

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME:
CASE NUMBER: PD1101043
BOARD DATE: 20121130

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20040928

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (63W/Wheel Vehicle Repairer), medically separated for bipolar disorder. The condition began after returning from a deployment to Iraq in 2003. She underwent a trial of medications and outpatient therapy, but failed to improve adequately to meet the operational requirements of her Military Occupational Specialty (MOS). She was issued a permanent P2L2E2S4 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded bipolar disorder and panic disorder to the Informal Physical Evaluation Board (IPEB) as medically unacceptable IAW AR 40-501. Eight other conditions, identified in the rating chart below, were also identified and forwarded by the MEB as meeting retention standards. The IPEB adjudicated the bipolar disorder condition as unfitting, rated 10% with likely application of the Department of Defense Instruction (DoDI) 1332.39. The remaining conditions were determined to be not unfitting. This finding was upheld by a Formal PEB (FPEB) and the CI was medically separated with a 10% disability rating.

CI CONTENTION: "I was given a 10% by the PEB for my bipolar disorder and the VA gave me 50% when I was discharged. Also the PEB found other conditions as Fit when the MEB listed them as unfitting." The CI attached a two page memorandum to her application from counsel which was reviewed by the Board and considered in its recommendations.

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 eight conditions requested for consideration and the unfitting bipolar disorder condition meet the criteria prescribed in DoDI 6040.44 for Board purview, and are 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:

Service FPEB – Dated 20040811			VA (7 Mo. After Separation) – All Effective Date 20040929			
Condition	Code	Rating	Condition	Code	Rating	Exam
Bipolar Disorder	9432	10%	Post Traumatic Stress Disorder	9411	50%	20050422
Residual Left Ankle Pain	Not Unfitting		Left Ankle Sprains	5271	0%*	STR
Migraine Headaches	Not Unfitting		Residuals of Head Injury	8045	10%**	STR
Benign Intention Tremor	Not Unfitting		Pes Planus	5276	0%	STR
Pes Planus	Not Unfitting		NO VA ENTRY			
Left Fifth Finger Amputation	Not Unfitting		NSC			STR
Right Hand Frostbite Residuals	Not Unfitting		NSC			STR
Vision Defect	Not Unfitting		NSC			STR
Recurrent Low Back Pain	Not Unfitting		Not Service Connected x 3			STR
↓No Additional MEB/PEB Entries↓						
Combined: 10%			Combined: 60%			

*Increased to 10% by VA decision 20091230, effective 20090827 (based on new exam); combined 60%

**Original VA decision rated 0%, increased to 10% by rating decision 20091230 (not based on new exam), effective 20040929; combined 60%

ANALYSIS SUMMARY: The Board acknowledges the CI’s contention that suggests ratings should have been conferred for other conditions documented at the time of separation. The Board wishes to clarify that it is subject to the same laws for service disability entitlements as those under which the Disability Evaluation System (DES) operates. 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 Department of Veterans Affairs, operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions and to periodically reevaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time.

Mental Health Condition. Although the PEB rating preceded the promulgation of the National Defense Authorization Act (NDAA) 2008 mandate for DoD adherence to VASRD §4.129, IAW DoDI 6040.44 and DoD guidance the Board must apply §4.129 to all relevant Board cases. 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 [that] is severe enough to bring about the veteran’s release from active military service.” In this case, the clinical record provides enough evidence the CI’s condition arose as a result of highly stressful events that the Board unanimously agrees §4.129 is applicable. The Board is therefore obligated to recommend a minimum 50% 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 at the end of the TDRL interval for its permanent rating recommendation. The most proximate source of comprehensive evidence on which to base the permanent rating recommendation in this case is the VA Compensation and Pension (C&P) examination performed 7 months after separation. There was no other relevant VA outpatient or civilian provider evidence providing psychiatric details during the 6-month interval. Especially since the C&P examination also reflects the stress of transition to civilian life, which is a core intent of §4.129, it carries the preponderance of probative value in the Board’s assessment of a fair permanent rating recommendation. The MEB evaluation nevertheless serves as a useful reference point and retains relevant probative value. The CI was medically evacuated from Iraq in July 2003 for an ankle problem, but within 6 weeks after return from this deployment she presented with psychiatric symptoms. A diagnosis of bipolar disorder and panic disorder was made and she became stable on treatment. However, inpatient treatment in October 2003 for worsening depression and suicidal ideation was required, and she was discharged in November 2003 after a 6 day hospitalization. In March 2004 she experienced auditory hallucinations while on drug therapy, which responded to the addition of antipsychotic

medication. The severity of the CI's condition at the time of the MEB evaluation could best be described as moderate. The commander's statement reflected unpredictable panic attacks, poor concentration and the need for constant supervision and correction. She was noted to frequently go into "near vegetative states," but he opined that some of her symptoms were due to medications. He noted that while working in her MOS in Iraq, she was exposed to continuous danger that she did not effectively cope with. The NARSUM examiner performed 4 months prior to separation reported that her symptoms of sleep disturbance, distractibility, auditory hallucinations and increased energy were intermittent. She also experienced intermittent episodes of intense anxiety; for example she became tremulous and profoundly anxious when asked to drive a 5-ton vehicle. She was taking three psychotropic medications. A mental status exam (MSE) revealed no evidence of psychosis. Mood was "okay" and there was no evidence of suicidal or homicidal ideation. Global Assessment of Functioning (GAF) was 60, connoting moderate symptoms or impairment. Two weeks after this exam however, the CI was re-admitted for inpatient care with auditory hallucinations, sleeping 2-3 hours per night, pressured thoughts, low energy, depressed mood and suicidal ideation, likely as a consequence of being off her medications for 3 weeks. Symptoms were stabilized with resumption of medication. At the time of hospital discharge 6 days later, she was sleeping well, had no hallucinations and her GAF was 59 (moderate symptoms). An outpatient note 2 weeks after hospital discharge indicated significant panic attacks twice per week and ongoing sleep impairment. Two months prior to separation, a narrative summary (NARSUM) addendum stated that new information about experiences in Iraq warranted the additional diagnosis of posttraumatic stress disorder (PTSD), and referred to the fact that the CI had been a participant in the weekly "Post Traumatic Stress Disorder Group" since 20 November 2003. Symptoms indicative of the PTSD diagnosis included recollection and re-experiencing traumatic events, avoidance, hypervigilance, nightmares, sleep disturbance and decreased concentration. She continued to avoid crowded places for fear of attack. Her GAF at that time was 62 (mild symptoms or impairment). Although her overall prognosis was considered fair to good, impairment for social and industrial adaptability was considered definite. At the VA examination on 22 April 2005 (7 months after separation and a month after the end of the 6 month constructional TDRL period) symptoms were best described as mild to moderate. She was a sophomore in college and worked 12 hour shifts as a paramedic. She was being treated at a PTSD program and was taking three medications for PTSD. She reportedly no longer carried the diagnosis of bipolar disorder. Panic attacks were occurring two to three times per week, and intrusive thoughts and flashbacks three to four times per week. Sleeping problems, crying spells, anhedonia (inability to enjoy usually enjoyable activities) and nightmares were also occurring. She still reported auditory hallucinations and paranoia at times. She stated that she was not as depressed now because she was working at a job she "truly enjoys" and because she was on her medication. She indicated that she was fairly well adjusted and much better off compared to when she was separated from the military. She complained of some forgetfulness. She was able to engage in a full range of normal activities of daily living and had some social contacts. MSE revealed her to be very hyperactive with psychomotor agitation and restlessness. There was no suicidal ideation. She was oriented and appeared euphoric. Speech was normal, thought processes were logical and coherent, and abstract thinking was intact. Concentration was fair and immediate recall appeared intact, however formal psychometric testing revealed her concentration and immediate memory to be substantially below her expected norms. The examiner's assessment was post traumatic stress disorder and bipolar disorder triggered by the PTSD. The GAF was 50 (serious symptoms or impairment).

The Board directs attention to its rating recommendation based on the above evidence. In its deliberation, the Board recognized the FPEB's acknowledgement of PTSD features when assigning a 10% rating under the 9432 code (bipolar disorder). The Board first considered the rating at the time of separation. The requirement for antipsychotic medication, the occupational impairment described by the commander and the need for hospitalization were considered to be indicators of the serious nature of the mental condition, and weighed heavily

in the Board's deliberation. The hospital admission after the first NARSUM examination likewise raised concern, although this was somewhat tempered by the fact that it occurred in the context of stopping her medications; after resumption, symptoms improved, suicidal ideation subsided and the GAF indicated moderate impairment. The Board discussed whether these factors supported a §4.130 rating of 70% (occupational and social impairment, with deficiencies in most areas) or the minimum required 50% (occupational and social impairment with reduced reliability and productivity); ultimately the Board majority agreed that the 70% rating best depicted the clinical picture. In determining the permanent rating, the Board relied heavily on the VA exam which described a positive transition to civilian life as evidenced by occupational performance, school attendance and social interactions. It was agreed that the criteria for a 70% rating were not met and the criteria for a 10% rating were exceeded; the deliberation settled therefore on arguments for a 30% versus a 50% rating recommendation. A 50% rating IAW §4.130 would rely on an inference that the acuity of reported symptoms could reasonably be expected to result in impaired occupational reliability and productivity; such impairment however did not appear to be the case. 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 with the occupational functioning in evidence and also well supported by the threshold symptoms present. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a TDRL rating of 70% and a permanent disability rating of 30% for the bipolar disorder with PTSD condition, coded 9411-9432.

Contended PEB Conditions. The contended conditions adjudicated as not unfitting by the PEB were residual left ankle pain and stiffness, migraine headaches, pes planus, status post left fifth finger amputation prior to service, mild sensory neuropathy and cold intolerance of right hand status post frostbite prior to service, benign intention tremor, vision defect requiring E2 profile and recurrent low back pain. The Board's first charge with respect to these conditions is an assessment of the appropriateness of the PEB's fitness adjudications. 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. Left ankle pain and instability was surgically addressed in November 2003 with a subsequent permanent L2 profile. The mild sensory neuropathy and cold intolerance of the right hand was profiled (P2) to allow extra cold weather gear as needed, and the mild refractive error of the left eye was also profiled E2. These three conditions were within the accession profile and physical demands rating for the CI's MOS. None of the remaining conditions were profiled; none of the conditions were implicated in the commander's statement; and, none were judged to fail retention standards. The MEB submission specified that all the above conditions did meet retention standards. The MEB physician stated: "She has no real physical difficulty in performing the MOS duties except when anxiety or panic attacks occur." All were reviewed by the action officer and considered by the Board. There was no indication from the record that any of these conditions significantly interfered with satisfactory duty performance. After due deliberation in consideration of the preponderance of the evidence, the Board concluded that there was insufficient cause to recommend a change in the PEB fitness determination for the any of the contended conditions; and, therefore, no additional disability ratings can be recommended.

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 with PTSD condition was operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the bipolar disorder PTSD condition, the Board by a vote of 2:1 recommends an initial

TDRL rating of 70% in retroactive compliance with VASRD §4.129 as DOD directed; and unanimously recommends a permanent rating after removal from the TDRL of 30% IAW VASRD §4.130. The single voter for dissent (who recommended a 50% initial TDRL rating) did not elect to submit a minority opinion. In the matter of the contended residual left ankle pain and stiffness, migraine headaches, pes planus, status post left fifth finger amputation prior to service, mild sensory neuropathy and cold intolerance of right hand status post frostbite prior to service, benign intention tremor, vision defect and recurrent low back pain conditions, the Board unanimously recommends no change from the PEB determinations as not unfitting. 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 her prior medical separation:

UNFITTING CONDITION	VASRD CODE	RATING	
		TDRL	PERMANENT
Bipolar Disorder with Post Traumatic Stress Disorder	9411-9432	70%	30%
	COMBINED	70%	30%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20111107, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

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

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 70% 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 70% 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

Deputy Assistant Secretary
(Army Review Boards)