

RECORD OF PROCEEDINGS  
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXX  
CASE NUMBER: PD1101110  
BOARD DATE: 20121025

BRANCH OF SERVICE: ARMY  
SEPARATION DATE: 20060210

**SUMMARY OF CASE:** Data extracted from the available evidence of record reflects that this covered individual (CI) was a National Guard SPC/E-4 (19K10/M1 Armor Crewman) medically separated for dementia. He was also diagnosed with alcohol dependence disorder and was hospitalized on three occasions for alcohol detoxification and treatment. He suffered at least two closed head injuries and had one skull fracture due to a fall. He could not be adequately rehabilitated to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was consequently issued a permanent P3/S3 profile and referred for a Medical Evaluation Board (MEB). The MEB determined alcoholism as medically unacceptable IAW AR 40-501 and identified the diagnosis of depressive disorder, not otherwise specified (NOS). These were the only two conditions forwarded to the Informal Physical Evaluation Board (IPEB) for adjudication. The IPEB adjudicated both conditions as dementia, in the setting of long-term, serious alcohol usage with multiple head traumas, as unfitting and rated at 10% based on the Veteran's Administration Schedule for Rating Disabilities (VASRD). The CI appealed to a Formal PEB (FPEB) which then adjudicated his condition as existing prior to service (EPTS) and non-compensable. The CI's case was then reviewed by a Formal Reconsideration PEB that rated his dementia at 10% based on the VASRD and, he was medically separated with a 10% disability rating.

**CI CONTENTION:** "Because I was rated at 100% by VA."

**SCOPE OF REVIEW:** The Board wishes to clarify that the scope of its review as defined in 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. 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 Recon FPEB – Dated 20060106			VA (2 Mo. After Separation) – All Effective Date 20060211			
Condition	Code	Rating	Condition	Code	Rating	Exam
Dementia, in the Setting of Long-Term, Serious Alcohol Usage with Multiple Head Traumas	8045-9304	10%	Residuals of Multiple Head Traumas with Dementia and Depression	9304	100%*	20060417
↓No Additional MEB/PEB Entries↓			Degenerative Joint Disease, Right Hip	5252	10%	20060914
			Left Hip Strain with Degenerative Joint changes	5252	10%	20060914
			0% X 1 / Not Service-Connected x 4			20060914
<b>Combined: 10%</b>			<b>Combined: 100%</b>			

\*100% rating continued through last rating decision available, 20110916.

ANALYSIS SUMMARY: The Board notes the current VA ratings for all of his service-connected conditions, but must emphasize that its recommendations are premised on severity at the time of separation. The VA ratings which it considers in that regard are those rendered most proximate to separation. 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. That role and authority is granted by Congress to the Department of Veterans' Affairs (DVA).

Dementia Condition. The narrative summary (NARSUM) prepared 9 months prior to separation noted two major factors related to the condition that resulted in the CI's medical separation. The first factor was an alcohol dependence disorder that required three hospitalizations over the CI's military career with the most recent hospitalization occurring in September 2004. At the time the NARSUM was prepared, the CI was alcohol free and in a sustainment program at the local military treatment facility. The second issue was the CI's history of "traumatic events to his central nervous system." There were three episodes of head trauma documented; two were "covered" with line of duty determinations and another occurred while the CI was at home on "convalescent leave." This last head injury mentioned in the NARSUM resulted in a temporal bone fracture. A magnetic resonance imaging (MRI) scan was accomplished in August 2003 and revealed left temporal cyst and a left superior convexity encephalomalacia with associated gliosis left temporal lobe, "which is felt most likely to be due to traumatic events." The CI had also been diagnosed with depression and had been treated with various medications but was taking Remeron 30 milligrams at bedtime and Klonopin on an as needed basis. Physical exam was significant for mini-mental state exam of 30/30 and a normal neurological exam. "The patient has presently been undergoing this Medical Evaluation Board process for approximately one and three quarter years. His mental status and impairment seem to be stable." At the MEB exam prepared approximately 8 months prior to separation, the CI reported "too many hits in the head from Army tanks & trucks," "can't remember things like I used to" and "hit in head with a 5 ton tailgate." The MEB physical exam noted "depression" in the physical exam portion of the exam form and "... history of depression for several years and alcohol abuse for many years. Pt. has been alcohol free for 1 year now." The MEB psychiatric addendum prepared approximately 5 months prior to separation documented that the CI had been compliant with outpatient psychiatric treatment, maintained alcohol sobriety, followed up regularly with the substance abuse rehabilitation department and continued in outpatient psychiatric follow-up. He continued to complain of depressive symptoms with recent stressors of divorce and child custody issues. He reported compliance with current outpatient medication regimen of Cymbalta 60mg by mouth every day, Remeron 30mg by mouth every night at bedtime, Klonopin .5 every day and Antabuse 250mg by mouth every day. He discontinued his Aricept (indicated in the treatment of Dementia) secondary to side effect problems. The CI had also had multiple trials of other antidepressant medications with limited success or side effect problems. Mini-Mental status examination performed in August 2005 was 26/30. Patient repeated neuropsychological testing in June 2005 and it was consistent with previous testing performed in January 2004. Results showed borderline intellectual functioning, borderline to low average memory functioning, significant impairment in visual perceptual organization and significant depression. The worsening memory loss can be more readily accounted for by increased depression. The psychiatrist noted Axis I diagnoses of depressive disorder, NOS; dementia manifested by neuropsychological findings consistent with organicity and visual perceptual organization, borderline intellectual functioning, and borderline to low average memory functioning; and alcohol dependence with physiological dependence in full remission. His current GAF was 65. The psychiatrist opined the CI did not meet retention standards but was competent and able to manage his own finances.

The VA Compensation and Pension (C&P) exam prepared approximately 2 months after separation noted, "Due to significant memory problems and other impairments in cognitive functioning, Mr. Lewis did not provide a clear chronology of his military service." In reference

to the CI's reported history of duty and experiences in Iraq, a VA regional office requested a review of the history performed on the 17 April 2006 VA C&P examination. That review determined that the CI significantly misrepresented the facts about his duty and experiences while he was on active duty from 3 September 2002 to 10 February 2006 and therefore, the diagnosis of Posttraumatic Stress Disorder (PTSD) was not valid. The 17 April 2006 C&P exam was significant for the following findings: He was oriented to person, place, time, and situation. He had a flattened affect. The CI "...was currently helping mother and one brother with the operation of a mobile home trailer park. Was a county employee for many years prior to taking leave for his National Guard service. He rambled circumstantially and tangentially throughout the interview, gave excessive details, and required repeated redirection. He has lived alone since his divorce approximately eight years ago. He lives near his mother and has daily contact with her. Mr. L--- appears to live a socially isolated life. Given the consistent and broad problems with cognitive functioning that Mr. L--- demonstrated in this interview, it is hard to image him functioning effectively in the work place." The examiner noted that the CI had significant depression and the symptoms of depression that he manifested can also be symptoms of PTSD. He opined the CI's cognitive impairment most likely resulted from a combination of head trauma, depression, and possible effects of alcohol. His current GAF was 60. His condition continued to deteriorate over time and by July 2008 he was declared incompetent for the purpose of managing VA payments and his sister was appointed to handle his funds.

The Board directs attention to its rating recommendation based on the above evidence. After US Army Physical Disability Agency (USAPDA) formal reconsideration review, the final adjudication was Dementia, in the setting of long-term, serious alcohol usage with multiple head traumas coded analogously as 8045-9304 and rated 10%. The VA applied the 9304 code for residuals of multiple head traumas with dementia and depression and evaluated it at 100% citing total occupational and social impairment due to symptoms of gross impairment of thought process and communication. Although there are significant alcohol dependence issues in this case, there is no defensible basis for applying, or means of measuring, any deduction which might be considered and to do so would require resorting to speculation. The Board must therefore disregard the influence of alcohol abuse on ratable symptoms for its permanent rating recommendation. In addition, the USAPDA's reconsideration review overturned the FPEB's determination of "existed prior to service" in reference to the CI's condition thus establishing the condition as unfitting and compensable, which must be adjudicated IAW VASRD guidelines in effect at the time of separation. In accordance with §4.124a Schedule of ratings—neurological conditions and convulsive disorders, the USAPDA's use of the 9304 code limited the evaluation to 10% if the diagnosis of multi-infarct dementia associated with brain trauma is not present, as in this case. The CI was also diagnosed and treated with various medications for depression and dementia. The use of §4.130 Schedule of ratings—mental disorders could also be utilized in this case allowing the Board to base its coding and rating recommendation on the totality of symptoms manifested by the CI at the time of separation using the General Rating Formula for Mental Disorders. The Board spent considerable time discussing the many significant details present in this case related to the CI's mental symptoms and capabilities, circumstances surrounding the various head injuries, administrative processes and the various evaluation tools utilized by the mental health professionals. The Board also spent considerable time deliberating the merits of each of the coding and rating options noted above and reached the conclusion that significant value was to be placed on the findings of the DES process that included adjudication from the reconsideration PEB. That adjudication followed the rating guidance present in VASRD §4.124a for the coding scheme utilized at the time of separation and it was judged to be not incorrect. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the formal reconsideration adjudication of the dementia, in the setting of long-term, serious alcohol usage with multiple head trauma 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. In the matter of the dementia, in the setting of long-term, serious alcohol usage with multiple head traumas condition, the Board, by a simple majority, recommends no change in the PEB adjudication. The single voter for dissent, who recommended rating 9304-9435 at 50%, submitted the appended minority opinion. There were no other conditions within the Board's scope of review for consideration.

**RECOMMENDATION:** The Board, therefore, recommends that there be no recharacterization of the CI's disability and separation determination, as follows:

<b>UNFITTING CONDITION</b>	<b>VASRD CODE</b>	<b>RATING</b>
Dementia, in the Setting of Long-Term, Serious Alcohol Usage with Multiple Head Traumas	8045-9304	10%
	<b>COMBINED</b>	<b>10%</b>

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20111202, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXXXXXX  
 President  
 Physical Disability Board of Review

## MINORITY OPINION

The Record of Proceedings (ROP) above states that the coding and rating scheme used by the Physical Evaluation Board (PEB) was not incorrect. However, it was incorrect and does not comply with paragraph §4.126 (d) of the Veteran's Administration Schedule for Rating Disabilities (VASRD) in effect at the time of separation. The Physical Evaluation Board (PEB) determined this covered individual (CI) was unfit for continued military service due to "Dementia, in the setting of long-term, serious alcohol usage with multiple head trauma. Dementia is associated with a depressive disorder, NOS for which the Soldier takes anti-depressant medications, and alcoholism is currently in total remission." The VA service-connected "residuals of multiple head traumas with dementia and depression." Both the VA and the PEB noted dementia, depression, and multiple head traumas. Neither the PEB nor the VA made any deductions for the effects of the alcoholism or any pre-service condition.

As described in the ROP above, the VASRD includes rating criteria for dementia in both paragraph §4.124a Schedule of Ratings--Neurological Conditions and Convulsive Disorders and paragraph §4.130 Schedule of Ratings—Mental Disorders. In general, dementia can be rated using either paragraph. However, VASRD §4.126 (d) states: "When a single disability has been diagnosed both as a physical condition and as a mental disorder, the rating agency shall evaluate it using a diagnostic code which represents the dominant (more disabling) aspect of the condition (see §4.14)." Paragraph §4.14 Avoidance of Pyramiding is an instruction to avoid rating the same disability under various diagnoses. This prohibits two separate ratings, with one utilizing §4.124a and one utilizing §4.130. Additionally, using §4.124a does not incorporate the associated depression specifically mentioned by both the PEB and the VA.

The CI's dementia can be viewed as either a physical condition or a mental disorder. The dominant or more disabling aspect of the CI's dementia is the significant cognitive dysfunction documented on two separate and valid neuropsychological testing events and it should be rated as a mental disorder IAW §4.126 (d). The CI does not merely have the less consequential mild or even moderate cognitive impairments associated with a post-concussive syndrome or traumatic brain injury as the 2005 VASRD code 8045 would cover. He has significant, life-altering cognitive impairments that will likely prevent him from gainful employment for the rest of his life. In fact, the rating criteria for 8045 has been changed over time to afford higher disability ratings for Veterans with more significant cognitive impairments. If the CI's condition was rated using the current 8045 rating criteria, a minimum rating of 70% would be warranted if his impairment was considered moderate. However, his cognitive impairment is more accurately described as severe and this would warrant a 100% rating. The current rating criteria for 8045 also states that emotional/behavioral dysfunction should be evaluated under §4.130 when there is a diagnosis of a mental disorder. The current 8045 code is to be used to evaluate emotional/behavioral symptoms only when there is no diagnosis of a mental disorder. However, this rating criteria was not in effect when the CI separated from service in February 2006 and a rating greater than 10% cannot be assigned under code 8045. Additionally, the 10% limit imposed by the VASRD rating criteria for 8045 in effect at the time of separation does not accurately reflect the level of functional impairment caused by the dementia.

The utilization of §4.130 to rate the CI's dementia as a mental and not a physical disorder is not only required in order to comply with section §4.126 (d) from the VASRD in effect at the time of separation, it also allows a disability rating more commensurate with his actual level of functional impairment. It also incorporates the associated depression which was acknowledged by both the PEB and the VA to contribute to his overall impairment. Additionally VASRD §4.7 Higher of two evaluations directs that when there is a question as to which of two evaluations shall be applied, the higher evaluation will be assigned if the disability picture more nearly approximates the criteria required for that rating. As just described, the CI's disability picture

more nearly approximates the criteria required for rating the dementia as a mental illness using §4.130.

The initial VA C&P examination provided the Board with the best picture of the CI's disability that can be used for rating purposes as there was salient information present that was based solely on the examiner's observations. This examination documented the findings of circumstantial speech, impaired short and long term memory, mood disturbance, socially isolated life, flattened affect, low energy, difficult social relationships and an examiner's statement of "Given the consistent and broad problems with cognitive functioning that Mr. Lewis demonstrated in this interview, it is hard to image him functioning effectively in the work place." The CI was working in the family business helping his mother and brother manage trailer park at the time of separation. While the record does not include any information about his level of functioning in this position, this appears to have been a protected environment without any significant responsibilities or demands. There was no evidence of the impairment of impulse control, neglect of personal hygiene, inability to function independently, or spatial disorientation in evidence that would support the next higher rating of 70% in the General Rating Formula for Mental Disorders. This Board member therefore recommends a disability rating of 50% for the dementia and depression, in the setting of long-term, serious alcohol usage with multiple head traumas condition based on occupational and social impairment with reduced reliability and productivity.

<b>UNFITTING CONDITION</b>	<b>VASRD CODE</b>	<b>RATING</b>
Dementia and Depression, in the Setting of Long-Term, Serious Alcohol Usage with Multiple Head Traumas	9304-9435	50%
	<b>COMBINED</b>	<b>50%</b>

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 XXXXXXXXXXXXXXXXXXXXXXXX, AR20120021211 (PD201101110)

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 and hereby deny the individual's application. This decision is final. The individual concerned, counsel (if any), and any Members of Congress who have shown interest in this application have been notified of this decision by mail.

BY ORDER OF THE SECRETARY OF THE ARMY:

Encl

XXXXXXXXXXXXXXXXXXXXXXXXXX  
Deputy Assistant Secretary  
(Army Review Boards)

CF:  
( ) DoD PDBR  
( ) DVA