RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXX BRANCH OF SERVICE: air force

CASE NUMBER: PD1100767 SEPARATION DATE: 20090828

BOARD DATE: 20120402

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty, SRA/E4 (2F051 Fuels Journeyman), medically separated for mood disorder. He was initially diagnosed with an adjustment disorder with mixed anxiety and depression in June 2006. Despite therapy, he did not respond adequately to treatment and was unable to adequately perform within his Air Force Specialty (AFS). He was placed on profile restricting deployment and carrying of weapons, and underwent a Medical Evaluation Board (MEB). Mood disorder not otherwise specified (NOS) was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AF 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 the mood disorder condition as unfitting, rated 10% with application of Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals and was medically separated with a 10% disability rating.

CI CONTENTION: “I was diagnosed with manic depression, I was awarded a 10% rating. I was also diagnosed with tinnitus and also eczema and several other conditions. I feel as if I wasn’t given the proper rating when I was discharged. Also during my 2 years separated from the Air Force, I have been disqualified for positions I have applied for resulting in unemployment. My service-connected disability is holding me back. My medical records proving all of my disabilities that were assessed on a Air Force Officer(s).”

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20090501** | | | **VA (2.5 Mo. After Separation) – All Effective Date 20090829** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Mood Disorder NOS | 9435 | 10% | Major Depressive Disorder | 9434 | 30%\* | 20091113 |
| ↓No Additional MEB/PEB Entries↓ | | | Tinnitus | 6260 | 10% | STR |
| Not Service Connected x 5 | | | STR |
| **Combined: 10%** | | | **Combined: 40%** | | | |

\*CI failed to report for initial evaluation in September 2009 and was awarded 10% for the MDD. After his November 2009 C&P, it was raised to 30%.

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-incurred condition continues to burden him. The Board wishes to clarify that it is subject to the same laws for service disability entitlements as those under which the DES operates. 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. That role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code). The Board evaluates DVA evidence proximal to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness decisions and rating determinations for disability 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. 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 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.

Mood Disorder. The CI first presented with an adjustment disorder with mixed anxiety and depression in June 2006 while in basic training. He was referred to a stress management class and apparently did well the next few years. During this period, he received a very good performance report from his supervisory chain. The CI deployed to Qatar in September 2007 and returned January 2008. A post-deployment health assessment questionnaire completed on 1 January 2008 was negative for depressive symptoms. A follow up post-deployment assessment on 9 April 2008 noted the presence of depressive symptoms that were coincident with marital separation (his wife filed for divorce in May 2008). In 2008, he was followed by both military and civilian practioners and placed on both Straterra for a history of ADHD and oxcarbazepine, an anti-convulsant also used “off-lable,” for bipolar disorder (BPD). During this time, his spouse left the marriage and took their son with her. The reasons for this are not specified in the record. Multiple mental health records note the civilian provider diagnosis of BPD, but the diagnosis carried was for a single episode of a major depressive disorder (MDD). The civilian records are not available for review. The MEB narrative summary, dictated 5 February 2009, was based on a psychiatry evaluation in December 2008. The CI was in active treatment at that time. The examining psychiatrist commented that there were inconsistencies within the interview that the CI was unable to reconcile. Contradictory answers were noted which the CI could not explain. Psychological testing demonstrated inconsistencies that reflected “considerable distortion” on the part of the CI when answering questions. Specifically, he grossly over reported manic symptoms (to a level that exceed the level one would expect from clinical samples from known bipolar patients) and under reported anti-social symptoms. Depressive symptom reported was determined to be reasonably accurate on testing. The examiner commented that he thought the CI was suffering from depression with a need to amplify symptoms. The CI reported a history of pre-service ADHD manifesting as academic deficiencies secondary to truancy and failure to study. Although the CI reported period of times of elevated mood, other features to support a diagnosis of bipolar disorder were noted as absent. On mental status examination mood was good, with broad and appropriate affect. Thought processes normal, linear, logical and goal directed without suicidal ideation, delusion, or evidence of psychosis. The CI endorsed three episodes of atypical visual hallucinations occurring four months prior to the examination. No cognitive impairment was noted. Insight was fair, and judgment questionable. The examiner determined that he had a mood disorder not otherwise specified with anti-social traits with minimal impairment for further military duty and mild civilian social and industrial adaptability. He was not worldwide qualified and could not carry weapons due to his medications. The Enlisted Performance Report (EPR) for the period 16 January 2008 to 15 January 2009 documents satisfactory duty performance. The commander’s letter, dated 21 January 2009 focused on restrictions due to medication side effects and deployability. A hand written note dated 18 May 2009 documented a telephonic contact with the CI by the mental health provided in which the CI declined a follow up appointment. The last documented appointment was 23 December 2008. The mental health clinic termination summary, dated 26 May 2009, stated that the CI continued treatment with the military mental health providers until he had completed the psychiatry interview for the MEB in December 2008, and then discontinued treatment, over 8 months prior to separation. The PEB rated the mood disorder at 10% (9435, mood disorder not otherwise specified).

The VA Compensation and Pension (C&P) exam was on 13 November 2009, almost 3 months after separation. The examiner noted that the CI had not taken any medications since August 2009, the month he was separated. He noted that he was a full-time student and that his social life had improved as he was back among his friends. He endorsed both manic and depressive symptoms and gave a history of alcohol abuse with binge drinking and blackouts. The mental status exam was essentially normal other than being “intense.” The examiner diagnosed MDD and noted that the history given that day was consistent with BPD. The examiner estimated the Global Assessment of Functioning as 60 for mild to moderate. The VA rated the mood disorder condition 30% (coded 9434), MDD.

The Board noted that the CI had been deployed and first considered if the provisions of VASRD §4.129 were applicable. It noted that the symptoms of adjustment disorder were first manifest within weeks of enlistment and well prior to any deployment. The post-deployment health assessment questionnaire completed by the CI indicates he was deployed to Qatar and he checked "no" to questions 7, 8, and 9 regarding seeing anyone dead, killed or wounded, engaging in combat, or feeling in great danger of being killed. It also noted that neither the VA nor PEB obtained a history of combat/deployment related stress or symptoms. Accordingly, the case is adjudicated solely under the provisions of VASRD §4.130.

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 rating higher than 30% were not met and that the criteria for a 0% rating were exceeded. The deliberation settled therefore on arguments for a 10% versus a 30% permanent rating recommendation. The mental status exam obtained by both the MEB and VA examiner was similar and essentially normal. The history obtained by the MEB examiner was inconsistent and contradictory. The CI also ceased treatment after the MEB psychiatry interview, 8 months before separation. The history obtained by the VA examiner described episodes of “high energy” and depression. The Board notes that at the time of the VA exam, the CI had been out of medications for 3 months and had discontinued therapy 11 months prior to that. Despite this, he was a full-time student and had a social life improved from when on active duty.

The evidence of the MEB psychiatry NARSUM, commander’s letter, and performance report more nearly approximates the 10% rating than the 30% rating. Board members concluded that symptoms were sufficiently “controlled by continuous medication” such that the CI was satisfactorily performing duties. The EPR ending January 2009 commented that the CI was a “seasoned journeyman; produced positive results; continue to reward with added responsibility” and was ready for promotion to the next higher rank. After separation, the CI discontinued medication but described improved social circumstances and was a full-time student. After due deliberation in consideration of the totality of the evidence, the Board concluded that there was insufficient cause to recommend a change from the PEB fitness adjudication for the mood disorder condition.

Other Contended Conditions. The CI asserts that compensable ratings should be considered for tinnitus and eczema. Both conditions were reviewed by the action officer and considered by the Board. There was no evidence for concluding that either of the conditions interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore that neither of the stated conditions was subject to service disability rating.

Remaining Conditions. Other conditions identified in the DES file were unspecified elbow condition, hearing loss of the left ear and insomnia. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were clinically or occupationally significant 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. In the matter of the mood disorder condition, the Board unanimously recommends no change from the PEB adjudication. In the matter of the unspecified elbow condition, eczema, tinnitus of left ear with hearing loss and insomnia or any other condition eligible for Board consideration, the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

RECOMMENDATION: The Board, therefore, recommends that there be no recharacterization of the CI’s disability and separation determination, as follows:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **PERMANENT**  **RATING** |
| Mood Disorder Not Otherwise Specified | 9435 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110907, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs Treatment Records

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President

Physical Disability Board of Review

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

Dear xxxxxxxxxx

Reference your application submitted under the provisions of DoDI 6040.44 (Title 10 U.S.C. §  1554a), PDBR Case Number PD-2011-00767

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,

XXXXXXXXXX

Director

Air Force Review Boards Agency

Attachment:

Record of Proceedings