RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100903 DATE OF PLACEMENT ON TDRL: 19981209

BOARD DATE: 20120620 Date of Permanent SEPARATION: 20021007

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty O-2/1LT (11A/Infantry Officer), medically separated for a mental health condition*.* He responded to inpatient and outpatient treatment but was unable to perform within his Military Occupational Specialty (MOS) or meet worldwide deployment standards. He was issued a permanent S3 profile and underwent a Medical Evaluation Board (MEB). Bipolar II disorder was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Two other conditions, as identified in the rating chart below, were forwarded on the MEB submission as medically acceptable conditions. The PEB adjudicated the mental health condition as unfitting, recommended placement on Temporary Disability Retired List (TDRL) with an assigned rating of 30%; and the remaining conditions as not unfitting with application of DoDI 1332.39 as reflected in the chart below. The CI remained on the TDRL for approximately 4 years then was medically separated with a 0% disability rating and he made no appeals.

CI CONTENTION: “At the time I was removed from TDRL in 2002, my bipolar condition had been treated with medication to keep me at a functional level. However, when I was told that I was "stable" and wouldn't need medication or further treatment in 2002 by my Army doctor, I was glad to be off medication and wanted to get on with my life. Little did I know at the time that going off of medication and not taking this illness seriously would lead to numerous relapses and hospitalization (all documented in my VA records). I have been divorced twice since leaving the service, had a serious manic episode, have been unable to hold down numerous jobs, been suicidal, and could not complete further education. Basically it was all a repeat of what happened when I was on active duty (lost job and placed on TDRL, suicidal, hospitalized, manic episodes, etc). If it were not for finally going to the VA again in 2008, I would not have had a place to go after my most serious relapse in 2007. I am rated at 30% with the VA for my service connected disability of bipolar disorder. I was rated at 10% in 2002 upon discharge. I believe that according to the criteria of rating bipolar disorder, I should have been rated at far higher than 10% and it definitely would have helped to continue to receive the treatment I was getting through the army. I do not believe that I received the proper acknowledgement from the Army Medical Board process on the seriousness of my condition, although the seriousness of it is well documented in my army and VA records. Since my first episode in 1998 while serving on active duty, the effect that this service connected disability has had on my life has been far worse than what is described according to the 10% rating for bipolar disorder. Thank you for your time and the opportunity try to correct this discrepancy.”

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. 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.

TDRL Rating Chart

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Final Service PEB – Dated 20020927** | | | | **VA\* – All Effective Date 20011101 (~11 Mo. Pre Sep)** | | | |
| **Condition** | **Code** | **Rating** | | **Condition** | **Code** | **Rating** | **Exam** |
| **On TDRL – 20020927** |  | **TDRL** | **Sep.** |
| Bipolar Disorder | 9432 | 30% | 0% | Bipolar Disorder | 9432 | 10%\* | 20011101 |
| Obsessive Compulsive Personality Traits |  | Not Unfitting | Not Adjudicated | No VA Entry | | | |
| Bilateral Stress Fracture of Feet |  | Not Unfitting | Not Adjudicated | No VA Entry | | | |
| ↓No Additional MEB/PEB Entries↓ | | | | Bilateral Knee condition | 5257 | NSC | 20080804 |
| Combined: 0% | | | | Combined: 10% | | | |

\*Increased to 30% effective 20080528.

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application, i.e., that there should be additional disability assigned for his mental health condition and the significant impairment with which his service-incurred condition continues to burden him. It is a fact; however, that the Disability Evaluation System (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 (DVA). 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 6040.44; 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. The Board also acknowledges the CI’s assertions that the PEB process did not acknowledge the seriousness of his condition. It is noted for the record that the Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to asserted service improprieties in the disposition of a 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.

Bipolar Disorder. In late 1997 the CI was unhappy with his life in the context of a new, more responsible assignment as an infantry platoon leader and a new marriage. He had a gradual loss of energy, concentration, a failed attempt to get an expert infantryman badge, and poor marital relationship due to his wife’s perception of him not “doing anything.” In January 1998 he self referred to mental health which resulted in a 2-day inpatient stay for suicidal thoughts. A Beck depression inventory conducted on the day of admission revealed a score of 31/63 consistent with significant depression. He responded well to medications and on discharge was diagnosed with major depressive disorder (MDD), single episode, and dysthymic disorder, primary onset. After returning from 3 weeks of convalescent leave he was followed in outpatient mental health, continued his medications and was reassigned to work as an assistant S3. He was stable enough which led to terminations of regular psychiatric sessions but 2 months later he had a recurrence of depression symptoms and suicidal ideations which led to a second hospitalization. Further inquiry into his mood disorder revealed evidence of hypomanic episodes which led to a revision of his diagnosis to bipolar II disorder. He responded to additional medications but remained with depressive and manic symptoms and thus underwent a MEB. The profile was written for bipolar disorder with the following limitations; no deployment away from a medical center, no access to weapons or live ammunition. The commander’s statement corroborated the profile limitations in addition documented performance “nothing less that of a true soldier” however noted due to the two attempts of suicide “that it is of the best interest of this officer to no longer be retained.”

At the MEB exam, the CI reported he had responded to additional medications but remained with depressive symptoms, thoughts of grandiosity, felt he had little control over his behavior and admitted wanting to engage in high risk acts. He no longer had suicidal ideations and continued to have marital difficulties, “not good, but not terrible.” The MEB physical exam demonstrated; appropriate grooming and hygiene, fully alert and oriented, normal speech, normal attention and cognitive abilities, normal thought process and content without suicidal or homicidal ideations, no hallucinations, appeared concerned and depressed, expressed ambivalence and some sense of hopelessness, was cooperative but was more reticent with limited eye contact, displayed moderate psychomotor retardation, affect was congruent and restricted with mixed depressive and anxious features, and judgment was improved though he still had limited insight into his illness. At the VA Compensation and Pension (C&P) exam, 4 months after TDRL placement, the CI reported that he was not referred for care and was no longer taking medications, was doing reasonably well, had depressive and sleep symptoms but no manic symptoms, was employed as a pharmaceutical representative, was still married and denied alcohol or drug use. The C&P physical exam demonstrated mild depressed affect, mild psychomotor retardation and mild anxiety otherwise the exam had similar normal findings as comparable to the MEB exam. Neither exam documented a Global Assessment of Functioning (GAF).

The TDRL interim exam, in July 2000, the examiner documented; the CI discontinued his medication despite residual depressive and guilt symptoms, lacked chronic care for his mental condition, continued employment with the pharmaceutical industry, was in marital counseling, and rated his mood at an “8” on a scale of 1-10 with his lowest being “3-4” in January. The exam demonstrated; a euthymic mood but mildly concerned, affect was congruent, moderate restricted and stable, fair judgment with partial insight and was otherwise normal.

At the TDRL separation exam in 2002, the CI reported; he was doing quite well with no symptoms related to initial bipolar II disorder diagnosis, was planning on separating from wife due to spiritual differences, had maintained employment in the pharmaceutical industry which worked well with his illness allowing him independence, had feelings of guilt for not fulfilling his government contract, desired to work for the FBI or CIA; had hobbies building computers and taking care of animals, had friends but was not close to anyone, kept in close contact with family, and was involved in local civic groups. The examiner documented the CI had not taken medication since early 2000 and that the last follow-up for psychiatric care was in October of 2001. The examiner documented an exam was not indicated for the purpose of this evaluation, diagnosed bipolar II disorder, opined he was in near-full remission and assigned a GAF of 75. At the C&P exam, 11 months prior to separation (most proximate to permanent separation), the CI reported; he no longer took medication, sleep, appetite, and concentration were good, he was moody at times and denied panic attacks, was employed full time with same job since April 2000, provided his own routine self-care, did some chores around the house, had some social relationships and adequate leisure and recreational pursuits. The C&P exam demonstrated: pleasant but tense mood, appropriate affect and otherwise normal exam. The examiner assigned a GAF of 70 and opined he had some mild symptoms, but generally was functioning pretty well and had meaningful interpersonal relationships.

The Board directs attention to its rating recommendation for both the time of placement on TDRL and at separation based on the above evidence. The Board notes that both the MEB and VA exams at the time of TDRL placement were complete, well documented, and similar in terms of ratable data; and, therefore assigns them equal probative value for its TDRL recommendation. The Board however notes the absence of an MEB mental status exam (MSE) at the time of separation. Further the Board notes the future psychiatric VA exam in 2008, a significant interval approximately 70 months after separation documented a significant worsening of his bipolar disorder however there were no other VA notes closer to separation in evidence reflecting this interval worsening. DoDI 6040.44, under which the Board operates, specifies a 12-month interval for special consideration to VA findings. This does not mean that the VA information was disregarded, as it was a valuable source for clinical information and opinions relevant to the Board’s evaluation. In matters germane to the severity and disability at the time of separation, however, the information in the C&P exam was assigned proportionately more probative value as a basis for the Board’s permanent rating recommendations.

The PEB and VA chose the same coding options for the condition and assigned a rating IAW VASRD §4.130 schedule of ratings-mental disorders. The PEB assigned a rating of 30% with placement on TDRL for the condition was moderate to severe without psychotic features and had not stabilized to the point that a permanent degree of severity could be determined. The PEB assigned a permanent recommendation of 0% for full sustained remission of the condition and further qualified his industrial adaptability impairment as none for he was working full-time. The VA assigned a rating of 10% for occupational and social impairment due to mild or transient symptoms noting the absence of continuous medication and did not increase this rating to 30% till 2008 with worsening of his illness. As regards to the TDRL rating recommendation, all members agreed that the §4.130 threshold for a 70% rating was not approached. The deliberation settled on arguments for a 50% vs. a 30% vs. 10% permanent rating recommendation. The Board noted the symptom description and clinical course argue against a characterization of the severity as mild or transient, and it is clear that symptoms were not completely controlled on medication at the time of the MEB. While the CI self-referred for treatment with multiple stressors, future evidence does provide provide a correlation of acuity with degree of stress, and that element of the 10% description was relevant at the time of permanent separation. The CI fit the 50% descriptor at the time of his immediate referral but after treatment he had resolution of his suicidal ideations and most of his symptoms. When carefully considering the whole record IAW VASRD §4.2 (Interpretation of examination reports) in order to develop a consistent picture of the CI’s mental health condition the 30% description (“occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks”) is a better fit at the time of TDRL placement. The occupational functioning in evidence is consistent with decreased efficiency, reliability and productivity and he demonstrated moderate motor retardation, constricted affect and limited insight. His occupational impairment and MSE improved 4 months after TDRL, and at the interim and TDRL separation exams, both 2 years apart, the CI was working full-time, not taking medications, demonstrated mild symptoms and on had meaningful relationships. The C&P exam, proximate to separation, did not approach the 30% criteria. Although the TDRL separation exam documented full remission, the Board deliberated the waxing and waning pathology of bipolar disease and agreed the 10% rating is the best fit at separation. After due deliberation, considering the totality of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a 10% permanent disability rating for the bipolar disorder.

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 bipolar disorder was operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the bipolar disorder condition, the Board unanimously recommends a permanent disability rating of 10%, coded 9432 IAW VASRD §4.130.

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows, effective as of the date of his prior medical separation:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | VASRD CODE | PERMANENT  RATING |
| Bipolar Disorder | 9432 | 10% |
| **COMBINED** | 10% |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111013, 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 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

for XXXXXXXXXXXXXXXXXXXXXXXXX, AR20120012021 (PD201100903)

1. I have reviewed the enclosed Department of Defense Physical Disability Board of Review (DoD PDBR) recommendation and record of proceedings pertaining to the subject individual. Under the authority of Title 10, United States Code, section 1554a, I accept the Board’s recommendation to modify the individual’s disability rating to 10% without recharacterization of the individual’s separation. This decision is final.

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.

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 XXXXXXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA