RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200205 SEPARATION DATE: 20070827

BOARD DATE: 20120508

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (21B1P/Combat Engineer), medically separated for posttraumatic stress disorder (PTSD). He did not respond adequately to treatment and was unable to perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. He was issued a permanent S3 profile and underwent a Medical Evaluation Board (MEB). Chronic PTSD was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. One other condition, as identified in the rating chart below, was forwarded on the MEB submission as medically acceptable conditions. The PEB adjudicated the PTSD condition as unfitting, rated 10%; additionally alcohol dependence condition rated category II; with likely application of the Veterans Administration Schedule for Rating Disabilities (VASRD). 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 it should permanently continue at 50% under 38 CFR 4.130.” He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

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.” 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 Army Board for the Correction of Military Records (ABCMR).

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – Dated 20070718** | **VA (2 Mo. After Separation) – All Effective Date 20070828** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Posttraumatic Stress Disorder | 9411 | 10% | Posttraumatic Stress Disorder | 9411 | 10% | 20071030 |
| Alcohol Dependence, Early Remission | Not Ratable\* | No Entry |
| ↓No Additional MEB/PEB Entries↓ | 0% x 0/Not Service-Connected x 3 | 20070927 |
| **Combined: 10%** | **Combined: 10%** |

\*See Other PEB Conditions; not a separately unfitting or ratable condition.

ANALYSIS SUMMARY: The PEB rating, as described above, was derived from DoDI 1332.39 and preceded the promulgation of the National Defense Authorization Act (NDAA) 2008 mandate for DoD adherence to 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 6-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, and the Department of Veterans’ Affairs (DVA) also rated PTSD less than 30%, he was given a choice of accepting the rating assigned by the DVA as a permanent rating or submitting applications to either the PDBR or BCMR. The Board must determine the most appropriate fit with VASRD 4.130 criteria at 6 months for its permanent rating recommendation. The most proximate source of comprehensive evidence on which to base the permanent rating recommendation in this case is the VA Compensation and Pension (C&P) examination performed 2 months after separation. There was no relevant VA outpatient or civilian provider evidence providing psychiatric details during the 6-month interval.

Posttraumatic Stress Disorder Condition. The CI was diagnosed with PTSD following his second combat deployment to Iraq. PTSD was manifested by intrusive thoughts, flashbacks, nightmares, hyper-vigilance, exaggerated startle response, irritability, anxiety, emotional withdrawal, dysphoria, restricted affect, insomnia, diminished interest, and feeling detached from others. PTSD was significantly complicated by alcohol abuse; however, the CI’s alcohol abuse was in remission by April 2007, 4 months before separation. The only examination available post-separation is the VA C&P examination, conducted 30 October 2007, 2 months after separation. The CI endorsed continued symptoms including unwelcome thoughts of experiences, feeling jumpy and easily startled, experiencing nightmares periodically, avoidance of crowds, avoidance of news of the war, feeling impatient and resentful, and a few depressive symptoms occurring off and on. Panic attacks were controlled with medication; “panic attacks are pretty well addressed with the medications,” with break through symptoms once per week that did not create a problem. The CI continued to abstain from alcohol, and was sleeping well with medications. Although he reported being easily startled, noises at work were not a problem and he reported no problems driving. He denied any obsessive compulsive behaviors such as performing security checks at home. An explosion at a chemical solvent distribution facility on the other side of town the day before the C&P examination triggered memories of his war experiences.

The CI was employed fulltime for a month working in a warehouse. He stated he liked the job well enough and no occupational problems were reported. He was planning on attending trade school for welding. He was married while on leave during his second deployment. At the time of the C&P examination, he and his wife were living with his wife’s parents. His wife was also working and they were looking for their own place to live. He reported getting along well with his wife and doing better since he had quit drinking and was taking his medications. No problems with his spouse or family were reported and he described normal daily life with his wife, in-laws and biological father. He and his wife socialized with other couples from time to time. On mental status examination, the examiner observed there was some tension and anxiety. As the interview progressed the CI was observed to show some humor at times. Speech was linear, logical, and goal directed without evidence of thought disturbance, hallucinations, delusions, obsessions, compulsions, or suicidal ideation. Memory and decision making were not impaired. The C&P examiner noted the CI was functioning reasonably well at that time but expressed uncertainty regarding how he would respond to increased stressors.

With regard to permanent rating at the time of removal from the 6-month period of constructive TDRL, all Board members agreed the evidence of the examinations at the time did not approach the 50% rating; therefore Board deliberations centered on a 10% versus a 30% rating at the time of removal from TDRL. Social and occupational impairment consistent with a 30% evaluation (“occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks”), could be surmised from some of the documented symptoms at the time of the C&P examination including some depressive symptoms, some breakthrough panic symptoms, intrusive thoughts, easily startled, and periodic nightmares. Although there were some breakthrough panic symptoms, they did not cause the CI any problem. There was no suspiciousness or impairment in memory or decision making, and the CI slept well with use of medications. Significantly, the CI remained abstinent from alcohol. Despite his persisting symptoms, occupational and social functioning was good. Based on this examination, the VA assigned a 10% rating, that to the knowledge of the Board, was not increased with an effective date within a year of separation. Board members concluded that symptoms were “controlled by continuous medication” such that the CI noted he was having no social or occupational impairments and was meeting all his obligations. The CI’s good level of social and occupational functioning more nearly approximates the 10% rating. After due deliberation and in consideration of all evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends 10% as the fair permanent separation rating for PTSD in this case.

Other PEB Conditions. The other condition forwarded by the MEB and adjudicated as not a separatedly unfitting condition by the PEB was alcohol dependence in early remission. This condition was reviewed by the action officer and considered by the Board. Alcohol abuse is not a condition that constitutes a physical disability and is not ratable in the absence of an underlying ratable causative disorder. In this case, PTSD would be considered an underlying causative disorder. Any contribution of alcohol abuse to the social and occupational functioning is subsumed under the overall 4.130 rating for PTSD discussed above.

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 recommends a 10% permanent rating IAW VASRD §4.130 following the initial TDRL rating of 50% in retroactive compliance with VASRD §4.129 and Sabo class action lawsuit settlement. There were no other conditions within the Board’s scope of review for consideration.

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

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| **UNFITTING CONDITION** | **VASRD CODE** | **PERMANENT****RATING** |
| Posttraumatic Stress Disorder | 9411 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120217, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs Treatment Record

 XXXXXXXXX

 President

 Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

(TAPD-ZB / ), 2900 Crystal Drive, Suite 300, Arlington, VA 22202

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

for XXXXXXXXXX, AR20120008794 (PD201200205)

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 constructively place the individual on the Temporary Disability Retired List (TDRL) at

50% disability for six months effective the date of the individual’s original medical separation for disability with severance pay and then following this six month period no recharacterization of the individual’s separation or modification of the permanent disability rating of 10%.

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 as follows:

 a. Providing a correction to the individual’s separation document showing that the individual was separated by reason of temporary disability effective the date of the original medical separation for disability with severance pay.

 b. Providing orders showing that the individual was separated with a permanent combined rating of 10% effective the day following the six month TDRL period with no recharacterization of the individual’s separation.

 c. Adjusting pay and allowances accordingly. Pay and allowance adjustment will provide 50% retired pay for the constructive temporary disability retired six month period effective the date of the individual’s original medical separation and adjusting severance pay as necessary to account for the additional TDRL time in service.

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 XXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA