

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME:
CASE NUMBER: PD1200052
BOARD DATE: 20121018

BRANCH OF SERVICE: MARINE CORPS
DATE OF PLACEMENT ON TDRL: 19961202
DATE OF PERMANENT SEPARATION: 20011001

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Marine, SSGT/E-6(0481, Longshoreman), medically separated for a mental health condition. He did not respond adequately to treatment and was unable to fulfill the physical demands within his Military Occupational Specialty (MOS), meet worldwide deployment standards or meet physical fitness standards. He was placed on limited duty and underwent a Medical Evaluation Board (MEB). Obsessive-compulsive disorder, severe; chronic pancytopenia and glucose 6-phosphate dehydrogenase deficiency were forwarded to the Physical Evaluation Board (PEB) IAW SECNAVINST 1850.4D. No other conditions appeared on the MEB's submission. The PEB adjudicated the mental health condition as unfitting, rated 30% and placed the CI on the Temporary Disability Retired List (TDRL). The remaining condition(s) were determined to be not unfitting and adjudicated to be Category III (not separately unfitting and not contributing to the unfit condition) and IV (condition that does not constitute a physical disability) as identified on the rating chart below. After 5 years on the TDRL, the PEB adjudicated a permanent disability rating of 10% for the mental health condition with application of SECNAVINST 1850.4D and the Veteran's Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals and was medically separated with a 10% disability rating.

CI CONTENTION: The CI states: "Please review my Department of Veterans files and outpatient treatment records from 04/01/97 – 01/01/2012. Those files and records will give a clearer picture of why I believe the rating for the condition which rendered me unfit should be changed."

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in the 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 Board for Correction of Naval Records.

TDRL RATING COMPARISON:

Service PEB – Dated 20010719				VA* – All Effective Date 19970301			
Condition	Code	Rating		Condition	Code	Rating	Exam
On TDRL – 19961202		TDRL 19961202	Sep.				
Obsessive Compulsive Disorder Severe	9404	30%	10%	Obsessive-Compulsive Disorder w/History of Adjustment Disorder w/Mixed Emotional Feelings	9404*	30%	19970515
Chronic Pancytopenia		Category III		No VA Entry			
Glucose 6-Phospate Dehydrogenase Deficiency		Category IV		Glucose-6-Phpspate Dehydrogenase Deficiency	7716	0%	19970502
↓No Additional MEB/PEB Entries↓				0% x 2/Not Service Connected x 12			
Combined: 10%				Combined: 30%			

*Code on VARD of 19970922 was 9440.

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application, i.e., that there should be additional disability assigned for the unfitting condition. It is a fact, however, that the Disability Evaluation System (DES) has neither the role nor the authority to compensate members for anticipated future severity or potential complications of conditions resulting in medical separation. This role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA). The Board utilizes DVA 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. The Board’s authority as defined in DoDI 6040.44, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Obsessive-compulsive disorder. The CI sought care for depression in March 1996 and was treated with Prozac. He was transferred to a new duty station in August 1996 and shortly thereafter was hospitalized for suicidal thoughts. Upon admission he reported obsessive compulsive symptoms which were excessive and unreasonable but he was unable to deter them and thus culminated in depressive symptoms. The obsessive-compulsive (OC) rituals described by the CI disrupted his work, significantly stressed his family relationships with his wife and daughter and impaired his social relationships. During his one month hospital stay his medications were changed, he attended individual and group therapy and reported overall a more hopeful outlook yet his obsessive-compulsive disorder (OCD) symptoms had not improved. At the MEB, performed at the time of his hospital discharge in September 1996, his mental status exam was abnormal for a depressed mood and blunted affect however no further suicidal ideations. The examiner diagnosis of OCD classified as severe and assigned a GAF of 40 at the time of admission and 70 at the time of discharge. At the VA Compensation and Pension (C&P) exam, performed 5 months after placement on the TDRL, the CI reported working as a supervisor but was looking for a better paying job with more responsibility and that his OCD symptoms had resolved to a large degree since leaving the military. He further reported the military was difficult for him as he was unable to delegate, he focused on the financial concerns for his wife and thus felt stressed out and depressed. The C&P mental status exam (MSE) was abnormal for observations of obsessive compulsive ritual of aligning papers during the exam, an over reporting of anxiety symptoms, impaired insight and fair judgment. The examiner

diagnosed obsessive/compulsive personality disorder. The examiner further opined this disorder may be exacerbated at times when he was under significant psychosocial or occupational stress, and had led to a decompensation with depression in the past, therefore he may have some occupational limitations however he was handling his current occupation without difficulty.

