and migraine headaches were forwarded on the MEB submission as medically acceptable conditions. The PEB adjudicated the cognitive disorder condition s/p closed head injury associated with PTSD as unfitting, rated 10% with likely application of the Department of Defense Instruction (DoDI) 1332.39, and the Veteran's Affairs Schedule for Rating Disabilities (VASRD). Migraine headaches were determined to be not unfitting. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: "Because the VA has found that it is not just Traumatic Brain Injury, but there is some type of heart condition and the left eye has major issues. Also the VA has determined that the PTSD is a lot worse than the Army stated. They have also determined that I have a sleeping condition."

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 ratings for unfitting conditions will be reviewed in all cases. The unfitting cognitive disorder s/p closed head injury with PTSD conditions meets the criteria prescribed in DoDI 6040.44 for Board purview, and are accordingly addressed below. Although migraine headache was not specifically contended, the CI included "traumatic brain injury" in his contention and the Board concluded the post concussive headache condition was within its purview. The other requested conditions (heart condition, left eye, and sleep condition) are not within the Board's purview. 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 Correction of Military Records.

RATING COMPARISON:

Service IPEB – Dated 20080317			VA (2 Mo. After Separation) – All Effective Date 20080429			
Condition	**Code**	**Rating**	**Condition**	**Code**	**Rating**	**Exam**
Cognitive Disorder s/p Closed Head Injury; Associated with PTSD, Depressive Disorder	8045-9304	10%	Posttraumatic Stress Disorder (also claimed as Cognitive Disorder)	9411	10%*	20080610
Migraine Headaches	Not Unfitting		Migraine Headaches	8045-8100	30%	20080610
↓No Additional MEB/PEB Entries↓			0% x 1			20080610
Combined: 10%			**Combined: 40%**			

* VA rating based on exam most proximate to date of permanent separation. VARD 20100202 Increased rating to 30% and changed the diagnosis to "PTSD with cognitive disorder" effective 20080429.

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. While the DES considers all of the member's medical conditions, compensation can only be offered for those medical conditions that cut short a member's career, and then only to the degree of severity present at the time of final disposition. The DES has neither the role nor the authority to compensate members for anticipated future severity or potential complications of conditions resulting in medical separation nor for conditions determined to be service-connected by the Department of Veterans Affairs (DVA) but not determined to be unfitting by the PEB. However the DVA, operating under a different set of laws (Title 38, United States Code), 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. 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. 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 to post-separation evidence. 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. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Cognitive Disorder, Not Otherwise Specified, Status Post Closed Head Injury, with Associated Posttraumatic Stress Disorder. Following a head injury in June 2007, the CI developed migraine headaches which were controlled with chronic prophylactic medication. However, the medication disqualified him from continuing in helicopter pilot training. In August 2007, the CI's physician initiated a MEB based on the use of medication which was disqualifying for continued flight training, and the fact that a transfer into another job was not a likely option. Subsequent neuropsychological testing diagnosed the presence of a cognitive disorder attributed to recurrent head injuries from bull riding beginning prior to service, as well as recurrent TBI while in service. Concurrently, the CI sought treatment for symptoms of chronic PTSD that had been present for 2 years, but had reportedly intensified following the June 2007 head injury. Traumatic combat experiences while deployed to Iraq in 2004 led to the development of PTSD. The PEB initially discontinued disability processing due to questions as to why the CI was unable to perform general military duties. Based on additional information, the IPEB subsequently found the cognitive disorder NOS, s/p closed head injury unfitting with associated PTSD and episodic depressive symptoms that worsened after the June 2007 head injury, and rated the combined conditions 10% consistent with VASRD guidelines (general rating formula for mental disorders, coded 8045-9304, dementia due to traumatic brain injury). The PEB awarded the 10A/C (directly related to armed conflict) and 10D (disability was incurred in a combat zone (Iraq) or incurred during the performance of duty in combat-related operations as designated by the Secretary of Defense) designations for PTSD. The PEB concluded the

migraine headaches controlled with medication were not unfitting for continued military service. The Board noted that PEBs often combine multiple conditions under a single rating when those conditions considered individually are not separately unfitting and would not cause the member to be referred into the DES or be found unfit because of physical disability. This approach by the PEB reflects its judgment that the constellation of conditions was unfitting, not a judgment that each condition was independently unfitting. When combining conditions in this manner, the PEBs concluded that there was no need for separate fitness adjudications. When considering a separate rating for each condition, the Board first must satisfy the requirement that each unbundled condition was unfitting in and of itself based on a preponderance of evidence. When the Board recommends separate fitness recommendations in this circumstance, its recommendations may not produce a lower combined rating than that of the PEB. The Board considered the cognitive disorder and PTSD conditions separately with regard to fitness for continued military duty. The 2 October 2007 neuropsychological testing report concluded the CI had a mild cognitive impairment due to head injury that would not interfere with general military duties but might interfere with pilot training. A psychiatry addendum dated 28 February 2008 addressing the diagnosis of cognitive disorder, NOS, reviewed the neuropsychological testing results. The psychiatrist thought the impairment was greater than that assessed by the neuropsychologist, stating that the CI was "a highly trained helicopter pilot (which he wasn't) who will no longer be able to function in his area of expertise but will need to retrain into another occupation and do so with a significant decrement in his cognitive abilities compared to those he had prior to his head injury." The Board noted the neuropsychological testing report recorded a test failure and difficulty with classroom work and concluded the cognitive disorder was separately unfitting for military duty. The Board next considered whether the PTSD condition was unfitting for continued military service. The MEB psychiatry narrative summary (NARSUM) (written by a different examiner than the psychiatry addendum) detailed combat stressors consistent with witness statements and service records, and symptoms of PTSD for which the psychiatrist concluded the impairment for military duty was marked. A majority of the Board concluded PTSD was also unfitting for military service. The Board also noted that there were overlapping symptoms from the CI's cognitive disorder and PTSD.

The Board next considered the evidence relevant to rating the unfitting cognitive disorder and associated PTSD. The neuropsychological testing report dated 2 October 2007 recorded symptoms of PTSD since the CI's return from Iraq, including personality changes, increased irritability and anger, and being nervous/edgy in traffic and crowds. The neuropsychologist wrote that the CI reported he had failed a flight school test prior to the onset of his migraines, and difficulty in flight training classes when instructors were bland. The neuropsychological testing revealed mild neuropsychological defects of visual attention, slow reaction time, slow processing speed, difficulty for fine motor dexterity for peg placement in the left upper extremity (however the CI was experiencing a tremor due to medication side effect), impaired rhythm perception and memory. His reading skill was at the seventh grade level. Mild anxiety was present on testing. The neuropsychologist concluded that the mild cognitive limitations were more likely related to multiple concussions than anxiety or PTSD. The neuropsychologist did not think the mild deficits would disqualify him from general military service or "competitive employment in the civilian sector" but suspected he would have difficulty taking in large amounts of information such as for pilot training or pursuing a job that required him to sustain attention over a period of time. The neuropsychologist also noted there were several strengths such as good mathematics ability and as reflected in performance in the superior range on a demanding non-verbal problem solving test requiring hypothesis generation and mental flexibility. The psychiatry NARSUM dated 14 January 2008 describes the traumatic combat experiences endured by the CI while deployed to Iraq from March 2004 to February 2005, service for which the CI was awarded the Bronze Star with "V" device and Combat Action Badge, and documents chronic symptoms of PTSD that began upon his return from Iraq in February 2005. Symptoms included nightmares, intrusive thoughts and flashbacks triggered by

reminders (such as fire crackers going off), irritability, short temper, hypervigilance, anxiety, and problems with large crowded public places. The CI also described short lived episodes of depressive symptoms lasting 3 days occurring every 3 months manifested by anhedonia, psychomotor retardation, fatigue, lack of appetite, and need for self isolation that resolved spontaneously. The psychiatrist noted that despite his PTSD symptoms, the CI was able to finish Warrant School without any difficulty and was enrolled in aviation school. Treatment had begun in August 2007, "greatly decreased the intensity of his PTSD symptoms," and was associated with improved relationship with his wife and the ability to interact with friends on a social basis. The CI was able to go to restaurants and movies but was still constantly scanning, felt nervous around large groups of people and was startled by unexpected loud noises. He also continued to note difficulty concentrating at times and some dizziness. Mental status examination (MSE) was unremarkable with a reflective mood, normal affect, and fluent speech with organized clear and lucid thought processes without hallucinations, delusions, suicidal ideation, homicidal ideation, or impairment of insight or judgment. Concentration was intact to serial 7s; the CI could recall two of three items on memory testing. The psychiatrist judged the PTSD to be mild.

Both the PEB and VA adjudicated a single rating for the cognitive disorder and PTSD together. This is consistent with VASRD guidance IAW §4.126 (evaluation of disability from mental disorders) and §4.14 (avoidance of pyramiding). In accordance with §4.126, cognitive disorders shall be evaluated under the general rating formula for mental disorders; neurologic deficits or other impairments stemming from the same etiology (e.g., a head injury) shall be evaluated separately and combined with the evaluation for delirium, dementia, or amnestic or other cognitive disorder. When a single disability has been diagnosed both as a physical condition and as a mental disorder, the rating agency shall evaluate it using a diagnostic code which represents the dominant (more disabling) aspect of the condition. In accordance with §4.14 (avoidance of pyramiding), more than one rating cannot be assigned for the same symptoms (i.e. a rating for PTSD and a rating for TBI that each are based on the same cognitive symptoms). In addition, TL 07-05, in effect at the time of separation, states: "Symptoms of cognitive impairment and mental disorders such as depression and PTSD often overlap. In such cases, a single evaluation taking into account both conditions may be the most appropriate way to evaluate them." The Board noted the impairing symptoms of irritability, anxiety, and cognitive problems are overlapping symptoms of both head injury and PTSD. Therefore, due to the overlapping and intertwined symptoms from the cognitive disorder and PTSD, the Board concluded that the symptoms including cognitive, emotional and behavioral complaints were most appropriately rated in combination as a single evaluation using the general rating formula for mental disorders consistent with the approach used by both the PEB and VA. The PEB rating was apparently derived from DoDI 1332.39 although the National Defense Authorization Act (NDAA) 2008 mandate for Department of Defense (DoD) adherence to VASRD §4.129 had recently been promulgated. IAW DoDI 6040.44 and current DoD guidance (which applies VASRD §4.129 to all Board cases), the Board is obligated to recommend a minimum 50% PTSD rating for a retroactive 6 month period on the Temporary Disability Retired List (TDRL). The Board must then determine the most appropriate fit with VASRD §4.130 criteria after six months for its permanent rating recommendation. At the time of separation from active duty and placement on TDRL, all members agreed the cognitive disorder associated with PTSD condition did not exceed the 50% level.

Next, the Board considered its recommendation for a permanent rating for PTSD based on the most appropriate fit with VASRD §4.130 criteria at six months following separation. The most proximate source of comprehensive medical evidence upon which to base the permanent rating recommendation in this case are the VA Compensation and Pension (C&P) examinations performed on 10 June 2008, approximately 2 months after separation. The general medical C&P examination recorded a history of multiple head injuries. Migraine headaches were attributed to the head injury in June 2007 and were reported to occur two to three times per

month with most attacks prostrating. However, they were also noted to cause no significant effects on the CI's usual occupation. The C&P examiner recorded complaint of mild memory impairment with absence of other symptoms, including dizziness, vertigo, fatigue, sleep problem, or tinnitus. The neurological examination was normal, and memory was considered intact on physical examination. On MSE, the CI exhibited normal mood, affect, judgment, appropriate behavior, and normal comprehension of commands. He was employed fulltime as an electrician's apprentice. The examiner concluded there was "No evidence for a physical condition relating to traumatic brain injury." The PTSD C&P examination on the same date summarized combat stressors and the CI endorsed continued symptoms of PTSD the examiner concluded were mild. There were no panic attacks, or problems with impulse control, substance abuse or violence. MSE noted the mood to be good with normal affect. The CI was observed to be friendly, relaxed, and attentive. Attention and concentration were normal, insight and judgment intact, and memory normal. There was no suicidal or homicidal ideation. The examiner concluded PTSD symptoms were controlled by continuous medication and were not severe enough to interfere with occupational and social functioning. The VA granted a service-connected rating of 10% for PTSD (also claimed as cognitive disorder) based on evidence of the service treatment records (STR) and the C&P examinations. The CI appealed his VA ratings and the VA increased his rating for PTSD with cognitive disorder to 30% based on an examination performed 21 September 2009, 17 months after separation. The Board noted the subsequent examinations and rating changes, however concluded the severity of the cognitive disorder associated with PTSD condition at the time of removal from TDRL was best described by the 10% rating criteria.

Migraine Headache Condition. The condition adjudicated as not unfitting by the PEB was migraine headache. Although not specifically contended, the headache condition was associated with the post-concussive symptoms including the unfitting cognitive disorder, and was the initial reason for entry into the DES. The Board's first charge with respect to this condition is an assessment of the appropriateness of the PEB's fitness adjudication. The Board's threshold for countering fitness determinations is higher than the VASRD §4.3 (reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 "fair and equitable" standard. Following the June 2007 head injury, the CI developed migraine headaches that were controlled with medication but resulted in disqualification for flight school due to the requirement for medication. The Board concluded the headache condition was unfitting and related to the unfitting post-concussive syndrome. At a 29 November 2007 aviation clinic appointment for MEB evaluation, the physician recorded that the CI had a prostrating headache once every 3 months. A 24 January 2008 neurology appointment recorded the CI experienced a headache once every 3 months (severity not specified). The general MEB NARSUM dated 5 February 2008 noted that the migraine headaches initially occurred two to three times per week, but occurred once every 3 months on medication. At the time of separation and placement on the constructive TDRL, the frequency and severity of headaches (good control with headaches once every three months responsive to medication), did not attain a compensable level IAW VASRD diagnostic code 8100. Therefore the Board recommends a zero percent rating at the time of entry on to TDRL. By policy and precedent, the Board will assess a permanent rating recommendation for the unfitting migraine headache condition based on the highest probative value information available describing the condition at 6 months post-separation (per retroactive application of §4.129 as above). As previously noted, the most proximate source of comprehensive medical evidence upon which to base the permanent rating recommendation is the VA C&P examination on 10 June 2008. It recorded report of headaches occurring two to three times per month with most attacks prostrating consistent with the 30% rating under diagnostic code 8100. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 0% for migraine headache at separation and entry on TDRL, and a permanent 30% rating at the time of removal from TDRL.

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 cognitive disorder, NOS, s/p closed head injury, with associated PTSD condition, the Board by a vote of 2:1 recommends a 10% permanent rating at six months IAW VASRD §4.130 following the initial TDRL rating of 50% in retroactive compliance with VASRD §4.129. In the matter of the contended migraine headache condition, the Board by a vote of 2:1 concluded that it was unfitting and recommends a 30% permanent rating at 6 months IAW VASRD §4.124a following the initial TDRL rating of 0%. The single voter for dissent (who concluded that the PTSD condition was not separately unfitting, and recommended a 10% rating for the traumatic brain injury with mild cognitive disorder) submitted the attached minority opinion. 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 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	
		TDRL	PERMANENT
Traumatic Brain Injury with Mild Cognitive Disorder and Posttraumatic Stress Disorder	8045-9304	50%	10%
Migraine Headache	8100	0%	30%
	COMBINED	**50%**	**40%**

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110826, w/atchs
Exhibit B. Service Treatment Record
Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXX, DAF
President
Physical Disability Board of Review

Minority Opinion.

After careful review of the available evidence in the record, the minority voter concluded the PTSD condition was not separately unfitting for continued military service. The minority voter concluded that the mild cognitive impairments more likely than not pre-existed the mild 2 June 2007 head injury, were not worsened by that injury, and had not interfered with performance of duties. Although the PEB determined the migraine headache condition was not unfit, the minority voter concluded that symptoms of post-concussive headaches controlled by medication interfered with continued pilot training, was the reason for entry into the DES, and was the primary reason for his separation from military service. Had the headache condition not resulted in disqualification for flying and referral into the DES, the minority voter concluded the mild cognitive symptoms and chronic PTSD symptoms would not have resulted in MEB referral or separation from military service. The CI was initially referred into the DES because he was taking a medication for migraine headaches that was disqualifying for continued flight training/duty and transfer to another career field was apparently not an option at that time. Cognitive problems attributed to multiple head injuries beginning prior to service and chronic PTSD symptoms since 2005 were first reported after initiation of the MEB 17 August 2007. Prior to initiation of the MEB process, the service treatment records (STR) were completely silent with regard to head injury (other than the 2 June 2007 event), symptoms of cognitive disorder or PTSD, and there was no indication of impairment from cognitive problems or PTSD present in the records. In the opinion of the minority voter, extensive inconsistent and contradictory evidence throughout the record substantially weakens the probative value of the subjective evidence upon which the majority of the Board based its conclusions and recommendations. When considered in its totality, the evidence does not support the conclusions of the majority. The headache condition rates zero percent based on prior to separation evidence. Although the mild cognitive disorder did not interfere with performance of duty, it was considered to be the result of the same cause for the headache condition, recurrent head injury. Therefore the minority voter recommends finding the post-concussive syndrome unfit rated 10% subsuming the headache and mild cognitive disorder coded 8045-9304. The minority voter recommends the PTSD condition as not unfit.

With regard to the Board majority's recommendation for a 6 month period to constructive TDRL, the minority voter agrees the cognitive disorder associated with PTSD most nearly approximated the 10% rating at the time of separation and at the time of removal from the constructive 6 month period of TDRL. However, regarding the rating for the headache condition, the same reasoning that the probative value of subjective reporting was not consistent with objective evidence extends to the headache frequency and severity recorded at the time of the C&P examination. In addition, the C&P examiner recorded headache frequency for the prior 12-months which included the time period prior to treatment when headaches were daily. There was no mention regarding what the headache frequency was in the preceding several months on treatment. According to service treatment records, following treatment the frequency of headaches did not attain a compensable level under VASRD diagnostic code 8100. The minority voter concludes the headache condition should be rated 0% for a permanent rating.

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency
(TAPD-ZB / XXXXXXXXX), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXXX, AR20130000090 (PD201100744)

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, per VASRD 4.129, 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 no recharacterization of the individual's separation or modification of the permanent disability rating of 10% (for cognitive disorder associated with PTSD and depressive disorder).

2. I do not accept the PDBR recommendation to add migraine headaches as an additional unfitting condition. Although the applicant originally entered the Disability Evaluation System (DES) due to migraine headaches (after only 2 months of treatment), the available evidence supports the Physical Evaluation Board (PEB) determination that migraine headaches were not unfitting. In fact, it appears that the migraine headaches, at the time of separation, did not even fail to meet retention standards.

3. 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 as follows:

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 separated with a permanent combined rating of 10% effective the day following the six month TDRL period with no recharacterization of the individual's separation.

c. Adjusting pay and allowances accordingly. Pay and allowance adjustment will provide 50% retired pay for the constructive temporary disability retired six month period effective the date of the individual's original medical separation and adjusting severance pay as necessary to account for the additional TDRL time in service.

4. 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

XXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
( ) DoD PDBR
( ) DVA