RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXX BRANCH OF SERVICE: navy

CASE NUMBER: PD1200155 SEPARATION DATE: 20040521

BOARD DATE: 20120514

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Master-at-Arms/E-3 (00183 / Gate Sentry), medically separated for Posttraumatic Stress Disorder (PTSD). The CI was diagnosed with PTSD consequent to a sexual assault while stationed in Crete, Greece in July 2003. Criterion A stressors were documented and the Diagnostic and Statistical Manual of Mental Disorders (DSM IV) criteria for an Axis I diagnosis of PTSD were met. She did not respond adequately to treatment and was unable to perform within her Rating or meet physical fitness standards. She was referred to a Medical Evaluation Board (MEB). Chronic PTSD, Nicotine Dependence and Alcohol Dependence with Physiological Dependence were forwarded to the Physical Evaluation Board (PEB) on NAVMED 6100/1. No other conditions appeared on the MEB’s submission. The PEB adjudicated the PTSD condition as unfitting, rated 10% with likely application of SECNAVINST 1850.4E; Alcohol Dependence with Physiological Dependence and Nicotine Dependence conditions were rated category IV (Conditions which do not constitute a physical disability). The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: “My initial rating for unfitting PTSD should be 50% under 38 CFR 4.129 and should permanently continue at 50% under 38 CFR 4.130.”

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in DoDI 6040.44 (4.a) is limited to those conditions which were determined by the PEB to be specifically unfitting for continued military service; and, when requested by the CI, those condition(s) “identified but not determined to be unfitting by the PEB.” The rating for the unfitting PTSD condition as requested for consideration meets the criteria prescribed in DoDI 6040.44 for Board 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 Board for Correction of Naval Records (BCNR).

RATING COMPARISON: No VA disability rating for physical disability compensation yet established.

ANALYSIS SUMMARY: The PEB rating, as described above, was derived from SECNAVINST 1850.4E and/or 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. The CI participated in the *Sabo et al v. United States* class action lawsuit and has received a 50% PTSD rating for a retroactive six-month period on the Temporary Disability Retired List (TDRL) in accordance with the settlement. Since the CI received a PTSD rating of less than 30% from the PEB, she was given a choice of accepting the rating assigned by the PEB as a permanent rating or submitting applications to either the PDBR or BCNR. The Board must determine the most appropriate fit with VASRD 4.130 criteria at six months for its permanent rating recommendation. There was no VA Compensation and Pension (C&P) examination or VA rating in this case.

PTSD Condition. The CI related a sexual assault while sleeping in her barracks in Souda Bay, Greece. The CI was suicidal for three weeks following the assault and had continued thoughts of killing the assailant with a gun. She sought pastoral and mental health care for PTSD symptoms and was started on an antidepressant and sleeping medication and changed station to the Norfolk VA area for further treatment.

The severity of the CI’s PTSD condition as evidenced by the MEB evaluation could best be described as moderate. At the time of the MEB exam, the CI had continued symptoms of nightmares; intrusive recollections of the assault; anxiety; "flashbacks" when she feels as if she is being smothered by her assailant; discomfort around strange men; avoidance; diminished concentration; insomnia; fatigue; diminished interest in usual pleasurable activity; irritable with verbal outbursts, but no physical violence; hypervigilance and an exaggerated startle response. She had thoughts of killing the assailant with a gun, but would not seek him out and did not have a plan. She was also drinking heavily following the assault and was diagnosed with alcohol dependence with physiological dependence. She was taking an antidepressant (SSRI) and had recently discontinued sleeping medication as ineffective. There was no evidence of hospitalization and the CI was compliant with treatment. The CI was in a sustained romantic relationship and had one Captain’s Mast for disobeying an order while “in school.” The CI was drinking 5-6 alcoholic beverages 4 or more times per week and endorsed tolerance and morning drinks to relieve hangover symptoms. Records indicated a history of sexual abuse prior to service entry with a rape in college. There was no indication of mental health symptoms or treatment, or alcohol abuse prior to service entry or prior to the in-service sexual assault. On mental status examination (MSE) her affect was restricted and impulse control was poor. There was no suicidal or homicidal ideation, delusional or hallucinatory symptoms, speech disturbance, or objective cognitive impairment. The commander's non-medical assessment indicated the CI was missing work 5-6 hours per week, was not able to carry a weapon, and “does suffer from some form of Post Traumatic Stress Disorder that is, on occasion, debilitating.” Her Global Assessment of Functioning (GAF) score was 51, connoting moderate impairment (at the lowest end of the moderate symptom range, closest to serious symptoms). The examiner stated: “The degree of industrial and military impairment related to the diagnosis of posttraumatic stress disorder is deemed moderate to severe. … The total degree of civilian performance impairment from all sources is deemed moderate.”

There was no relevant VA outpatient or civilian provider evidence providing psychiatric details during or proximate to the six-month interval. The VA treatment records began in May 2011, seven years after separation, with scant documentation relevant to the rating timeframe. This deprives the Board of evidence for judging the stress of transition to civilian life, which is a key intent of §4.129, and generally a significant element underlying the Board’s permanent rating recommendation. In cases such as this, the Board, of necessity, must base the permanent rating recommendation on the information at separation and, to a certain extent, on the anticipated (more likely than not) prognosis at six months.

The most proximate source of comprehensive evidence on which to base the permanent rating recommendation in this case is the narrative summary (NARSUM) examination performed 5 months prior to separation. Although the PEB adjudicated the Alcohol Dependence with Psychological Dependence as category IV (conditions which do not constitute a physical disability) IAW DoDI 1332.38, all mental health symptoms are considered in the overall PTSD §4.130 rating. There was no record of inappropriate alcohol use prior to the recent sexual assault and alcohol abuse is one of the DSM IV criteria for the diagnosis of PTSD. There was no valid basis for any rating deduction for alcohol use or any existed prior to service (EPTS) mental health disorder: of note, the PEB specified “EPTS – Reduced by 0%.”

The Board directs its attention to its rating recommendations based on the evidence just described. 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; and, therefore the minimum 50% TDRL rating prescribed by §4.129 is applicable. As regards the permanent rating recommendation, all members agreed that the §4.130 threshold for a 70% rating was not approached and that the criteria for a 10% rating were well-exceeded. The deliberation settled on arguments for a 50% versus a 30% permanent rating recommendation. The 30% description (“occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks”) is a better fit with the occupational functioning in evidence. The Board deliberated if the constant social impairment supported a 50% rating recommendation, although the preponderance of the hard evidence favors a 30% rating strictly IAW VASRD §4.130. After due deliberation, considering the totality of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a permanent PTSD disability rating of 30% 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. In the matter of the PTSD condition, the Board unanimously recommends a 30% permanent rating at 6 months IAW VASRD §4.130 following the initial TDRL rating of 50% in retroactive compliance with VASRD §4.129, DOD instruction and Sabo class action lawsuit settlement. 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 to reflect a permanent 30% disability retirement as indicated below.

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

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120207, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

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President

Physical Disability Board of Review

MEMORANDUM FOR COMMANDER, NAVY PERSONNEL COMMAND

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION XXXXXXXXXXXXXX

Ref: (a) DoDI 6040.44

1. I have reviewed the subject case pursuant to reference (a) and direct the subject member’s official records be corrected to reflect the following disposition:

a. Separation from the Naval service due to physical disability rated at 50 percent with transfer to the Temporary Disability Retired List for the period 21 May 2004 through 20 November 2004.

b. Separation due to disability rated at 10 percent effective 21 November 2004.

2. Please ensure all necessary actions are taken to implement this decision, including the recoupment of previously paid disability separation pay if warranted, and notification to the subject member once those actions are completed.

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Principal Deputy

Assistant Secretary of the Navy

(Manpower & Reserve Affairs)