PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: NAVY

CASE NUMBER: PD1000944 DATE OF PLACEMENT ON TDRL: 20050206

BOARD DATE: 20120227 Date of Permanent SEPARATION: 20080730

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SUMMARY OF CASE: This covered individual (CI) was an active duty BM3/E-4 (Hospital Corpsman) medically separated from the Navy. The medical basis for the separation was posttraumatic stress disorder (PTSD). He was diagnosed with posttraumatic stress disorder (PTSD) after a deployment on the USNS Comfort from March to May 2003. Criteria A stressors were documented and the Diagnostic and Statistical Manual of Mental Disorders (DSM IV) criteria for an axis I diagnosis of PTSD were met. The CI did not respond adequately to perform within his Rating and was issued a permanent limitation of duty (LIMDU) and underwent a Medical Evaluation Board (MEB). PTSD was forwarded to the Physical Disability Board (PEB) as medically unacceptable SECNAVINST 1850.4E. Obstructive sleep apnea (OSA) was forwarded as medically acceptable. Alcohol abuse is not a ratable condition IAW both DoD and VA regulations. 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 PTSD condition as unfitting, rated 30% with application of Department of Defense Instruction (DoDI) 1332.39 and placed the CI on the Temporary Disability Retired List (TDRL) effective 6 February 2006. After 44 months on the TDRL the PEB assigned a permanent disability rating of 10% for the PTSD condition. Two other conditions were listed with ratings as reflected in the chart below. The CI’s appeal for inclusion of OSA on reconsideration was denied. The CI made no further appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: The CI states: “I was assigned less than 50% disability rating by the military for my unfitting PTSD upon discharge from active duty. In accordance with the class action notice, assign the highest final disability rating applicable consistent with 38 CFR4.I29 and DOD policy to the extent such increase will not adversely affect my total compensation, including but not limited to compensation pursuant to CRSC.” The CI contends his permanent rating should be 50% or not less than the 30% rating assigned by the VA at the time of separation from active duty. The CI also lists obstructive sleep apnea and rating as per the rating chart below, and a contention its inclusion in the separation rating is therefore implied.

RATING COMPARISON:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Final Service FPEB – Dated 20080326** | | | | **VA – All Effective Date 20050206** | | | |
| Condition | Code | Rating | | Condition | Code | Rating | Exam |
| **On TDRL – 20041115** |  | **TDRL** | **Sep.** |
| PTSD | 9411 | 30% | 10% | PTSD | 9411 | 30% | 20050107 |
| OSA | Category III |  |  | OSA | 6847 | 50% | 20041228 |
| Alcohol Abuse | | Not ratable | | No VA Entry |  |  |  |
| ↓No Additional MEB/PEB Entries↓ | | | | R Patellar tendonitis | 5024 | 10% | 20041228 |
| Not Service Connected x 1 | | |  |
| **Combined:10%** | | | | **Combined:70%** | | | |

ANALYSIS SUMMARY: The PEB rating, as described above, was derived from DoDi 1332.39 and preceded the promulgation of the National Defense Authorization Act (NDAA) 2008 mandate for Department of Defense adherence to Veterans Administration Schedule for Rating Disabilities (VASRD) 4.129. IAW DoDI 6040.44 and 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 six-month period on the TDRL. Since the service was in compliance with the 4.129 TDRL requirement, the Board need not apply a constructive TDRL rating interval in this case; although, the 50% minimum TDRL rating remains applicable as above, as held by the Federal court in the Sabo V. United States class action suit. The Board must then determinate the most appropriate fit with VASRD 4.130 criteria at the conclusion of the TDRL interval for its permanent rating recommendation. The most proximate source of comprehensive evidence upon which to base the permanent rating recommendation is the TDRL psychiatric narrative summary (NARSUM) performed approximately four years after initiation of TDRL and four months prior to removal from the TDRL and permanent separation. There are two Department of Veterans’ Affairs (DVA) Compensation and Pension (C&P) evaluations performed four years and three years before termination of TDRL, neither of which was temporally probative to the Boards rating interval. There are no other VA outpatient or civilian provider evaluations providing psychiatric details relative to the PTSD condition during this three year interval.

PTSD Condition. The CI developed symptoms of PTSD in December 2003, six months after completion of a three month deployment on the USNS Comfort in the Persian Gulf (March to May 2003). During this deployment, he was responsible as a Corpsman for incinerating medical waste which he described as “bodies, body parts, bags of blood.” He stated a window was present on the incinerator through which he could view this conflagration. The CI reported not feeling traumatized at that time but later developed symptoms. Symptoms included nightmares, social isolation, hypervigilance, dissociative experiences and visual hallucinations of his body or that of others around him were on fire. He would act on these hallucinations by throwing water on his wife. At the MEB psychiatric evaluation, September 2004, the CI was noted to be alert and oriented with mood described as depressed and angry. Judgment and impulse control were limited and he complained of concentration disturbances. The MEB psychiatrist judged the PSTD condition as severe with severe social and industrial impairments.

The commander’s NMA stated the CI was performing duties outside his normal military specialty in the post office in customer service, accepting, processing and sending out mail, and that “he is capable of performing the duties associated with this position.” The PEB adjudicated a rating of 30% and placed the CI on the TDRL effective 6 February 2005. At the VA C&P examination performed 7 January 2005, one month before placement on the TDRL, the CI’s condition was moderately severe. Symptoms reported included nightmares and hallucinations occurring four to five times weekly. Hypersensitivity, exaggerated startle response, irritability and hypervigilance were recorded. The CI described inability to get close to people and that his marriage had dissolved. The Global Assessment of Functioning (GAF) was recorded at 50 (serious impairment in social, occupational or school functioning). Based on this examination, the VA assigned a service-connected disability rating of 30%. A psychiatric TDRL examination was performed in July 2006. The psychiatrist determined the CI’s PTSD condition to be unchanged and the CI was continued on the TDRL by the PEB. The final psychiatric TDRL examination was performed 7 March 2008 (NARSUM dated 10 March 2008), four months prior to permanent disposition and removal from the TDRL. During the interval since his 2006 examination, the CI was treated by his primary care physician with marked improvement in his condition. The CI noted that he had neither required nor sought any psychiatric treatment, and continued medication treatment by his primary physician. The CI reported that he currently worked as a network administrator for a computer systems company, had lost no time from work, and had no periods of unemployment. He had left his previous security job to become a computer equipment installer and then advanced to the network administrator position. The CI did report nightly nightmares seeing himself shooting people and flashbacks of putting people in the incinerator on average of three times a week. He further noted his sleep was disturbed, but attributed this to recent malfunction of his CPAP machine, required for his OSA. However, he denied any social or occupational impairment or having avoidance behavior and stated he was meeting all his obligations. On mental status evaluation, the CI was alert and oriented, relaxed and interactive with good eye contact. Thought processes were linear, logical, goal directed, and did not contain hallucinations or delusions. There was no impairment in cognition, insight, judgment, or impulse control. 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 50% were not met at the time of separation, and therefore the minimum 50% TDRL rating (as explained above) is applicable. As regards to the permanent rating recommendation at the time of removal from the TDRL, all members agreed that the §4.130 threshold for a 50% rating was not approached 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 final TDRL examination is not consistent with the general description for a §4.130 rating of 30%, “occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks (although generally functioning satisfactorily”). While the CI was still experiencing nightmares and some flashbacks, there were no panic attacks, dissociative hallucinations, depression, anxiety or suspiciousness. Medication had improved and stabilized the symptoms, and he had required no evaluation or care by a psychologist or psychiatrist in a two year period. Some sleep impairment was reported but this was attributed to the CI’s OSA and malfunctioning CPAP device which was remedied with improved sleep (pulmonary NARSUM addendum). Board members concluded that symptoms were “controlled by continuous medication” such that the CI noted he was having no social or occupational impairments and was meeting all his obligations. The CI’s good level of functioning with occupational advancement more nearly approximates the 10% rating. After due deliberation and in consideration of all evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends 10% as the fair permanent separation rating for PTSD in this case.

Other PEB Conditions. The other conditions forwarded by the MEB and adjudicated as not unfitting by the PEB were OSA and alcohol abuse. Alcohol abuse, is not a ratable condition IAW both DoD and VA regulations. OSA was not forwarded by the MEB as a medically unacceptable condition. The condition was considered by the PEB and determined that the OSA condition was not separately unfitting (category III condition; not separately unfitting and does not contribute to the unfitting condition). The Board’s threshold for countering DES 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. The diagnosis of “suspected OSA” was made in March 2004 when CI complained of snoring, apneas observed by his wife, and excess daytime drowsiness with falling asleep at work. The diagnosis was confirmed by sleep study and a CPAP device was issued to the CI in August 2004. At the time of initial evaluation in the DES, the CI submitted a memorandum to the PEB contending OSA interfered with performance of duty. Although the original sleep study reports are not in the file, the pulmonary medicine NARSUM 13 June 2006 reported that the CPAP device had “completely alleviated” the OSA. Symptoms of OSA were reported to be present for three years prior to treatment with CPAP during which time the CI performed duties satisfactorily (until symptoms of PTSD began). Following initiation of treatment there was no evidence in service treatment records that suggested his treated OSA condition interfered with performance of military duties (the 2008 NARSUM addendum also confirmed CPAP was effective and the CI had no occupational impairment as a result of his condition). The condition was judged to be within SECNAVINST 1850.4E standards, received no LIMDU and was not identified as an impairment in the commander’s non-medical assessment (NMA). Conditions which are not unfitting at the time of separation and placement on TDRL are not subject to rating at the time of TDRL removal. In the matter of the OSA condition, the Board unanimously recommends no recharacterization of the PEB adjudication as not unfitting.

Remaining Conditions. The other condition identified in the DES file was patellofemoral pain syndrome. The CI had non-traumatic left knee discomfort with “popping” since Boot camp. MRI revealed mild lateral patellar femoral subluxation but no ligamentous or cartilage disorder. Treatment was generally successful with topical ice and oral anti-inflammatory medications. In June 2000 the CI was issued a temporary limitation of duty (TEMDU) for increasing discomfort and the knee condition forwarded to a MEB where the CI was found fully fit. This document is referenced but not present in the DES file. In April 2001, the CI was given an eight month LIMDU for his knee. In June 2002 the CI was approved for alternate physical training test (PT test) with 1.5 mile run replaced with .75 mile walk The CI was deployed without restriction in 2003 to the Persian Gulf. This condition was not referred by the MEB or mentioned in the commander’s NMA. The condition received only a limited LIMDU in 2001, five years before separation. This condition was reviewed by the action officer and the Board and could not be argued as unfitting and subject to separation rating. Additionally hypertension was noted in the VA rating decision proximal to separation, but not documented in the DES file. The Board does not have the authority under DoDI 6040.44 to render fitness or rating recommendations for any conditions not considered by the DES. The Board, therefore, has no reasonable basis for recommending any additional unfitting conditions for separation rating. However, even if its presence in the DES file is conceded, there was no evidence for concluding that hypertension interfered with duty performance to a degree that could be argued as unfitting.

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, the PEB reliance on DoDI 1332.39 for rating PTSD at the time of temporary retirement was likely operant in this case. In the matter of the PTSD condition, the Board unanimously recommends a 10% permanent rating at separation IAW VASRD §4.130. In the matter of the OSA condition the Board unanimously recommends no change from the PEB adjudication as not unfitting. In the matter of the knee condition, or any other medical conditions eligible for Board consideration, the Board unanimously agrees that it cannot recommend any findings of unfitting for additional rating at separation.

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

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **PERMANENT**  **RATING** |
| Posttraumatic Stress Disorder | 9411 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100805, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

President

Physical Disability Board of Review

MEMORANDUM FOR DIRECTOR, SECRETARY OF THE NAVY COUNCIL OF REVIEW

BOARDS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATIONS

Ref: (a) DoDI 6040.44

(b) CORB letter dtd 6 Mar 12

In accordance with reference (a), I have reviewed the cases forwarded by reference (b), and, for the reasons provided in their forwarding memorandum, approve the recommendations of the PDBR the following individuals’ records not be corrected to reflect a change in either characterization of separation or in the disability rating previously assigned by the Department of the Navy’s Physical Evaluation Board:

Assistant General Counsel

(Manpower & Reserve Affairs)