RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXX
CASE NUMBER: PD1200711
BOARD DATE: 20130125

BRANCH OF SERVICE: ARMY
DATE OF PLACEMENT ON TDRL: 20000519
DATE OF PERMANENT SEPARATION: 20030819

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (02T/Guitar Player), medically separated for bipolar disorder. The CI began exhibiting depressive symptoms in 1998 at Fort Bragg and was eventually hospitalized for suicidal ideations. Subsequently he was diagnosed with cyclothymia, profiled as S2 and was treated pharmacologically and with psychotherapy. His treatment continued with his transfer to Fort Benning in 1999; however, despite these efforts, the CI's symptoms continued and were re-classified as Bipolar I disorder. The CI did not improve adequately with treatment to meet the physical requirements of his Military Occupational Specialty or satisfy physical fitness standards. In 2000, he was issued a permanent S3 profile and was referred for a Medical Evaluation Board (MEB). The MEB forwarded bipolar disorder, Type I to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Status post (s/p) intra-articular unicondylar fracture, left small finger, identified in the rating chart below, was also identified and forwarded by the MEB. The PEB adjudicated the Bipolar I disorder condition as not sufficiently stable for final adjudication and placed him on the Temporary Disability Retired List (TDRL) in 2000, rated 30%. The remaining small finger condition was determined to be not unfitting. He was continued on the TDRL with an interim reevaluation in 2001, and then underwent a final evaluation after approximately 3 years on the TDRL. At that time the PEB adjudicated bipolar disorder as permanently unfitting, rated 10% with application of the Veterans Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: My bipolar disorder has drastically worsened. Please review my VA file regarding this.

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. The bipolar disorder condition requested for consideration meets the criteria prescribed in DoDI 6040.44 for Board purview, and are accordingly addressed below. The remaining condition (left small finger condition) rated by the VA at separation is not within the Board's 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 Army Board for Correction of Military Records.

TDRL RATING COMPARISON:

Service IPEB – Dated 20030804			
Condition	**Code**	**Rating**	
On TDRL – 20000519		**TDRL**	**Sep.**
Bipolar Disorder, Type I	9432	30%	10%
Status Post Fracture, Left Small Finger		Not Unfitting	
No Additional MEB/PEB Entries			
Combined: 10%			

VA* – All Effective Date 20000519			
Condition	**Code**	**Rating**	**Exam**
Bipolar Disorder, Type I	9432	30%**	20000126
S/P Fracture, Left Little Finger	5299-5227	0%	20000207
Combined: 30%			

* VA rating based on exam most proximate to date of permanent separation.
**VA rating decisions increased to 50% and 70%, effective 20090204 and 20100930 respectively, based on later exams; combined 50% and 70%.

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI's application, that there should be additional disability assigned for conditions which worsen over time. It is a fact, however, that the Disability Evaluation System (DES) has neither the role nor the authority to compensate members for anticipated future severity or potential complications of conditions resulting in medical separation. This role and authority is granted by Congress to the Department of Veterans Affairs (DVA). 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.

Bipolar Disorder Condition. The Board first addressed if the tenants of §4.129 (Mental disorders due to traumatic stress) were applicable. The Board noted that there was no "highly stressful event" for which provisions of §4.129 would apply, and therefore concludes that its application is not appropriate to this case. Consequently, the rating recommendation for the time of placement on the TDRL will not automatically reflect the 50% minimum as required under §4.129. At the time of entry onto TDRL, the CI's symptoms could best be described as mild to moderate. According to the VA Compensation and Pension (C&P) examiner on 26 January 2000 (4 months prior to placement on the TDRL), the CI lived with his fiancée, with whom he had a good relationship. Mental status exam (MSE) revealed good grooming and normal orientation. Mood was anxious, but not depressed. Affect was appropriate. Speech was normal, and there was no looseness of association or flights of ideas. Immediate and remote memory was intact, and attention and concentration were good. The diagnosis was cyclothymia with moderate symptoms. The Global Assessment of Functioning (GAF) was 75-80 (connoting no more than slight symptoms or impairment). The narrative summary psychiatrist on 25 February 2000 (3 months prior to placement on the TDRL) indicated that since his hospitalization in 1998 for a severe major depressive episode and active suicidal ideations, he benefitted significantly from one psychotropic medication and outpatient psychotherapy. However, despite excellent compliance with treatment, the CI continued to suffer from recurrent depressed mood, anhedonia, decreased energy and concentration, poor sleep and suicidal ideations. These symptoms alternated with manic or hypomanic episodes that included inflated or grandiose mood, racing thoughts, decreased need for sleep and potentially dangerous impulsivity. The examiner was also concerned about the possibility of delusions. MSE noted good grooming and normal orientation. Mood was anxious, psychomotor agitation;

pressured speech and motor restlessness were evident. Affect was anxious and expansive. Thought processing was linear, although occasional tangential or circumferential thinking was noted. There was no suicidal or homicidal ideation. Although some grandiose and paranoid thinking was expressed, it was not of a clearly delusional severity. Judgment, insight and memory were intact. The diagnosis was Type I bipolar disorder. A GAF score was not assigned. The described functional status was definite impairment for military duty and for social and industrial adaptability. The commander's letter on 16 February 2000 noted the CI's performance on a recent MOS audition was substandard and that he displayed inconsistent performance on daily, recurring tasks. It also stated that the supervisory chain was hesitant to assign stressful tasks for fear of triggering a manic-depressive episode. A VA outpatient follow-up evaluation on 9 September 2000 (4 months after placement on the TDRL) indicated that the CI experienced no obsessions, compulsions or panic attacks. He married 4 months previously and was expecting a child. He was employed as a land surveyor and planned to attend college. The CI considered the two psychotropic medications he was taking to be helpful, and stated he had experienced no suicidal thoughts during the preceding year. MSE revealed good grooming, normal speech and no psychomotor agitation. He appeared somewhat anxious. Mood was "ok" and affect appropriate. Judgment and insight were good, and thought processes and content were normal. Memory and orientation were intact. Hallucinations, delusions and suicidal or homicidal ideations were absent. The assessment was that he was functional, free of mania or depressive symptoms and doing well since release from the service. The GAF was 72 (no more than slight impairment). At the time of the interim TDRL re-evaluation in 2001, VA psychiatric notes described a recent episode of depression that responded to a change in medication. He denied manic symptoms. He was returning to school full time and was going to buy a house. MSE noted good personal appearance and hygiene, and described him as pleasant and engaging. Mood was "ok" and affect was appropriate. There was no suicidal ideation. GAF was 80.

At the time of removal from TDRL, the most proximate sources of comprehensive evidence on which to base the permanent rating recommendation in this case are VA outpatient notes. On 16 April 2003 (4 months prior to permanent separation), a VA psychiatric note indicated the condition was "very well maintained" on two psychotropic medications. He was doing well in school. He rated his mood severity as 1-2 on a 0-10 scale. He was completing the process of adopting his step son. MSE was identical to the most recent VA exam described above and GAF was 77. The assessment was bipolar disorder in full remission. However, a note on 17 July 2003 stated that during the prior week he had experienced increased energy and decreased need for sleep. Some medication dosage adjustments were instituted and a medication for sleep was prescribed. A C&P evaluation on 26 March 2009 stated that the CI had worked as a social worker at the VA for 5 years and that he had obtained a Master's degree.

The Board directs attention to its rating recommendation based on the above evidence. At the time of entry on TDRL, the PEB and the VA both assigned a 30% rating. All members agreed that the §4.130 criteria for a rating higher than 30% were not met at the time of placement on TDRL. The VA re-evaluation examination at the time of removal from TDRL was consistent with the general description for a §4.130 rating of 10% "(occupational and social impairment due to mild or transient symptoms; or symptoms controlled by continuous medication)," but the Board debated if sufficient criteria for a rating of 30% were present. 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 suggested by the slightly depressed mood. However, there were no panic attacks, suspiciousness, sleep impairment or memory problems; and he was attending school full time while adopting his step son. The Board debated the significance of

apparent symptom exacerbation a month prior to separation. Although there were no available proximal follow-up evaluations, the Board considered that the CI began a job as a social worker soon thereafter. On balance, the Board concluded that there was not adequate reasonable doubt favoring the next higher rating, and agreed that at the time of permanent separation the condition more nearly approximated the criteria for the 10% rating. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (Resolution of reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the bipolar disorder, type I 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 bipolar disorder, Type I condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. 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 disability and separation determination, as follows:

UNFITTING CONDITION	**VASRD CODE**	**RATING**	
		TDRL	**PERMANENT**
Bipolar Disorder, Type I	9432	30%	10%
	COMBINED	**30%**	**10%**

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120606, w/atchs
Exhibit B. Service Treatment Record
Exhibit C. Department of Veterans' Affairs Treatment Record

xxxxxxxxxxxxxxxxxxx, DAF
Director
Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency (TAPD-ZB / xxxxxxxxxx), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for xxxxxxxxxxxxxxxxxx, AR20130002269 (PD201200711)

I have reviewed the enclosed Department of Defense Physical Disability Board of Review (DoD PDBR) recommendation and record of proceedings pertaining to the subject individual. Under the authority of Title 10, United States Code, section 1554a, I accept the Board's recommendation and hereby deny the individual's application. This decision is final. The individual concerned, counsel (if any), and any Members of Congress who have shown interest in this application have been notified of this decision by mail.

BY ORDER OF THE SECRETARY OF THE ARMY:

Encl

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Deputy Assistant Secretary
(Army Review Boards)