RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX BRANCH OF SERVICE: air force

CASE NUMBER: PD1200122 SEPARATION DATE: 20051003

BOARD DATE: 20120412

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SRA/E-4 (3M051, Services Journeyman), medically separated for major depressive disorder (MDD)*.* She did not respond adequately to treatment and was unable to perform within her Air Force Specialty (AFS). She was issued an S4 profile and underwent a Medical Evaluation Board (MEB). Major depressive disorder, bulimia nervosa and dysthymic disorder were forwarded to the Physical Evaluation Board (PEB) IAW AFI 48-123.

No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) packet will be discussed below. The PEB adjudicated the major depressive disorder condition as unfitting, rated 30%, less aggravating/contributory factors of 20%, for a combined rating of 10%. Additionally bulimia nervosa was determined to have existed prior to service (EPTS) without permanent service-aggravation (Category II), and dependent personality traits determined Category III (conditions that are not separately unfitting and not compensable or ratable) with application of the DoDI 1332.39. The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: “Chronic Depression, Bulimia Nervosa- was not in remission at time of separation. I thought because I was losing weight and not purging that I was fine, in actuality I learned from my eating disorder therapists that I was in the restricting phase of Bulimia, eating no more than 1,000 cal. a day. I started having problems with bingeing and purging after I found out I was being discharged. It continually became worse as with my depression when a month later in November my dog was killed and my boyfriend broke up with me. I was so depressed I couldn't leave the house and couldn't make it to my VA compensation exams in Fargo 4 hours away. Prior to military service I exercised when I ate too much and went on diets to lose weight but as I'm not a physician I'm not sure that would classify as an eating disorder. I tried purging once but never did it again prior to service. I was never diagnosed with Bulimia prior to my military service. I maintained a healthy weight for my height range and was very active in extra-curricular activities. I did not begin purging until after my rapes in tech school. I didn't indicate that I had an eating disorder at time of entrance because I didn't believe I had one. I was functioning well and at a healthy weight. I overate when stressed and worked out to compensate like my girlfriends all did. I may have been at risk for developing an eating disorder, but I don't believe I developed one until my sexual assaults. That is when allmy problems started. As for my Depression, I believe I should have a higher rating because although I performed satisfactorily in my occupation, it was because I used my eating disorder to function and numb myself from my depression and PTSD/MST

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – Dated 20050818** | **VA (Rating Decision Dated 5 Years After Separation)**  |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Major Depressive Disorder with Dysthymic Disorder | 9434 | 10% | Dysthymic Disorder (claimed as depression) | 9433 | 10% | STR\* |
| Bulimia Nervosa | CAT II(EPTS) | Bulimia Nervosa (in remission) | 9521 | 0% | STR\* |
| Dependent Personality Traits | CAT III | PTSD Due to Sexual Trauma | 9411 | Not Service Connected | STR\* |
| **Combined: 10%** | **Combined: No Service-Connection** |

\* CI failed to show at C&P Exam, rating decision of 2010223 based on received STR

ANALYSIS SUMMARY: The Board acknowledges the CI’s opinion that her conditions were not in remission with the implication a medical error was responsible for a lower rating decision for her disabilities. It must be noted, however, the CI received another full psychiatric evaluation after admitting she was not in remission in which no new diagnoses were made. It must also be noted for the record that the Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to allegations regarding suspected service improprieties or faulty medical care. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB disability ratings and fitness determinations as elaborated above. The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which her service-incurred condition continues to burden her. The Board wishes to clarify that it is subject to the same laws for disability entitlements as those under which the DES operates. 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. That role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code). The Board evaluates DVA evidence proximal to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness decisions and rating determinations for disability at the time of separation. The Board further acknowledges the CI’s contention for service ratings for other conditions documented at the time of separation, and notes that its recommendations in that regard must comply with the same governance.

Major Depressive Disorder and Bulimia Nervosa. In July 2005 the CI reported for an MEB after being on a prolonged S4 profile for life skills diagnoses, specifically for dysthymic disorder. She had been treated intermittently from 2003 to 2005 for bulimia nervosa, dysthymic disorder and MDD. She had responded to therapy and had discontinued all treatment by April 2004 informing the original MEB examiner her “bulimic and dysthymic disorder were in full remission” yet her personal statement in January 2005 documented her symptoms of depression had remerged in the summer/fall of 2004 and, in 2002, and she had experienced sexual assaults while in technical school. She was appropriately reevaluated based on this new history but no new diagnoses were established. At the time of the narrative summary (NARSUM) she was in weekly therapy, on medications, specifically Prozac and Concerta, and had improved on her ability to handle stress with fewer reported depressive and bulimic symptoms. The CI denied any history of psychiatric treatment prior to entering the Air Force but disclosed she had been struggling with symptoms of an eating disorder since she was about 12 years old. The psychiatric exam was normal and specifically demonstrated a normal weight, a euthymic affect, with no homicidal or suicidal thoughts. The examiner diagnosed bulimia nervosa, dysthymic disorder, major depressive disorder, recurrent, in partial remission, dependent personality traits and poor family support with a history of multiple sexual assaults, and occupational stress. The examiner assigned a current GAF of 60, with the highest in the past year of 75 and further opined her military impairment was minimal however in light of her duty as a chef, moderate. Furthermore the examiner documented “despite her excellent duty performance, she has consistently reported overwhelming stress and disdain for her current AFSC. She has stated on several occasions that she finds it difficult to make progress in treatment and work around food.” The examiner documented this was a line of duty incident despite the fact that her symptoms were EPTS and the severity of her symptoms were exacerbated upon enlisting into the Air Force after being assigned to an AFS duty preparing food. The service treatment records characterized her bulimia as the purging type with no weight loss or inpatient hospitalizations, maintaining appropriate weight for her height during while receiving intermittent treatment from 2003 to 2005. The VA Compensation Pension (C&P) exam was not in the evidence for review due to the CI’s failure to report.

The Board directs its attention to its rating recommendations based on the evidence just described. The PEB and VA chose different coding options for the condition, but this did not bear on rating. The PEB opined the bulimia nervosa and MDD were intertwined citing the “EPTS bulimia nervosa significantly affects the severity of your major depressive/dysthymic disorders.” The PEB recognized the military service temporarily aggravated the bulimic condition; yet opined this condition would resolve with removal from her AFS duties, and further opined without the bulimic condition the MDD would best described as mild. The PEB assigned a mental health rating of 30% for MDD and dysthymic disorder; less 20% for aggravating/ contributory factors for a combined rating of 10%, and characterized bulimia as a category II and EPTS condition. The VA rated the dysthmic disorder independently of bulimia and conferred a 10% rating, citing that symptoms were controlled on medication. The bulimic condition was granted a noncompensable rating pending a directed examination, and cited service-aggravation with respect to the EPTS issue. The Board’s initial charge regarding its recommendation(s) in this case is therefore its evaluation of the PEB’s EPTS determination for bulimia. The Board’s authority for recommending a change in the service’s EPTS determination is not specified in DoDI 6040.44, but is considered adjunct to its DoD-specified obligation to review service fitness adjudications. As with its consideration of fitness adjudications, the Board’s threshold for countering service EPTS determinations is higher than the VASRD §4.3 (reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 “fair and equitable” standard. It is well supported that bulimia was a pre-existing condition; and, the natural progression of this disorder is marked by a chronic recurrent course with potentially fatal consequences for untreated relapses. Though relapses can be triggered by stressors and the severity of symptoms exacerbated by co-existent mental disorders, there were no specific stressors in this case unique to military service; and, even if service-aggravation were conceded, it is difficult to postulate how the permanent course of the bulimia disorder would have been altered. The action officer therefore opined, and the voting members concurred, that bulimia was EPTS without permanent service-aggravation and thereby ineligible for service rating.

The Board cannot support a formal deduction for bulimia, however, since both DoDI 1332.39 (6.11.3) and VASRD §4.22 stipulate, “if the degree of disability at the time of entrance into the service is not ascertainable in terms of the schedule, no deduction will be made.” Either the bulimia was clinically inactive on entrance, i.e. 0%, or it was not documented well enough to establish a §4.130 rating. Furthermore, VASRD §4.130 provides that separate mental health ratings cannot be conferred without a medical opinion clearly defining distinct rating boundaries separating the disability attributable to each mental disorder. All members agreed in this case; however, that the total psychiatric disability was closer to the §4.130 criteria for 10% than for 30%. All members also agreed that, although the unratable disability attributable to the bulimia component was not quantifiable, it was significant and therefore relevant with respect to the assignment of reasonable doubt. After due deliberation and in consideration of the preponderance of the evidence, the Board concluded that there was insufficient cause to recommend a change in the PEB rating and EPTS determinations for the depression and bulimia conditions; although, the Board’s recommendations are not underpinned by the assignment of an EPTS deduction.

Other PEB Conditions. The other conditions forwarded by the MEB and adjudicated as not unfitting by the PEB were dependent personality traits. Dependent personality traits are not a ratable condition under DoD or VA regulations and will not be discussed further.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for posttraumatic stress disorder (PTSD). This condition was reviewed by the action officer and considered by the Board. PTSD was not in the DES file. By policy and precedent the Board has limited its jurisdiction for recommending unadjudicated conditions as unfitting and subject to additional separation rating to those conditions which are evidenced in the core DES file. The core DES file consists of the MEB referral document, the PEB adjudication document, the NARSUM (including any addendums or referenced examinations), the MEB physical exam, the commander’s statement, the physical profile(s), and any written appeals or internal DES correspondence. The Board does not have the authority under DoDI 6040.44 to render fitness or rating recommendations for any conditions not considered by the DES. The Board, therefore, has no reasonable basis for recommending any additional unfitting conditions for separation rating.

Remaining Conditions. No other conditions were noted in the NARSUM, identified by the CI on the MEB physical, or found elsewhere in the DES file. The Board does not have the authority under DoDI 6040.44 to render fitness or rating recommendations for any conditions not considered by the DES. The Board, therefore, has no reasonable basis for recommending any additional unfitting conditions for separation rating.

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. As discussed above, PEB reliance on DoDI 1332.39 for rating MDD was operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the major depressive disorder condition and IAW VASRD §4.130, the Board unanimously recommends no change in the PEB adjudication at separation or permanently. In the matter of the bulimia nervosa and dependent personality traits conditions, the Board unanimously recommends no change from the PEB adjudications as not unfitting and not ratable, respectively. The Board unanimously agrees that there were no other conditions, specifically the contended PTSD condition, eligible for Board consideration which could be recommended as additionally unfitting for rating at separation.

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

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Major Depressive Disorder with Dysthymic Disorder | 9434 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120131, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans Affairs Treatment Record.

 XXXXXXXXXXXXXXXX

 President

 Physical Disability Board of Review

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

Dear XXXXXXXXXXXX:

 Reference your application submitted under the provisions of DoDI 6040.44 (Title 10 U.S.C. §  1554a), PDBR Case Number PD-2012-00122

 After careful consideration of your application and treatment records, the Physical Disability Board of Review determined that the rating assigned at the time of final disposition of your disability evaluation system processing was appropriate. Accordingly, the Board recommended no re-characterization or modification of your separation with severance pay.

 I have carefully reviewed the evidence of record and the recommendation of the Board. I concur with that finding and their conclusion that re-characterization of your separation is not warranted. Accordingly, I accept their recommendation that your application be denied.

 Sincerely,

XXXXXXX

Director

Air Force Review Boards Agency

Attachment:

Record of Proceedings