

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME:
CASE NUMBER: PD1200325
BOARD DATE: 20121121

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20040914

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (11B/Infantryman), medically separated for posttraumatic stress disorder (PTSD). The CI developed symptoms of anxiety and depression after a deployment to Iraq in 2003. A diagnosis of PTSD was made in 2004. The PTSD condition could not be adequately rehabilitated with treatment to meet the physical requirements of his Military Occupational Specialty (MOS). He was issued a permanent S3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded no other conditions for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated the PTSD condition as unfitting, rated 10%. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: "This application is based on the Michael Sabo, ET AL, VS United States class action law suit and settlement which mandates that the services and PEBs must grant a disability rating of at least 50% for service members separated for PTSD between Sept 11, 2001 and Dec 31, 2009. I clearly was diagnosed with Post Traumatic Stress Disorder with Anxiety, issued a rating of only 10% by the PEB, and subsequently discharged. The board should change my disability rating to at least 50%."

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

RATING COMPARISON:

Service IPEB – Dated 20040610			VA (11 Mos. Post-Separation) – All Effective Date 20040925			
Condition	Code	Rating	Condition	Code	Rating	Exam
Posttraumatic Stress Disorder	9411	10%	Posttraumatic Stress Disorder*	9411	100%	20050706
					50%	
					100%	
↓No Additional MEB/PEB Entries↓			Not Service-Connected x 2			20050706
Combined: 10%			Combined: 100%			

*Per VARD dated 20050613 rating was 100% effective 20040925 and 50% from 20050301. Per VARD dated 20050801 rating 100% effective 20040925 and 100% effective 20050301.

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. While the DES considers all of the member's medical conditions, compensation can only be offered for those medical conditions that cut short a member's career, and then only to the degree of severity present at the time of final disposition. The DES has neither the role nor the authority to compensate members for anticipated future severity or potential complications of conditions resulting in medical separation nor for conditions

determined to be service connected by the Department of Veterans Affairs (DVA) but not determined to be unfitting by the PEB. However the DVA, operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions and to periodically re-evaluate said conditions for the purpose of adjusting the Veteran's disability rating should the degree of impairment vary over time. The Board's role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to VASRD standards, based on severity at the time of separation. 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 6044.40, 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.

Posttraumatic Stress Disorder Condition. The CI was assigned to a combat unit deployed to Kuwait, Qatar and Iraq, January to July 2003. He reported involvement in traumatic combat in Iraq during the period 20 March to 13 April 2003. On 12 November 2003, 4 months after return from deployment, the CI presented to a walk in clinic with anxiety, decreased appetite, irritability and difficulty sleeping. He expressed dependence on his wife and feeling depressed when not with her or those connected to him. At that time, the CI noted no serious problems while in Iraq. A diagnosis of anxiety state was made. On a later exam, 26 March 2004, the CI described a many year problem with mild/moderate anxiety especially in social situations, but noted the condition to be worse since deployment. In March 2004, during combat training the CI was referred by his commander for increasing irritation, anger, decreasing social interaction and inability to relax without alcohol of one month's duration. The CI was seen by psychiatry on 26 March 2004 for increasing agitation, irritability, depression and insomnia and was begun on psychotropic medication. On 31 March 2004 a diagnosis of PTSD was made without reference to specific stressors. The CI improved with medication adjustment, but symptoms of depression, anger and anxiety continued. At the MEB psychiatry narrative summary (NARSUM) evaluation on 29 April 2004, 5 months before separation, the CI was cooperative, but seemed nervous and withdrawn. His affect was anxious and depressive, but suicidal ideation was absent. Thought processes were logical; cognition and judgment was adequate and insight, partial as the CI agreed that he had a mental illness requiring ongoing treatment. The CI was noted to be improved with medical treatment; impairment for social and industrial adaptability (S&I) was judged mild. On psychiatry evaluation on 7 May 2004, 6 months prior to separation, the first reference to experiences in Iraq appear, as CI reported anxiety about transition, MEB processing, and excessive cleaning to 'keep his mind off memories of Iraq.' On 21 May 2004, a second MEB psychiatry NARSUM changed the civilian S&I to 'definite.' In June the CI suffered issues with his spouse and child abuse resulting in hospital admission, 30 June 2004 to 12 July 2004, for severe agitation with attempts at self injury. The CI reported that his current situation and experiences made him lose control. He offered for the first time, that he killed many enemy soldiers and witnessed many mutilated bodies, the cause of his symptoms. At discharge the CI, on medication, was reported cooperative, friendly, with clear, cogent goal oriented thought with fair impulse control. The CI improved until late August when stress increased with return of bad dreams, from the situation with kids, concerns over future, being forced to return to work and people making fun of him. On mental health evaluation, 14 September 2004, the day of separation, the CI reported increased irritability and insomnia related to out processing, not having custody of kids, and negative feelings about specific combat related incidents (not defined) in Iraq. In October and November, the CI was continually stressed by minor things such as bills, phone calls and chores, but noted slow improvement in symptoms with medication and stabilization of his marital relationship. At the time of a VA mental health clinic evaluation on 7 February 2005, 5 months after separation, the CI reported having relocated to Michigan, his home town. He remained married with two children in Georgia who will join him in the near future. He was living with his grandmother, spending time with his parents and

siblings in the area and was employed at a bank. He noted liking to walk and exercise and had membership at the YWCA where he played racquetball with his father 3 to 5 times a week. The CI reported night sweats 3 times a week with no mention of flashback or nightmares. He noted mild depression, 'ok' appetite and occasional palpitation in crowds with loud noises, but denied 'hitting the ground' with loud noises. On PTSD screen, the CI reported nightmares, hypervigilance, and detachment in the last month. On examination the CI was awake, alert, oriented and appropriate with logical thought processes. At the VA Compensation and Pension (C&P) psychiatry exam performed on 6 July 2005, 10 months after separation, the CI reported receiving therapy every 2 weeks. He was hopeful about his situation and noted that emotional symptoms intersected with present legal problems. At this time CI was free on bond for assaulting his mother in law. He had obtained a criminal attorney working to achieve VA hospitalization for treatment of PTSD as an alternative to jail. The CI reported hearing voices of buddies calling to him, and experiencing combat related nightmares that were of different scenarios than the ones he actually experienced in combat. On the statement in support of his VA claim, the CI reported shooting children and women, putting bodies in bags by hand, and viewing bodies being burned to death and their flesh peeling off. The CI noted a decrease of panic attacks to approximately one a week and a decrease in severity of depression from 8-9/10 to 6/10. He had separated from his wife in March and was living with a maternal grandmother. He was able to maintain minimal personal hygiene, and other activities of basic living. On examination the CI appeared depressed, but was oriented, without delusion or hallucination or impairment of thought process or communication. The examiner assigned a Global Assessment of Functioning (GAF) of 50, determined him unable to be employed or involved in an educational program and noted: "The veteran's symptom intersect with his present legal problem in that he is currently free on bond after having assaulted his mother in law in March 2005".

The Board directs attention to its rating recommendation based on the above evidence. The PEB and VA both rated the condition 9411, PTSD, but at different ratings. PEB rated at 10% and VA on VARD 13 June 2005 initially at 100%, effective 25 September 2004, the day after separation, based on the STR, reduced to 50%, effective 1 March 2005, and increased to 100%, effective 1 March 2005, on VARD 1 August 2005, based on new C&P exam of 6 July 2005. 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 Veterans' Administration Schedule for Rating Disabilities (VASRD) §4.129. IAW DoDI 6040.44 and DoD guidance (which applies current VASRD 4.129 to all Board cases), the Board is obligated to recommend a minimum 50% PTSD rating for a retroactive 6-month period on the Temporary Disability Retired List (TDRL). The Board must then determine the most appropriate fit with VASRD 4.130 criteria at 6 months for its permanent rating recommendation. For §4.129 to be applicable, the CI must have been exposed to a traumatic event in which both of the following were present: (1) the person experienced, witnessed, or was confronted with an event or events that involved actual or threatened death or serious injury, or a threat to the physical integrity of self or others; and (2) the person's response to the trauma involved intense fear, helplessness, or horror. The Board then undertook to determine if §4.129 was applicable in this case. The Board debated if there was reasonable evidence that the history, symptoms, and clinical findings described in the above psychiatric examinations were connected to the stresses he experienced in combat during his deployment. Despite the delay in articulation of specific stressing experiences, confusing record reports and myriad of contributing social and domestic stressors, all producing anxiety, the Board concluded that the application of §4.129 was appropriate to this case IAW §4.30 (reasonable doubt), and would premise its rating recommendation on the psychiatric acuity at conclusion of TDRL period. On review of record in evidence, the Board unanimously recommended a 50% PTSD rating on the TDRL with subsequent evaluation IAW VASRD §4.130 criteria at 6 months for its permanent rating. The most proximate source of comprehensive evidence on which to base the permanent rating recommendation is VA mental health evaluation on 7 February 2005, five months after

separation. The Board then undertook final rating IAW §4.130. All Board members agreed that the preponderance of evidence at the time of this exam did not support the 10% rating; therefore, the Board deliberations centered on a 30% versus a 50% rating. 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 reported by the including nightmares, hypervigilance and detachment. At the time of separation the CI was working, socially involved with friends and family and community activity, living with a maternal grandmother and awaiting the arrival of his wife and family with symptoms adequately controlled on medication. The Board concluded that while he continued to manifest symptoms requiring medication, the impairment from the psychiatric disorder at the time of TDRL conclusion would decrease work efficiency and ability to perform occupational tasks during periods of stress. After due deliberation, the Board by divided vote agreed the preponderance of the evidence to support a rating of 30%. The Board noted the marked deterioration in the CI’s status on the C&P evaluation of 6 July 2005, 10 months after separation. This examination was undertaken during a period of extreme psychosocial, domestic and environmental stress including, disruption of marriage by separation with pending divorce, legal restraint from visiting children, allegations of child abuse, assault charges toward mother-in-law with ongoing legal action and possible jail time and related loss of employment. The Board assigned lower probative value to this exam as it is vulnerable to the compelling psychological influence of secondary gain. The Board agreed that psychiatry exam performed on 7 February 2005 best reflected the functional ability of the CI in the average daily civilian social life and occupational environment which is a core intent of §4.129. After deliberation, considering the totality of the evidence and with deference to VASRD §4.3 (reasonable doubt), the Board recommends 30% as the fair and equitable permanent rating for PTSD 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 an initial TDRL rating of 50% in retroactive compliance with VASRD §4.129 as DOD directed and a 30% permanent rating at six months 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; and, that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of his prior medical separation:

UNFITTING CONDITION	VASRD CODE	RATING	
		TDRL	PERMANENT
PTSD	9411	50%	30%
	COMBINED	50%	30%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120329, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

President
Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency
(TAPD-ZB), Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

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 recharacterize the individual's separation as a permanent disability retirement with the combined disability rating of 30%.

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 temporary disability 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 day following the six month TDRL period.

c. Adjusting pay and allowances accordingly. Pay and allowance adjustment will account for recoupment of severance pay, provide 50% retired pay for the constructive temporary disability retired six month period effective the date of the individual's original medical separation and then payment of permanent disability retired pay at 30% effective the day following the constructive six month TDRL period.

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

Deputy Assistant Secretary
(Army Review Boards)