

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXX
CASE NUMBER: PD1200152
BOARD DATE: 20130102

BRANCH OF SERVICE: ARMY
DATE OF TEMPORARY RETIREMENT: 20081227
DATE OF PERMANENT SEPARATION: 20091125

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty, SSG/E-6, (25F/Information Technology), medically separated for posttraumatic stress disorder (PTSD). His psychiatric symptoms developed in association with two temporally proximate deployments to Iraq (January 2004 – February 2005 and November 2005 – October 2006). He underwent a trial of medications and outpatient therapy, but failed to improve adequately to meet the operational requirements of his Military Occupational Specialty. He was consequently issued a permanent S3 profile and referred for a Medical Evaluation Board (MEB). The PTSD condition was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Obstructive sleep apnea (OSA) was also identified by the MEB and forwarded as failing retention standards. Five other conditions (identified in the rating chart below) were addressed by the MEB, and forwarded as medically acceptable. The PEB adjudicated PTSD as unfitting, rated 50% with reference to Veterans Administration Schedule for Rating Disabilities (VASRD) §4.129; and, placed the CI on the Temporary Disability Retired List (TDRL). The OSA and remaining conditions were determined to be not unfitting. After 11 months on TDRL, the PTSD condition was considered to be stable but still unfitting. The CI was consequently removed from TDRL in 2009; and permanently separated, without appeal, with a 10% disability rating citing criteria of the VASRD.

CI CONTENTION: The application states simply, “It should be rated according to VASRD instead of DODI 1332.39.” He does not elaborate further or specify a request for Board consideration of any additional conditions.

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 the unfitting PTSD condition are addressed below. The OSA and remaining conditions (adjudicated as not unfitting by the PEB) were not alluded to in the CI’s request, and thus are not within the DoDI 6040.44 defined purview of the Board. Those, and any other conditions or contention not requested in this application, remain eligible for future consideration by the Army Board for Correction of Military Records.

RATING COMPARISON:

Final Service PEB - 20091027				VA (13 Mo. Prior to Adjudication Date*) – Effective 20081227			
On TDRL – 20081227	Code	Rating		Condition	Code	Rating	Exam
Condition		TDRL	Sep.				
PTSD	9411	50%	10%	PTSD w/ Alcohol Abuse	9411	70%	20081027
OSA	Not Unfitting			OSA	6847	50%	20081030
Hypertension	Not Unfitting			Hypertension	7101	0%	20081030
Hyperlipidemia	Not Unfitting			Not ratable by VASRD			20081030
Erectile Dysfunction	Not Unfitting			Erectile Dysfunction	7599-7522	NSC	20081030
Impaired Glucose Tolerance	Not Unfitting			Impaired Glucose Tolerance	7999-7913	NSC	20081030
Hepatic Steatosis...	Not Unfitting			Hiatal Hernia ... Alcoholic Hepatitis	7346	10%	20081030
No Additional MEB/PEB Entries				Not Service Connected (NSC) X 4 Additional			20081030
Rating: 50% → 10%				Rating: x0%			

*Represents VA rating proximate to TDRL placement; no VA rating proximate to permanent separation.

ANALYSIS SUMMARY: The “it” cited in the application logically refers to PTSD; and, the Board must assume that the CI surmises that the PEB rating was derived from DoDI 1332.39; however, the PEB’s DA Form 199 specifically references VASRD §4.129 for the TDRL rating, and cites specific criteria of VASRD §4.130 for the permanent rating. The Board’s charge in this case is therefore limited to satisfying itself that the TDRL rating did not fairly exceed the 50% minimum derived from §4.129, based on the evidence proximate to TDRL placement; and, assessing the fairness of the permanent rating IAW §4.130 criteria, based on evidence proximate to permanent separation.

Posttraumatic Stress Disorder (PTSD). The CI was treated for depression prior to his first deployment. All mental health records make clear that his cardinal Criterion A stressor occurred in April 2004 during his first Iraq deployment. This involved the proximate combat death of a friend and exposure to the mutilated remains. Although there are no mental health encounters in the service treatment record (STR) until after the second deployment, numerous subsequent notes document that psychiatric symptoms developed in the aftermath of the 2004 incident. The CI first sought psychiatric care in January 2007. Typical symptoms for PTSD were elaborated which included irritability, hypervigilance, nightmares and sleeplessness; and, an Axis I diagnosis of PTSD was recorded. The CI underwent extensive outpatient psychotherapy and pharmacotherapy over the ensuing 18 months, for which numerous STR entries are in evidence. No hospital admissions were required and no acute symptoms (suicidality, psychosis, delusions, etc.) were documented. There were active personal stressors (divorce, financial) during this period. Global Assessment of Functioning (GAF) scores were consistently in the 51-60 range, connoting moderate impairment. The last outpatient entry (initiating the MEB) stated that he was “making significant progress”, but “his condition remains essentially unchanged, and is unfitting...” Alcohol use was denied per numerous STR entries, and “occasional” use was noted in the narrative summary (NARSUM). The NARSUM psychiatrist documented, “He uses the following words to characterize his PTSD symptoms ‘Fear, hypervigilance, paranoid, helpless, despair, sadness, sense of impending doom and isolation.’” The CI was prescribed 3 psychotherapeutic/sleep medications, plus Prazosin for nightmares. The NARSUM characterized severity as, “On a good day, PTSD symptoms are rated 1/10, a bad day is 10/10 with full-blown panic attack.” The NARSUM mental status exam (MSE) noted a depressed mood and constricted affect; without suicidal ideation, delusional or hallucinatory symptoms, speech disturbance, cognitive impairment or other abnormalities. At the VA psychiatric Compensation and Pension (C&P) exam (2 months prior to separation), the examiner noted similar symptoms (and technical nomenclature) as those documented in the NARSUM. The VA examiner (3 months after the NARSUM) recorded twice weekly “alcohol abuse” and a pattern of same since the first deployment. The VA MSE was equivalent to that

recorded in the NARSUM. Social functioning was notable for some isolation and estrangement, but tolerance for public environments; and, the divorce had been settled. The VA psychiatrist's description of occupational functioning is excerpted below.

He states that currently he is working. ... His relationship with his supervisor is fair and his relationship with his co-workers is fair. While performing this job he has not lost any time from work, however it was deemed, per military records, that he was unable to perform assigned job duties to severity of trauma symptoms.

The VA psychiatrist's GAF assignment was 40, suggesting major impairment; although, the action officer does not find support for a score that low from the examiner's recorded history and MSE.

During the 11 month period of TDRL, there are no treatment notes for the first 4 months. A VA intake note at that time noted continued symptoms (more typical of depression than PTSD), and an escalation of alcohol use to 3-4 times weekly. It documented full time employment in human resources at a military facility. There was a VA consult for evaluation of traumatic brain injury (TBI) on the same day, documenting a history of numerous concussive exposures during the Iraq deployments. There is no corroboration of such events or complaints in the STR, NARSUM or prior to separation C&P. There are only two cursory outpatient notes from the VA after the above encounters for the balance of the TDRL period. There are no formal MSE's or GAF assignments for the period of TDRL. There are two no-show entries in July 2009 (4 months preceding permanent separation), and there are no further entries until the final TDRL evaluation in September 2009. The TDRL psychiatrist noted hypervigilance, sleep disturbance, continued nightmares, anxiety, hyperstartle, "avoidance behaviors" (crowds, etc.), and "difficulties with social attachment." Medications were changed, but similar to the regimen when entering TDRL. Alcohol use 4 times weekly (in six beer quantities) was documented, with comments that this was coming under better control; and, no Axis diagnosis of alcohol abuse was made (unlike the VA psychiatric opinion). The examiner commented on the CI's lack of interim treatment. The MSE recorded the CI's mood description as "whatever" with a "full ranging" affect. The MSE was otherwise normal without gross cognitive deficit. No GAF assignment was made, although the "impairment for social/industrial adaptability" (DoDI 1332.39 defined) was assessed as "definite." Occupationally, the TDRL examiner made note that the CI had quit his aforementioned employment quoting the explanation "there were too many people around and it was too military;" and related the CI's report that he "has been unable to work due to psychiatric symptoms and that his disability rating was increased to 100% by the VA." The examiner concluded with, "Without treatment, is it not likely that he will be able to secure and maintain employment in the civilian sector." There is in evidence a probative VA psychiatric C&P re-evaluation performed a month after permanent separation. It documented that the CI "has not been to MH [Mental Health] yet, because he's not comfortable talking to people about how he is feeling." The stated symptoms were similar to those at the TDRL re-evaluation; although, the examiner noted an additional symptom of panic attacks "not full blown ... 2-3 times per week." The exam stated that the CI had "quit his job in May due to stress." The GAF assignment was 50. That examiner also commented on the limitations imposed by the CI's abandonment of treatment; and, concluded that with this limitation he was "employable but only under limited conditions and low stress." There is a conflict with the CI's employment status at the time of permanent separation based on the history recorded in the VA and TDRL psychiatric evaluations, and that from a VA C&P evaluation for OSA performed a month after permanent separation. The latter described details of adverse consequences of that condition on *present* employment, stating that the CI was working "fulltime" in a human resources position which he had held "less than 1 year." Independent inquiry by the Board confirmed that the CI had held the post-separation human resources position from March – May, 2009; and, the basis for the conflicting history remains unresolved.

The Board directs attention to its rating recommendation based on the above evidence. All members agreed that the §4.130 criteria for a TDRL rating higher than 50% at the time of placement on TDRL were not met; since the CI was occupationally functional and none of the threshold symptoms for a 70% rating, such as suicidal ideation or significant cognitive impairment, were present. In regards the permanent rating recommendation, a significant factor in this case is the fact that the CI was not compliant with recommended treatment during the rating interval; and, in fact may have been self-medicating with alcohol. Since alcohol or substance abuse is recognized as a feature of the psychiatric illness itself, any direct impairment from its use is not fairly immune from disability rating; but, non-compliance with available and recommended treatment options is an issue which the members agreed should be considered with regard to the Board's recommendation in this case. Both the TDRL and the VA psychiatrists caveated their conclusions regarding occupational impairment with the opinion that better prospects were in the offering with treatment. A permanent disability rating reasonably should reflect the severity of a condition after stabilization with an expectation that reasonable treatment options have been exhausted. Since non-compliance imposes a significant degree of speculation as to what potential benefit has been forfeited, members agreed that no formal deduction could be approximated; but, concluded that some tempering of the severity reflected by the evidence was a fair variable to entertain in the Board's decision making.

The members first deliberated if the PEB assigned 10% rating was reasonable as a permanent rating recommendation. The §4.130 description for a 10% rating is "occupational and social impairment due to mild or transient symptoms which decrease work efficiency...only during periods of significant stress, or; symptoms controlled by continuous medication." With or without treatment, the evidence supports a conclusion that the symptoms were neither mild nor transient; and, they were not controlled by continuous medication even during a protracted period of compliance with aggressive treatment measures. Likewise the occupational impairment was logically constant, not episodic or stress dependent. The compliance factor would go to severity of impairment, but continuing treatment (more likely than not) would not have eliminated occupational impairment or rendered it sporadic. Members agreed, therefore, that the §4.130 criteria for a 10% rating were exceeded in this case. Members next deliberated if a 70% permanent rating recommendation, as initially conferred by the VA, could be supported by the evidence. The §4.130 rating description for 70% is "occupational and social impairment, with deficiencies in most areas, such as work, school, family relations, judgment, thinking, or mood;" referencing (among others) such symptoms as suicidal ideation, illogical speech, "near continuous panic or depression," spatial disorientation, and neglect of hygiene. All members agreed that the evidence, even without considering the compliance factor, did not draw a disability picture as bleak as the one described in the 70% criteria. The members then settled on deliberations for a 50% vs. a 30% permanent rating recommendation. The rating description for 50% is "occupational and social impairment with reduced reliability and productivity;" referencing typical symptoms of flat affect, stereotyped speech, frequent (greater than weekly) panic attacks, deficits in comprehension and memory, impaired judgment, mood disturbance, and difficulty with establishing relationships. The rating description for 30% is "occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks (although generally functioning satisfactorily ...);" referencing typical symptoms of depression, anxiety, suspiciousness, panic attacks (less than weekly), sleep disturbance, and mild memory loss. The reduced reliability and productivity cited for a 50% rating was arguably supported by the evidence; although, also arguably adversely affected by the absence of treatment. Panic attacks (frequency not elaborated), mood disturbance and relationship problems were clearly present; although none of the other symptoms exemplified under 50% were in evidence. The decreased work efficiency and lapses in occupational capacity encompassed in the 30% language were supported by the employment history if it is assumed that the CI remained unemployed after May 2009; although, it could be argued that the CI's lapse in employability

may well have been avoided with full treatment. Virtually all of the typical symptoms exemplified in the 30% description were to be found in the evidence. After due deliberation, considering all of the evidence and conceding reasonable doubt, the Board recommends a permanent disability rating of 30% for the PTSD 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 PTSD, the Board unanimously recommends no change in the disability rating of 50% under code 9411 for the period of temporary retirement, IAW VASRD §4.129; and, a 30% permanent rating, 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; with a permanent 30% disability retirement as indicated below.

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

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120210, w/atchs.
- Exhibit B. Service Treatment Record.
- Exhibit C. Department of Veterans Affairs Treatment Record.

XXXXXXXXXXXXXXXXX
Director
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 XXXXXXXXXXXXXXXX, AR20130001976 (PD201200152)

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 recharacterize the individual's separation as a permanent disability retirement with the combined disability rating of 30% effective the date of the individual's original medical separation for disability with severance pay.

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 permanent disability retirement 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 date of the original medical separation for disability with severance pay.

c. Adjusting pay and allowances accordingly. Pay and allowance adjustment will account for recoupment of severance pay, and payment of permanent retired pay at 30% effective the date of the original medical separation for disability with severance pay.

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

XXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)