RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100918 SEPARATION DATE: 20070909

BOARD DATE: 20120928

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (92G, Food Service Operations), medically separated for anxiety disorder. The CI deployed to Kuwait/Iraq three times. Each deployment resulted in increased anxiety and substance abuse problems that culminated in hospitalization for evaluation of his mental health and substance detoxification when he missed his plane back to Iraq while on his mid-tour visit home. He was discharged from the hospital to his rear detachment unit and treated for anxiety and substance dependency. 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 S3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded anxiety disorder with features of posttraumatic stress disorder (PTSD) to the Physical Evaluation Board (PEB) for adjudication. The MEB proceedings document also identified dependence to alcohol and marijuana, and personality disorder as not causing the CI to fall below retention standards. The PEB adjudicated the anxiety disorder, complicated by alcohol and drug dependence as well as an unratable personality disorder, as unfitting and rated 0%. The CI made no appeals and was medically separated with a 0% disability rating.

CI CONTENTION: “I was discharged from the military for an anxiety disorder and was discharged with a 0% disability. The Veterans Administration (VA) determined I had PTSD and gave me a 50% disability.”

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in the Department of Defense Instruction (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 anxiety disorder condition meets the criteria prescribed in DoDI 6040.44 for Board purview, and is accordingly addressed below. 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:

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| --- | --- |
| **Service IPEB – Dated 20070718** | **VA (47 Mo. Post-Separation) – All Effective Date 20101026** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Anxiety Disorder | 9413 | 0% | An Acquired Mental Health Condition to include Post Traumatic Stress and Anxiety Disorders | 9411 | 50%\* | 20110815 |
| ↓No Additional MEB/PEB Entries↓ | Not Service-Connected x 3 |  |
| **Combined: 0%** | **Combined: 50%** |

\* 100% from 20101206 (in-patient treatment), 50% from 20110201

ANALYSIS SUMMARY: It is noted for the record that the Board recognizes the significant interval (47 months) between the date of separation and the VA evaluation. 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 service treatment record (STR) was assigned proportionately more probative value as a basis for the Board’s rating recommendations. It is a fact that 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. This role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA). 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. However the DVA, 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 Condition. The comprehensive MEB psychiatric evaluation prepared four months prior to separation notes three deployments to Kuwait/Iraq between October 2002 and January 2007. During the first deployment, the CI experienced stressful events described as donning protective gear against chemical attack and “he was involved in a few firefights.” He did not seek mental health assistance during the deployment. Upon redeployment he began drinking very heavily and self-referred to the alcohol substance abuse program (ASAP). During his second deployment, the CI reported the intensity of his combat experience as moderate experiencing a vehicle borne IED attack that blew out the windows of his barracks. He felt increasingly stressed, irritable and sleep-deprived. Upon redeployment, the CI began drinking heavily and using marijuana. On his third deployment, the CI reported a particularly stressful mortar attack that caused substantial injuries to others, again causing the CI to feel depressed, irritable and sleep-deprived. During his mid-tour morale & welfare leave seven months prior to separation, he remained intoxicated the entire time, missed his flight back to Iraq and was hospitalized for detoxification and evaluation of depression. After the CI’s first deployment, on the post deployment screening questionnaire he indicated seeing wounded, killed or dead enemy and civilian and feeling in great danger of being killed. He also indicated that he was not engaged in direct combat where he discharged his weapon. He indicated a lot of “little interest or pleasure in doing things,” some feeling down/depressed or hopeless and no suicidal or homicidal ideation. On the post-deployment screening questionnaire from his second deployment he indicated “no” to all mental health screening questions.

A comprehensive psychiatric evaluation was performed upon hospitalization 7 months prior to separation. In the emergency room the CI indicated that “he could no longer continue doing what he was doing” and he just could not go back to Iraq. He reported having vivid dreams and memories of explosions in Iraq and a significant startle response. He had been drinking alcohol to get to sleep. He was hospitalized and started on anti-depressant and anti-substance abuse medication. His GAF was 35 on admission. After 5 days, the CI was discharged with the diagnosis of PTSD, alcohol & marijuana abuse. Follow up care was coordinated with a military mental health provider.

After discharge, continued mental health treatment consisted of medical management, ASAP treatment and individual/group therapy. He worked on a daily basis back on rear detachment and his commander’s performance statement stated, “His performance has been outstanding under the no pressure environment from the rear detachment,” however; the CI was not working in his MOS. In spite of mental health treatment, the CI continued reporting symptoms of hypersensitivity to loud noises, intrusive memories of mortar attacks, irritability, emotional detachment, depressed mood and sleep disturbance with occasional nightmares of being in chemical-attack protective gear. Psychiatric evaluation 4 months prior to separation, documents an appropriately dressed male in uniform. He exhibited moderately slowed psychomotor activity with monotonous speech. He reported his mood was "better than I was" and his emotional tone was moderately depressed and restricted. His thought processes were logical and goal directed. He admitted to ongoing general aggressive thoughts when frustrated or when frustrated by traffic. His diagnosis was anxiety disorder, not otherwise specified (NOS) with features of PTSD, alcohol and cannabis dependence in early remission and personality disorder, NOS. His GAF was 55 (in the range of moderate symptoms). The examiner indicated impairment for social and industrial adaptability was “definite.”

The C&P exam performed 47 months after separation documented a GAF of 54 and had indications of occupational and social impairment with some evidence of poor social functioning following separation and scant information on any sustained employment. The CI had been hospitalized remote from separation, and the VA rated this exam at 50%.

The Board directs attention to its rating recommendation based on the above evidence. The PEB rating, as described above, was likely derived from DoDI 1332.39 and preceded the promulgation of the National Defense Authorization Act (NDAA) 2008 mandate for DoD adherence to VASRD. The Board must consider if the tenant of VASRD §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.” Should the Board decide that §4.129 is applicable in this case, then, IAW DoDI 6040.44, the Board is obligated to recommend a minimum 50% rating for the unfitting mental condition 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 at six months for its permanent rating recommendation. The Board first considered the question of §4.129 applicability. Mental health records indicate that during his three deployments the CI reported experiencing the following stressful events: donning MOPP4 protection 19 times, “involved in a few firefights,” barrack windows blown out by vehicle born improvised explosive device (VBIED) and frequent mortar attacks causing substantial injuries. These incidents resulted in the CI feeling stressed, irritable and sleep-deprived. On the post-deployment health assessment form performed on
26 July 2003, the CI checked “yes” to seeing enemy and civilian wounded, killed or dead, and “yes” to feeling in great danger of being killed. The civilian hospitalization diagnosis was PTSD, active. After deliberation and consideration of reasonable doubt, the Board concludes that sufficient evidence supported that application of §4.129 is appropriate in this case. Although there are alcohol and substance dependence issues in this case, there was no defensible basis for applying, or means of measuring, any deduction which might be considered. The Board must therefore disregard the influence of alcohol and substance abuse on ratable symptoms for its permanent rating recommendation.

The most proximate and only comprehensive evaluation upon which to base the permanent rating recommendation in this case is the MEB psychiatric examination performed four months prior to separation. There is no other useful documentation to reference in the Board’s effort to arrive at a fair permanent rating recommendation. The C&P exam performed 47 months after separation is the next proximate comprehensive evaluation present for review. It is noted, however, that the MEB exam documented a GAF of 55 and the C&P exam documented a GAF 54 suggesting that the CI’s PTSD condition was stable over the 51-month interval between examinations and therefore the Board deems the MEB psychiatric exam a reasonable foundation to base 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.

With regard to the permanent rating at the end of the constructive period of TDRL, all Board members agreed that the preponderance of evidence on the psychiatric evaluation four months prior to separation referenced in the NARSUM 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 exam prior to separation to include, irritability, intrusive memories, hyper vigilance, exaggerated startle response, sleep disturbance and emotional detachment. The Board noted that the commander’s statement, prepared three months prior to separation, documents “His performance has been outstanding under the no pressure environment from the rear detachment”, although the CI could not work in his MOS (92G, Food Service Operations). 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, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 30% for the anxiety disorder condition.

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 disorder was operant in this case and the condition was adjudicated independently of that instruction by the Board. 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 as DOD directed, and a 30% permanent rating at six months 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 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:

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| **UNFITTING CONDITION** | **VASRD CODE** | **TDRL RATING** | **PERMANENT****RATING** |
| Anxiety Disorder | 9413 | 50% | 30% |
| **COMBINED** | **50%** | **30%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111005, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

 XXXXXXXXXXXXXXXXXX

 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 XXXXXXXXXXXXXXXXXXXX, AR20120019344 (PD201100918)

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 XXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA

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