RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: marine corps

CASE NUMBER: PD1200021 SEPARATION DATE: 20060301

BOARD DATE: 20120712

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a reserve LCPL/E-3 (1812/M1A1 Tank Crewman), medically separated for posttraumatic stress disorder (PTSD) following combat operations in Iraq, from January 2003-June 2003, serving with the Infantry rather than as a Tank Crewman. Criterion A combat stressors were documented and the Diagnostic and Statistical Manual of Mental Disorders (DSM IV) criteria for an Axis I diagnosis of PTSD were met. He was hospitalized for his condition four times and treated as an outpatient with medications and therapy. He did not respond adequately to treatment and was unable to perform within his Military Occupational Specialty (MOS) or meet physical fitness standards, was issued a limited duty (LIMDU) and underwent a Medical Evaluation Board (MEB). Prolonged PTSD, alcohol dependence, cocaine dependence and tobacco use were forwarded to the Physical Evaluation Board (PEB) IAW SECNAVINST 1850.4E. No other conditions appeared on the MEB’s submission. The PEB adjudicated the PTSD condition as unfitting, rated 10%; additionally cocaine dependence, nicotine dependence and alcohol dependence conditions rated Category IV; with likely application of the SECNAVINST 1850.4E and Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: “I want the PDBR to retroactively amend my records to show that on the date of my separation I was placed on the TDRL with a rating of 50% for my PTSD for at least 6 months in accordance with 38 CFR 4.129 and subsequently placed on Permanent Disability Retirement with a rating equal to the PTSD rating that I was initially given by the VA.”

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. 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 Board for Correction of Naval Records (BCNR).

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20060207** | | | **VA (At time of Separation) – All Effective Date 20050419** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| PTSD | 9411 | 10% | PTSD | 9411 | 70%\* | 20060404 |
| Cocaine Dependence | Condition does not constitute a physical disability | | No corresponding VA condition. | | | |
| Nicotine Dependence | Condition does not constitute a physical disability | | No corresponding VA condition. | | | |
| Alcohol Dependence | Condition does not constitute a physical disability | | No corresponding VA condition. | | | |
| ↓No Additional MEB/PEB Entries↓ | | | 0% x 1/Not Service-Connected x 1 | | | 20060411 |
| **Combined: 10%** | | | **Combined: 70%** | | | |

\* IAW VASRD §4.129.

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application, i.e., that the disability assignment should equal the initial Department of Veterans’ Affairs (DVA) rating for his mental health condition. It is a fact, however, that 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. This role and authority is granted by Congress to the DVA. The PEB rating in this case fell after the effective date of the National Defense Authorization Act (NDAA) 2008 mandate for DoD adherence to VASRD §4.129. Furthermore, IAW DoDI 6040.44 and DoD guidance (which applies VASRD §4.129 to all Board cases), the Board is obligated to consider if the definition of §4.129 is met for any psychiatric condition resulting in medical separation; i.e., “a mental disorder that develops in service as a result of a highly stressful event.” The evidence is clear in this case that all of the elements for application of §4.129 were met. Thus, in compliance with the above directives, the Board must 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 6 months for its permanent rating recommendation. The only sources of comprehensive evidence on which to base either the TDRL or permanent rating recommendations in this case are the narrative summary (NARSUM), completed 5 months prior to separation, the DVA Compensation and Pension (C&P) exam, completed 2 weeks prior to separation and the future psychiatric DVA exam in 2010, a significant interval of approximately 39 months after separation. There was no other relevant DVA outpatient or civilian provider evidence providing psychiatric details during the 6-month interval of constructional TDRL. This deprives the Board of evidence for judging the stress of transition to civilian life which is the key intent of §4.129 and a significant element underlying the Board’s permanent rating recommendation. DoDI 6040.44, under which the Board operates, specifies a 12-month interval for special consideration to DVA findings. This does not mean that the 2010 DVA exam was disregarded, as it was a valuable source for clinical information and opinions relevant to the Board’s evaluation as the exam documented employment and social history during the constructional TDRL period that was pertinent to consider when judging the stress of transition to civilian life. The Board therefore agreed to consider the 2010 VA exam in addition to the C&P exam at separation for its permanent rating recommendation.

PTSD Condition. The CI was activated from the reserves for Operation Iraqi Freedom and was involved in the initial northward thrust up to Baghdad from March 2003 to June 2003. He was not injured but witnessed intense combat, deaths of two Marines and the wounded. He sought care for irritability, anger, hypervigilance and difficulty fitting-in a year and 3 months upon his return, at the request of his girlfriend. He reported having nightmares and insomnia but these abated 2 months after his return; however, he was drinking heavily (6-15/night 4-5 nights/wk) and was cutting back upon the request of his family. His alcohol use, disorders identification test (AUDIT), and PTSD checklist (PCL) screen were positive. In October 2004, he was diagnosed with PTSD and alcohol abuse, early remission, assigned a Global Assessment of Functioning (GAF) of 51 and referred for treatment.

In March 2005, he was hospitalized for 2 days for PTSD, chronic, moderate to severe; cocaine dependence, alcohol dependence, and nicotine dependence and reported using these substances to numb himself from many of the symptoms he was having from his experience in the war. He additionally reported using cocaine to stay up at night to avoid sleep and nightmares. He had used both alcohol and cocaine prior to enlistment while in college but did not consider that he had a problem. He did consider his use a problem now. In April 2005, he was admitted to a 45 day rehabilitation substance abuse program with diagnosis of chronic polysubstance abuse, and PTSD symptoms and assigned a GAF of 45. The mental status exam (MSE) throughout these hospitalizations consistently demonstrated some psychomotor agitation, no suicidal or homicidal ideations (SI, HI), slightly anxious mood, restricted affect, fair insight and judgment. He was medicated for sleep and depression, and was doing okay until a relapse in alcohol use with suicidal ideation resulted in his third hospitalization. He was seen for a fit-for-duty evaluation in September 2005 and the examiner diagnosed PTSD with secondary depressive symptoms with alcohol and drug use for self-medication, 5 months abstinent and opined he had a guarded recovery due to past polysubstance, noncompliance and lack of motivation to remain in the Marines. The examiner recommended a favorable discharge rather than an administration separation to remain eligible for treatment with the VA and assigned a GAF of 60, connoting mild to moderate impairment. The examiner further opined he was psychiatrically unfit and unsuitable to return to combat. After this exam and prior to separation, in October 2005, the CI was suicidal a second time with a concomitant relapse in use of alcohol and metamphetatime, was admitted for his fourth time for 10 days and discharged with a GAF of 60.

At the NARSUM exam the CI reported PTSD symptoms had begun to improve which included; recurrent nightmares, avoidance of crowds or news of the war, feelings of estrangement from old friends, difficulty staying asleep, irritability, outbursts of anger, hypervigilance and depressed mood. He was compliant with the four medications to help control these symptoms, was compliant with psychiatric visits every three weeks, was not working, was living with his mother and did not have any relationships. The MEB physical exam demonstrated subdued behavior, monotone voice, depressed and anxious mood, mildly dysphonic affect and fair impulse, judgment and insight. The examiner did not change his opinion from the fit for duty evaluation in September 2005 but further opined this condition had severely impacted his ability to hold a civilian job and to have meaningful personal relationships.

At the VA Compensation and Pension (C&P) exam, performed 2 weeks prior to separation, the CI reported ongoing PTSD symptoms to include hyperarousal, social avoidance, sleep problems, nightmares once per week, recurring thoughts and images of the war, anxiety, anger and irritability among others and was taking three medications for control of these symptoms. He worked briefly as an airport security guard but was unable to continue due to anger and irritability and his boss would let him know he was being rude and difficult to his customers. The C&P physical exam demonstrated; subdued and withdrawn mood, constricted affect, fair impulse control due to anger, and all other findings related to grooming, speech, thoughts, psychomotor movements, concentration, insight and judgment and suicidal and homicidal ideations were normal. The examiner opined the evaluation was consistent with a diagnosis of chronic and severe PTSD, severely socially avoidant, and a significant history of anger related issues with some related depression and polysubstance abuse, 6 months into remission and assigned a GAF of 46.

The CI’s employment and social history 6 months after the constructive TDRL was documented by the VA C&P exam completed in March 2010 for a rating increase, 4 years after separation. This exam documented the CI had employment as a quality control manager at a concrete factory working the night shift, was able to block memories and go to work on a regular basis and worked with men who understood his difficulties. However, when he switched to day shift, he was no longer able to tolerate the stress; stopped taking his medication in February/March of 2009, and reported Memorial Day triggered a relapse. He received a DWI, served a month in jail, was transferred to a substance abuse rehabilitation program and shortly after admission was released back to jail due to inability to follow policy and procedures of the program. He served another month and was admitted to the VA for PTSD and substance abuse with an assigned GAF of 52. Also, during this time, socially the CI had had a girlfriend, fathered a son but had not married.

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 original rating decision of the VA assigned a 70% rating for the PTSD condition with specific citation of §4.129 criteria. There is no evidence of record documenting the VA’s disposition regarding the lack of a psychiatric reevaluation, as explicitly mandated by §4.129. A lengthy deliberation ensued regarding the Board’s permanent rating recommendation in this case, given the absence of any hard probative evidence relative to the 6-month benchmark and the distant evidence from the VA C&P exam 39 months after separation. It was agreed that the §4.130 threshold for a 70% rating was not approached and that the criteria for a 10% rating were well-exceeded for its permanent rating recommendation. The deliberation thus settled on arguments for 30% (occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks) versus a 50% (occupational and social impairment with reduced reliability and productivity) rating. The 50% rating is defensible based on the periodic psychiatric exacerbations which required hospitalizations prior to and after separation, with an obvious occupational impact and he could reasonably be assumed to have remained at risk for these decompensations at the time of permanent separation as the examiner opined he had a guarded recovery due to severe PTSD, with severe social avoidance, polysubstance abuse and significant anger issues. In addition, albeit the CI was employed, the Board agreed the night shift provided a safe, socially structured work environment, not allowing the opportunity to transition to a socially integrated civilian life, and further the evidence reflects a decompensation when he shifted to a day shift and his continued avoidance of any reminders of the war. Furthermore, the evidence reflects GAFs from 45 to 52, absent a recent hospitalization, connoting serious difficulty in social and occupational functioning. After due deliberation and in consideration of all evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends 50% as the fair permanent separation 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. The Board did not surmise from the PEB ruling in this case that any prerogatives outside VASRD §4.130 were exercised. The PEB did not, however, apply VASRD §4.129 to the CI’s PTSD adjudication as required by NDAA 2008 in effect at the time of final separation, for which the Board provides remedy. In the matter of the psychiatric condition, the Board unanimously recommends an initial TDRL rating of 50% IAW VASRD §4.130; and a 50% permanent rating at 6 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: TDRL at 50% for 6 months following CI’s prior medical separation (PTSD at minimum of 50% IAW §4.129 and DoD direction) and then a permanent combined 50% disability retirement as below.

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

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111219, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs’ Treatment Record

President

Physical Disability Board of Review

MEMORANDUM FOR DEPUTY COMMANDANT, MANPOWER & RESERVE AFFAIRS

COMMANDER, NAVY PERSONNEL COMMAND

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATIONS

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 26 Jul 12

(c) PDBR ltr dtd 22 Aug 12

(d) PDBR ltr dtd 8 Aug 12

1. Pursuant to reference (a) I approve the recommendations of the PDBR set forth in references (b) through (d).

2. The official records of the following individuals are to be corrected to reflect the stated disposition:

a. former USMC: Placement on the Permanent Disability Retired List with a 50 percent disability rating effective 15 April 2006.

b. former USMC: Placement on the Temporary Disability Retired List for the period 31 March 2006 through 10 January 2008 with a disability rating of 100 percent (increased from 30 percent) and final separation on 11 January 2008 with a disability rating of 10 percent with entitlement to disability severance pay.

c. former USN : Disability separation with entitlement to disability severance pay with a final disability rating of 20 percent (increased from 10 percent) effective 21 November 2001.

3. Please ensure all necessary actions are taken to implement these decisions, included the recoupment of disability severance pay, if warranted, and notification to the subject members once those actions are completed.

Assistant General Counsel

(Manpower & Reserve Affairs)