At the October 1998 TDRL interim exam the CI reported he quit his supervisory job after a year due to stress with exacerbation of his obsessive compulsive disorder. Since then he had taken a full-time custodian position at a post office which was beneficial since it limited him to a forty hour work week. He still reported checking behaviors but felt that this job had helped to contain his compulsive behavior since he was not allowed to work more than an 8 hour day. He had not been hospitalized, was taking mood medication and denied depressive symptoms but still had OCD symptoms. The MSE was normal. The examiner opined his degree of social and occupational impairment was minimal. The CI was kept on TDRL as he was undergoing further evaluation of a T10 fracture in lieu of his pancytopenia for possible oncologic disorders.

At the final TDRL exam, performed in May 2001, the CI reported he continued to have significant symptoms of OCD, with regards to cleanliness and precision spending up to 6 hours a day and more on the weekend. He declined a supervisory position at the post office for fear of being unable to delegate or spending excessive hours at work. He also reported the forty hour work limitation was best suited for his social and marital life. He reported his OCD thoughts and behaviors were as severe as they were prior to treatment. He was taking mood medication which helped; however, he did have a relapse with depression secondary to psychosocial stressors, losing 20-30 pounds that did not require hospitalization. He stated he was not depressed at the time of the exam and denied any suicidal or homicidal ideations. He was not attending behavioral therapy. He was compliant with treatment, seeing a psychiatrist once a year and a nurse practitioner every 3 months. The final TDRL MSE was abnormal for a serious, restricted affect and not notable for depression. The examiner opined the degree of civilian, social, and occupational impairment was deemed significant due to his severe OCD which had caused him to have limited employment opportunities and behaviors which were disconcerting and caused concern from his wife, daughter and friends. The MEB examiner cited the internal medicine notes and drew attention to "the patient's psychiatric condition has not stabilized. The prognosis is guarded and is deemed poor if he continues to experience his recurrent symptoms since it greatly limits both his employment opportunities as well as his social functioning." There was an addendum to the PEB for the TDRL periodic physical dated 3 May 2001 in which the examiner, likely the internal medicine examiner, documented that the OCD and T10 conditions had not required or led to loss of time at work. The examiner further documented the pancytopenia laboratory values were stable and had improved and spinal films were normal with minimal arthritic changes and no evidence of a fracture. The examiner added depression as additional diagnosis and suggested behavioral therapy for his OCD.

The Board directs attention to its rating recommendation based on the above evidence. The PEB and VA chose the same coding options for the condition and assigned a rating IAW VASRD §4.130 Schedule of ratings-mental disorders. The PEB assigned a rating of 30% with placement on TDRL for a severe OCD that had not stabilized to the point that a permanent degree of severity could be determined. The PEB assigned a permanent recommendation of 10% for likely stable OCD symptoms, improved depressive symptoms and having a full-time occupation. The VA assigned a rating of 30% for occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks. The evaluator cited the condition was subject to further improvement and a future exam would be conducted. This future exam performed in January 1999 and the 30% was upheld for persistent OCD symptoms which had interfered with work activities but had not affected current employment, for fair insight and judgment and for a GAF of 60, connoting moderate

impairment. The examiner further documented he did not had any major problem in socializing with others.

As regards to the TDRL placement rating recommendation, all members agreed that the §4.130 threshold for the 70% rating was not approached. The deliberation settled on arguments for a 50% vs. a 30% rating recommendation. The CI fit the 50% descriptor (occupational and social impairment with reduced reliability and productivity) at the time of his immediate hospitalization. Upon discharge from the hospital the evidence reflects no further suicidal ideations and an improvement in his depressive symptoms yet his OCD symptoms remained the same. The Board notes the CI was undergoing a MEB from September 1996 to December 1996 and further notes there is no occupational or social evidence after his hospitalization. Therefore, the Board agreed the 50% descriptor is a better fit at the time of TDRL placement. As regard to the permanent rating recommendation, all Board members agreed the 50% rating was not approached and deliberation settled on arguments for the 30% descriptor (“occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks”) and for the 10% descriptor (occupational and social impairment due to mild or transient symptoms which decrease work efficiency and ability to perform occupational tasks only during periods of significant stress...). The Board notes while on TDRL there is no resurgence of suicidal ideations, a transient resurgence of depressive symptoms and stable OCD symptoms which the CI noted had improved upon release from active duty. The Board further notes during the entire TDRL period the CI maintained full-time employment with two different jobs, without loss of work due to his condition. However, the Board notes while he initially accepted a supervisory position he later quit which he stated was due to increase stress and worsening of his OCD. The historical account in the VA exam reflects however he wanted a better paying position and therefore there is speculation as to why he left his first job. In his current position he was offered a supervisory position yet declined for fear worsening his OCD symptoms which may lead to more than 40 hours in a work week. The Board notes this supervisory offer was made in spite of prepping his cleaning cart for 30-40 minutes upon arrival and prior to leaving work. The action officer opines, at this point in time, the CI had some insight and judgment with regards to his mental health condition to make this reasonable and appropriate decision. The Board notes the evidence reflects the CI is doing well in his current employment and there is no loss of time from work which meets the 10% descriptor criteria. The Board deliberated at length if the CI’s current employment is equivalent to the functions required of him while in the Marine Corp and further deliberated if the inability to function in a supervisory role could be considered occupational impairment with decrease work efficiency to merit the 30% descriptor. The Board majority agreed the postal position is equivalent to his military functions and further agreed holding supervisory positions, both in the military in the civilian life, led to an increase in stress which exacerbated the CI’s OCD symptoms. Therefore the Board majority agreed at the mental health condition at the time of separation best fit the 10% descriptor. After due deliberation, considering the totality of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board majority recommends 50% TDRL rating and a 10% permanent disability rating for the mental health 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 mental health condition, the Board, by a vote of 2:1, recommends a 50% disability rating upon entry on TDRL and a permanent disability rating of 10%, coded 9404 IAW VASRD §4.130. The single voter for dissent (who recommended a 50% disability rating upon entry on TDRL and a permanent disability rating of 30% coded 9404 IAW

