RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: xxxxxxxxxxxx BRANCH OF SERVICE: Army

CASE NUMBER: PD1101103 SEPARATION DATE: 20090611

BOARD DATE: 20120823

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (92A20, Automated Logistical Specialist), medically separated for Type II bipolar disorder. While the CI improved with treatment, it was inadequate to meet the requirements of his Military Occupational Specialty (MOS) including weapons access and the ability to deploy. He was issued a permanent S3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded bipolar disorder to the Physical Evaluation Board (PEB) as medically unacceptable. Right wrist pain, bilateral ankle pain, allergic rhinitis, obstructive sleep apnea, and chronic obstructive pulmonary disease (COPD [mild]), identified in the rating chart below, were also forwarded, but noted to meet retention standards. The PEB adjudicated the Type II bipolar disorder condition as unfitting, rated 10%, with application of the Veterans Affairs Schedule for Rating Disabilities (VASRD). The remaining conditions were determined to be not unfitting. The CI made no appeals and was medically separated with a 10% disability rating.

CI CONTENTION: “The VA rated my condition higher than my military board rated it. The CI elaborated no specific contention in his application.

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 service ratings for unfitting conditions will be reviewed in all cases. The CI did not contend for any condition in his application for review other than the single unfitting condition, bipolar disorder. 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 (ABCMR).

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20090219** | | | **VA (1 Mo. Pre-Separation) – All Effective Date 20090612** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Type II Bipolar Disorder | 9432 | 10% | Type II Bipolar Disorder | 9432 | 30% | 20090521 |
| Obstructive Sleep Apnea | Not Unfitting | | Obstructive Sleep Apnea | 6847 | 50% | 20090520 |
| Bilateral Ankle Pain | Not Unfitting | | Left Ankle Strain | 5271 | 10% | 20090520 |
| COPD (mild) | Not Unfitting | | COPD | 6604 | 10% | 20090520 |
| Right Wrist Pain | Not Unfitting | | 0% X 4 / Not Service-Connected x 3 | | | |
| Allergic Rhinitis | Not Unfitting | |
| ↓No Additional MEB/PEB Entries↓ | | |
| **Combined: 10%** | | | **Combined: 70%** | | | |

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. 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 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 nor for conditions determined to be service-connected by the VA but not determined to be unfitting by the PEB. However the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate all 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. 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.

Type II Bipolar Disorder. The MEB narrative summary (NARSUM), dated 23 January 2009, notes that the CI initially presented to mental health services on 15 April 2008, 14 months prior to separation, reporting decreased mood, decreased energy, and increased irritability in the context of ongoing problems with work. He also reported a several year history of difficulty with sleep. He also noted that his mood had previously improved when treated with Zyban for smoking cessation. The patient was initially diagnosed with an adjustment disorder and treated with medications and biofeedback with minimal improvement. The treating clinicians also noted that the CI endorsed a long history of anger management issues and that he was frustrated with the Army and wanted to separate. In September 2008, he displayed signs of hypomania evidenced by racing thoughts, impaired sleep, impaired memory, increased self-esteem, being more talkative than normal, increased distractibility and an increase in goal-directed activities. His diagnosis was changed to bipolar II disorder and his medications changed. He responded well with “noticeably reduced” symptoms, and psychiatry clinic notes recorded “full remission of symptoms” in October 2008 that was sustained through November. The CI experienced a decline in his mood during December 2008 that improved somewhat in January 2009. At the MEB psychiatry NARSUM examination on 23 January 2009, the CI was oriented and the verbosity, fast speech and mild motor agitation seen on initial presentation were resolved. Mood was no longer depressed but “absent.” Affect was congruent and signs of hypermania, hypomania and depression were absent. His thought processes, insight and judgment were intact. Neither suicidal or homicidal ideation nor hallucinations were present. His symptoms were noted to “cause him clinical and significant distress or impairment in social or occupational and other important areas of functioning.” A Global Assessment of Functioning (GAF) score of 70 was assigned, indicative of “some mild symptoms or some difficulty in social, occupational, or school functioning, but generally functioning pretty well, has some meaningful interpersonal relationships.” The psychiatrist estimated the social and industrial adaptability impairment as definite based on the psychiatric examination and the commander’s letter. The commander’s assessment, dated 24 December 2008, was written after the change in diagnosis. In it, he wrote that the CI was not meeting the requirements of his MOS and had, in fact, been removed from several critical duties due to poor performance. The Board notes that these actions were taken before the change in diagnosis and treatment regimen. However, the commander also commented that it was not feasible to return the CI to a position of leadership due to the side effects of the medications and the underlying mental condition and that he did not meet his duty requirements. There were multiple notes in the service treatment record (STR) between the MEB examination in January 2009 and separation in June 2009 reviewed by the Board. Consistently, the CI was noted to either be stable or improved from the prior visit. The CI did state that there was marital discord secondary to his mental health condition and attributed some of the problem to the lack of understanding of the disease process by his wife. At the VA Compensation and Pension (C&P) examination on 21 May 2009, one month prior to separation, the CI reported increased marital discord since he returned from deployment, although this was in response to the psychiatric symptoms displayed, and that he had been arrested after an altercation. He also reported two additional hypomanic episodes since the MEB narrative was accomplished. On examination, he endorsed feeling isolated and difficulty sleeping. He displayed an overabundance of ideas and was restless and tense. There was no impairment of thought, memory or judgment. Passive suicidal ideation was noted, but no homicidal thoughts or hallucinations. A GAF of 50 was assigned by the examiner denoting “serious symptoms or any serious impairment in social, occupational, or school functioning.” The examiner noted that the CI was poorly motivated to either return to work or continue his education. The CI was concerned about anger management, poor motivation, fatigue, and mood instability. The Board considered if VASRD §4.129 was applicable given the statement by the CI that his marital stress and depression developed post-deployment. STRs make no reference to a traumatic stressor triggering his mental condition and on the post-deployment health assessment completed by the CI on 14 August 2007, the CI checked “No” to questions regarding seeing anyone wounded killed or dead, engagement in direct combat, or feeling in great danger of being killed. Mental health evaluations in May 2008 and August 2008 recorded an absence of traumatic stressors and symptoms of posttraumatic stress disorder. Bipolar II disorder is a mental health disorder which occurs in about 0.5% to 5% of the population; it is not linked to traumatic events. After careful consideration, the Board determined that VASRD §4.129 was not applicable in this case. The Board directs attention to its rating recommendation based on the above evidence. It noted that there was a general trend towards improvement in the pre-separation records after the MEB examination, but that at the VA C&P examination, the CI reported symptoms consistent with significant deterioration. The Board concluded that the VA C&P examination, which was the most proximate to separation, was most consistent with the description of the 30% disability rating “occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks [although generally functioning satisfactorily, with routine behavior, self-care, and conversation normal],” and noted the VA assigned a 30% rating based on this examination. The Board considered that the CI continued to have recurring marital problems, and following the MEB, and was not assigned to any significant duties. A VA C&P examination on 28 April 2010, 10 months after separation, indicated that the CI remained unemployed. He endorsed symptoms of depressed mood, reduced motivation, impaired concentration and continued marital problems. Even though the STRs document initial significant improvement in October 2008, this was followed by worsening in December 2008 with subsequent partial improvement. 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 bipolar II 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. The Board did not surmise from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised. In the matter of the bipolar II disorder, the Board unanimously recommends a disability rating of 30%, coded 9432 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** | **RATING** |
| Bipolar II Disorder | 9432 | 30% |
| **COMBINED** | **30%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111129, 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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

for XXXXXXXXXXXXXXXXXXX, AR20120016400 (PD201101103)

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 recharacterize the individual’s separation as a permanent disability retirement with the combined disability rating of 30% effective the date of the individual’s original medical separation for disability with severance pay.

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 permanent disability retirement 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 date of the original medical separation for disability with severance pay.

c. Adjusting pay and allowances accordingly. Pay and allowance adjustment will account for recoupment of severance pay, and payment of permanent retired pay at 30% effective the date of the original medical separation for disability with severance pay.

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 XXXXXXXXXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA