RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXX
CASE NUMBER: PD1200478
BOARD DATE: 20130108

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20020729

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSG/E-6 (55030/EOD Specialist), medically separated for Posttraumatic Stress Disorder (PTSD). The CI developed symptoms of PTSD after a friendly fire training accident in the Udari training range in Kuwait In March 2001. Despite treatment with weekly psychotherapy and medication, the CI's symptoms did not resolve and he remained unable 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 no other conditions for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated the PTSD condition as unfitting, rated 10%, with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD) and Department of Defense Instruction (DoDI) 1332.39. The CI made no appeals, and he was medically separated with a 10% disability rating.

CI CONTENTION: The CI attached a six-page statement to his application that was reviewed by the Board and considered in its recommendations. The CI later submitted a three-page letter dated 27 October 2012 that included the following: "I am writing today to discuss my current medication for PTSD/bipolar, which I was just put back on because of my continued mental health state. I am also writing to ask for a review of my DA 199, and the possibility of the combat 10 a/c award (Line 10a-c of DA Form 199 combat related) be given to me based on the circumstances of my PTSD stressor, the facts at hand, which I will explain in detail in this letter. I am also asking my back be rated for degenerate (sic) disk syndrome/herniated disk, along with asthma."

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 other requested conditions (Degenerative Disc Disease and Asthma) and the other conditions rated by the Department of Veterans Affairs (DVA) are not within the Board's purview. Additionally, the contention that the PTSD condition should be considered a direct result of armed conflict is not within the Board's purview. 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 IPEB – Dated 20020711			VA (2 Months Post-Separation) – All Effective Date 20020730			
Condition	**Code**	**Rating**	**Condition**	**Code**	**Rating**	**Exam**
Post-Traumatic Stress Disorder	9411	10%	Post-Traumatic Stress Disorder	9411	70%	20020914
↓No Additional MEB/PEB Entries↓			Asthma	6602	10%	20020829
			Degenerative Disk Disease T12-L1/2, & Herniation, L5-S1	5293	10%*	20020829
			0% X 2 / Not Service-Connected x 1			20020829
Combined: 10%			**Combined: 80%****			

*Code change to 5243 and rating increased to 20% effective 20050822with no change in the combined rating.
**IU also granted effective 20020730

ANALYSIS SUMMARY: The Board's authority as defined in DoDI 6040.44, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. The Board utilizes VA evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12-month interval for special consideration to post-separation evidence. Post-separation evidence is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Posttraumatic Stress Disorder Condition. Two separate MEB narrative summaries (NARSUMs) were completed, the first in March 2002 by a psychologist and the second in June 2002, approximately one month prior to separation, by a psychiatrist as is required. Both report a very similar clinical history and examination findings and indicate the CI was not able to perform the duties required of his MOS due to his medical condition. After exposure to a traumatic event in March 2001, the CI developed symptoms of PTSD with 1) persistent re-experiencing with recurrent, intrusive and distressing recollections, recurrent distressing dreams, and dissociative flashbacks; 2) intense psychological distress and physiological reactivity with exposure to internal or external cues; 3) persistent avoidance of stimuli associated with the event and numbing of general responsiveness with efforts to avoid thoughts, feelings, or conversations associated with the trauma and to avoid activities, places, or people that arouse recollections of the trauma; 4) markedly diminished interest or participation in significant activities, feelings of detachment or estrangement from others; 5) persistent symptoms of increased arousal with difficulty falling and staying asleep, increased irritability and outbursts of anger, difficulty concentrating, hypervigilance, and an exaggerated startle reflex. The earliest records available regarding mental health are from October 2001 and these annotated a diagnosis of depression and treatment with medication. Anxiety and depression were noted in October and November 2001 and the CI was first restricted from handling any explosive ordinance in October 2001. Mental health clinic treatment records are not available for review but a memorandum signed by the chief of social work services, dated October 2001, noted the CI was being treated for adjustment disorder with depressed mood and anxiety after a traumatic event. Visits from March, June, and July 2002 include the diagnosis of PTSD and treatment with Prozac and Ambien. The MEB NARSUM from March 2002 reports the CI began weekly counseling sessions in the mental health clinic in the third week of October 2001. The CI's nightmares and intrusive flashbacks did improve somewhat with treatment but he continued to have ongoing depressed mood, sleep disturbances, low self-esteem, low energy, and thoughts of hopelessness. Mental status examination documented psychomotor agitation and anxiety symptoms. The CI became noticeably agitated and tearful when discussing the events of March 2001. His mood was ongoing anxious and depressed and his affect was mood congruent. No delusions were noted but the examiner opined "frequent recollections of the events of March 2001 have caused pronounced disruption of social and occupational functioning which has been only partially corrected by medication." Present status with treatment of medication and ongoing weekly psychotherapy was described as continued feelings of uselessness and being unable to perform his military duties. Prior to starting Prozac, the CI was so immobilized by his depression that he had failed to pay his bills

and was suffering financial repercussions. The CI continued to have an anxious mood, decreased energy, difficulty sleeping, decreased libido, increased distractibility, and thoughts of hopelessness. Current Global Assessment of Functioning (GAF) was estimated at 60, moderate symptoms, or moderate difficulty in social, occupational, or school functioning in social, occupational, or school functioning.

The MEB NARSUM completed in June 2002 was very similar to the March NARSUM. At the time of this evaluation, the CI additionally reported frequent nightmares, memory problems, and self-isolation. He also reported decreased interest in normally pleasurable activities and feeling detached or estranged from others. The mental status examination noted the CI was quite agitated, constantly wringing his hands and tapping his feet on the floor, and he became very tearful at times. His speech was normal except when "interrupted by uncontrollable tearful outbursts." Current status included ongoing difficulty sleeping, decreased libido, increased distractibility, and ongoing thoughts of hopelessness despite ongoing psychotherapy as well as pharmacological therapy. Impairment for continued military duty was marked and impairment for social and industrial adaptability was moderate. Current GAF was estimated at 60.

The commander's letter stated the CI was "very limited on what he can handle mentally" and that he was not able to perform the duties of his MOS due to his profile. The CI had a permanent S3 profile with no conditions other than mental health.

At the initial VA Compensation and Pension (C&P) exam completed in September 2002, approximately one and a half months after separation, the same clinical history was described with initial care sought in October 2001 and the eventual diagnosis of PTSD with ongoing treatment. The CI had not been receiving treatment since he separated from service and asked the C&P examiner how he could initiate treatment at the VA. The CI continued to have disturbing dreams twice a week but on nights without a nightmare, his sleep was good due to medication (probably Ambien). He continued to have intrusive thoughts every day and remained unable to talk about the event without getting all choked up. He also continued to have hypervigilance but was able to go to public places. At the time of the exam, he was going to school as part of vocational rehabilitation and he reported he was doing well. He also identified several leisure time activities, including painting and getting involved in exercise, and having one good friend. He admitted to increasing his alcohol intake to include intoxication three times a week to avoid thinking about the event. Mental status again documented normal speech, except when discussing the stressor event when he became emotional. His mood was reported as "kind of dreary" and the examiner opined it was anxious. His range of affect was broad. The diagnosis was PTSD with a current GAF of 50 and the highest GAF in the past year was 50 indicating serious symptoms, or any serious impairment in social, occupational, or school functioning.

A letter from his treating psychologist dated 25 November 2002 noted the CI was currently under treatment for PTSD, major depression, and alcohol abuse in early remission. He was currently enrolled in vocational rehabilitation but had been unable to continue sustained employment due to his psychiatric symptoms. The CI had shown efforts for employment but had been terminated or unable to perform the duties. His condition was considered chronic and it was estimated that he would remain symptomatic for a minimum of one year.

Outpatient treatment records from the VA from September 2002 to April 2003 are also available for review. The CI sought medication refills in September 2002 and prescriptions were provided. Notes from September 2002 include ongoing symptoms of depression, irritability, flashbacks, nightmares, startle response, and avoidance. His mood was anxious and the physician noted cluster B traits. He was referred to psychiatry for therapy after these visits. He began psychotherapy in October 2002. The CI reported he was doing better after restarting his Prozac but continued to have chronic PTSD and depression symptoms with sleep disturbance,

depressed mood, and frequent crying. The CI reported he had resumed his relationship with his ex-girlfriend but a previous note said he had been found guilty of stalking her. The examination revealed a depressed mood and congruent affect. In November 2002, the CI reported he had been fired from this job and had had conflicts with his boss and felt disrespected. He also reported he was getting along better with his girlfriend. His mood was dysphoric and his affect was congruent. In December 2002, the CI reported increased symptoms when he ran out of Prozac but the symptoms returned to baseline when restarting it. He remained unemployed but continued to attend school and GAF was estimated at 65. The exam noted his mood was less angry and depressed but his affect was constricted. On 6 February 2003, the CI expressed interest in joining the PTSD program but when told he would need three months of sobriety he stated that wasn't going to happen and he refused referral for alcohol treatment. He remained interested in individual therapy. The exam documented a good mood but a continued restricted affect. The CI remained unemployed and continued to have stress at school and the resident estimated a GAF of 70. However, the CI was seen one month later on 7 March 2003 and his GAF that day was estimated at 44 by a psychiatrist. He reported continuing symptoms of PTSD, remained unemployed and was still attending school. He reported the legal trouble with his girlfriend had occurred while he was on active duty. The exam documented an apprehensive mood with a congruent affect and the CI was noted to be alert but inattentive. No delusions were noted but the CI did have obsessive ruminations and flashbacks as well as increased continuity and rate of thought processes. At a follow-up with the same psychiatrist one month later in April 2003, the GAF was decreased to 35. His symptoms of PTSD continued and the examination was essentially the same as it had been in March. His medications were changed and he was continuing psychotherapy.

At the time of the initial VA C&P examination, a future exam was planned for November 2004. A second C&P examination for PTSD completed in December 2005 (more than 3 years after separation) noted very severe and chronic PTSD, major depressive disorder, and alcohol, cannabis, and narcotic abuse all in remission. The CI had married in April 2005 and his PTSD symptoms were "causing considerable tension in his marriage." No personality disorder was diagnosed and the GAF was 35. The CI had dropped out of vocational rehabilitation school because he could not concentrate. The CI had been employed at an off road mechanics shop but had flashbacks at work and had been fired. He planned to attempt to work again but the examiner opined the CI remained unable to work even in a relatively low stress job as a direct result of his PTSD. The 70% rating was continued based on the examination and VA treatment records. Individual unemployable was granted effective the day after separation and was continued through the VA rating decision (VARD) in February 2007, the latest VARD available for review. The CI's only employment had been as a photographer for a school newspaper from February to September 2006, working 5 to 10 hours per week and earning approximately $130 per month.

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 DoD adherence to Veterans Administration Schedule for Rating Disabilities (VASRD) §4.129. IAW DoDI 6040.44, the Board is obligated to recommend a minimum 50% PTSD 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 6 months for its permanent rating recommendation. The VA C&P examination of September 2002 and outpatient clinical records from 2 months to 9 months after separation, as elaborated above, constitute evidence of the greatest probative value relative to the Board's permanent rating recommendation. This evidence reflects the impairment precisely timed with the prescribed interval from which the Board derives its permanent rating recommendation, and it captures the stress of transition to civilian life which is a core intent of VASRD §4.129.

The Board directs attention to its rating recommendation based on the above evidence. 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. The VA assigned a 70% rating for the PTSD condition based on §4.130 criteria without relying on the provisions of §4.129. The VA rater's rationale for a 70% rating appears to be based on the daily symptoms, twice weekly nightmares, ongoing treatment, and a GAF of 50 documented at the C&P examination and on the letter from the CI's VA treating psychiatrist dated November 2002 that stated the CI was not able to be employed. The CI was not gainfully employed through 2007. The CI was going to school and reported he was doing well at the initial C&P examination. The February 2007 VARD noted he was not able to finish but it is unclear when his performance at school began to decrease. In addition, there appear to be conflicting reports of a relationship with his girlfriend but the CI reportedly married in April 2005. The outpatient records show a honeymoon period in the first few months after separation when, although he continued to have continued symptoms despite medication and therapy, he appeared to be improving. However, his affect was noted to be restricted as early as December 2002, 5 months after separation from service, and this is a sign of a more serious mental illness. The reported GAF of 70 in February 2003 appears incongruent with the rest of the record and as it was estimated by a resident physician, appears less reliable than other estimated GAFs. From April 2003 forward, the CI became more and more dysfunctional. The CI's symptoms were never controlled with treatment and the 10% rating is exceeded. Without more information about the CI's functioning in school (including when he began to have problems) and with interpersonal relationships, the 30% rating criteria ("occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks") appears to be the best fit with the occupational functioning in evidence. Decreased efficiency can be supported with the existing evidence but there is limited information regarding reliability and productivity near the point of 6 months after separation. After this deliberation, considering the totality of the evidence and with deference to VASRD §4.3 (reasonable doubt), the Board recommends 30% as the fair and equitable permanent rating for PTSD in this case.

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 PTSD was operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the PTSD condition, the Board unanimously recommends an initial TDRL rating of 50% and a 30% permanent rating at six months, coded 9411 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:

UNFITTING CONDITION	VASRD CODE	RATING	
		TDRL	PERMANENT
Posttraumatic Stress Disorder	9411	50%	30%
	COMBINED	**50%**	**30%**

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120602, w/atchs
Exhibit B. Service Treatment Record
Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXX, DAF
President
Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency
(TAPD-ZB / XXXXXXXXX), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXXXXXX, AR20130000865 (PD201200478)

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

XXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
( ) DoD PDBR
( ) DVA