VASRD §4.130) submitted the appended minority opinion. 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, effective as of the date of his prior medical separation:

UNFITTING CONDITION	VASRD CODE	RATING	
		TDRL	PERMANENT
Obsessive Compulsive Disorder Severe	9404	50%	10%
	COMBINED	50%	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120102, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

President
Physical Disability Board of Review

Minority Opinion:

This CI met the criteria for 50% disability at separation. His condition improved during his TDRL period, reaching the 30% criteria. During a 13 year period (1997-2010), the CI has maintained a rather consistent level of disability – that of 30% - validated 5 times by the VA. At his last TDRL evaluation, 5 months prior to TDRL exit (or permanent separation), the CI clearly met the 30% criteria, not the 10% criteria as suggested by the Marine Corps, and actually presented some signs that are characteristic of 50% ratings.

The CI demonstrated occupational impairment with reduced productivity, impaired judgment and difficulty with social relationships (50% criteria); depressed mood, anxiety and anxiousness, and suspiciousness which collectively have caused occupational and social impairment with occupational and personal inefficiencies, have limited his ability to perform occupational and family tasks (all 30% criteria) and prevented occupational growth; and he has presented consistent symptoms (not mild or transient and not limited to periods of significant stress; another words, more than the 10% criteria) which impair him occupationally and socially.

At work, his compulsiveness to spend 30-45 minutes of his work-day prepping for a 3 hour task, only to re-do the same 3 hour task during the remainder of the day showed impaired judgment, reduced his productivity, demonstrated decreased occupational efficiency, limited his usefulness at work for other tasks, and by his own choice has limited his occupational growth. While he stated at the second VA exam that he enjoys this job, he has chosen a job which accommodates his OCD condition but is far from the potential he exhibited between 1985 and 1996 as he rose from Private to Staff Sergeant in the Landing Support career field, ultimately serving as a Military Career Counselor and Platoon Sergeant. He has chosen to avoid his weaknesses (OCD) and not to capitalize on his strengths – thereby limiting the positive impact he might bring to his civilian job. His choice validated his disease. His compulsiveness has limited his ability to perform. His compulsive behaviors consume 6 hours of every waking day – that is 6 hours that he could have easily devoted to his job, to his wife or to his daughter. Analytically, he has spent 1/3 of his waking day in compulsive behavior – this is not mild or transient – it is not caused by significant stress nor is it controllable by medication – it is every day – it is his life.

I strongly recommend that the CI's prior determination be modified as follows: TDRL at 50% and then a permanent 30% disability retirement as below.

UNFITTING CONDITION	VASRD CODE	RATING	
		TDRL	PERMANENT
Obsessive Compulsive Disorder Severe	9404	50%	30%
	COMBINED	50%	30%

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 2 Nov 12
(c) PDBR ltr dtd 6 Nov 12
(d) PDBR ltr dtd 14 Nov 12

1. Pursuant to reference (a) I approve the recommendations of the Physical Disability Board of Review 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: Retroactive increase in disability rating from 30 percent to 50 percent for the period member was on the Temporary Disability Retired List with a final disability rating of 10 percent effective 1 October 2001.
 - b. former USMC: Disability retirement with a final disability rating of 30 percent and assignment to the Permanent Disability Retired List effective 15 July 2005.
 - c. former USMC: Disability retirement with a final disability rating of 30 percent and assignment to the Permanent Disability Retired List effective 30 April 2007.
3. Please ensure all necessary actions are taken, included the recoupment of disability severance pay if warranted, to implement these decisions and that subject members are notified once those actions are completed.

Assistant General Counsel
(Manpower & Reserve Affairs)