

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXX
CASE NUMBER: PD1200753
BOARD DATE: 20130117

BRANCH OF SERVICE: NAVY
SEPARATION DATE: 20021023

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty IC3/E-4 (IC3/Interior Communications Electrician Third Class), medically separated for a mental health condition. She did not respond adequately to treatment and was unable to meet the requirements of her rating or meet worldwide deployment standards. She was placed on limited duty and underwent a Medical Evaluation Board (MEB). The CI had four mental health conditions: posttraumatic stress disorder (PTSD), chronic, delayed onset; major depressive disorder (MDD), single episode, moderate severity without psychotic features; anxiety disorder, not otherwise specified (NOS), and impulse control disorder were forwarded to the Physical Evaluation Board (PEB) IAW SECNAVINST 1850.4E. The PEB adjudicated MDD, single episode, moderate severity without psychotic features, rated 10%, with application of Department of Defense Instruction (DoDI) 1332.39 and Veterans Affairs Schedule for Rating Disabilities (VASRD). For the three remaining mental health conditions, PTSD was determined to not be unfitting Category II condition (contributing to the unfitting condition); the anxiety and impulse control disorders were determined to be Category III conditions (not contributing to the unfitting condition). The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: The CI is deceased from multidrug toxicity and the application is made on her behalf by her mother. No specific contention was stated in this application.

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 Board for Correction of Naval Records.

RATING COMPARISON:

Service PEB – Dated 20020826			VA (~5 Mos. Post-Separation) – All Effective Date 20021024			
Condition	Code	Rating	Condition	Code	Rating	Exam
Major Depressive Disorder	9434	10%	PTSD with Major Depression Disorder and Panic Disorder with Agoraphobia (Also Claimed as Impulse Control Disorder)	9499-9411	50%	20030411
PTSD, chronic delayed onset	Not Unfitting Category 2					
Impulse Control Disorder, NOS	Not Unfitting Category 3					
Anxiety Disorder, NOS	Not Unfitting Category 3		Prominent Arachnoid Cyst Overlying the Right Frontoparietal and Small Arachnoid Cyst on the Coronal Sequence	8099-8003	60%	20030411
↓No Additional MEB/PEB Entries↓			Left Maxillary Retention Cyst/Polyp	6599-6513	10%	
			0% X # / Not Service-Connected x #			
Combined: 10%			Combined: 80%			

ANALYSIS SUMMARY: The PEB rating, as described above, was derived from DoDI 1332.39 and preceded the promulgation of the National Defense Authorization Act 2008 mandate for Department of Defense (DoD) adherence to the VASRD §4.129. A salient question before the Board is whether the CI’s mental health condition meets the §4.129 definition of “a mental disorder that develops in service as a result of a highly stressful event [that] is severe enough to bring about the veteran’s release from active military service.” Should the Board decide that §4.129 is applicable in this case, then, IAW DoDI 6040.44 and DoD guidance the Board is obligated to recommend a minimum 50% §4.129 rating for a retroactive 6 month period on the Temporary Disability Retired List. Linked with this decision is the Board’s assessment regarding the appropriateness of the PEB’s determination that PTSD was not, itself, unfitting. The Board’s threshold for countering Disability Evaluation System fitness determinations is higher than the VASRD §4.3 (Resolution of reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 “fair and equitable” standard. In drawing its conclusions regarding these aspects of this case, the Board considered the evidence listed below.

Mental Health Condition. The MEB narrative summary (NARSUM) was written 4 months prior to separation. The severity of the CI’s overall psychiatric conditions at the time could best be described as moderate. The CI first presented to outpatient psychiatry in March of 2001 for a mental health evaluation whereupon she was diagnosed with the above four referenced psychiatric disorders. She reported a history of childhood molestation with classic symptoms of PTSD. After two limited duty, outpatient counseling, and multiple medications to include: Temazepam (antianxiety) 30 mg at night for sleep, sertraline (antidepressant) 300 mg per day which exceeded the recommended dosage for depression, and Bupropion SR (antidepressant) 200 mg twice daily to augment the sertraline, she continued to have persistent symptoms. The non-medical assessment (NMA), 4 months prior to separation, documented that the CI was capable of performing her assigned duties, capable of participating in the Navy-wide physical fitness program, however, was not able to perform her Rating duties as a shipboard interior communications electrician.

At the time of her MEB, with regards to her PTSD symptoms; she continued to have intrusive daytime recollections of her childhood molestation as well as nightmares, persistent insomnia, typically sleeping only 3 to 4 hours per night; these symptoms worsened in March 2002 due to an extensive discussion with her sister, who was also molested. With regards to her MDD symptoms; she continued to have persistent depressed feelings which had diminished

somewhat compared to when she began treatment, described as a "seven" on a scale of "one to ten" with "ten" representing severe depression, and had increased symptoms with holiday stress and after having some conflicts with her supervisor, persistent irritability and fatigue. She had not been hospitalized throughout her treatment. The CI was in a stable marriage for 3 years, had a 2 year old son and denied current legal, alcohol or substance abuse problems. The mental status exam (MSE) documented mild psychomotor retardation and a dysphoric, fatigued, and blunted affect, but appropriate. The exam was otherwise normal without suicidal or homicidal ideations or signs of psychosis. The examiner diagnosed PTSD, considered disabling, and with DoDI 1332.39 defined 'moderate' impairment for social and industrial adaptability. The examiner also diagnosed MDD, single episode, moderate severity, and without psychotic features, considered disabling, and with DoDI 1332.39 defined 'severe' impairment for social and industrial adaptability. The examiner additionally diagnosed anxiety disorder, not considered disabling and impulse control disorder, service-aggravated, considered disabling. The examiner opined the total degree of civilian performance impairment from all psychiatric sources was deemed severe and assigned a Global Assessment of Functioning (GAF) of 51 connoting moderate symptoms. At the time of the VA Compensation and Pension (C&P) exams, 5 months after separation, she additionally reported being stressed about being potentially deployed and leaving her young son when her mental health condition surfaced. She reported additional symptoms of obsessional thoughts, difficulty getting close to people, avoiding anything that reminds her of her trauma. Additionally, she believed she had to live out her full life span with irritability, hypervigilance, exaggerated startle response, had concentration and memory problems, insomnia, helplessness, and appetite changes. The CI had not been hospitalized, was taking only Zoloft due to her recent delivery of her 3-week old daughter, had remained married, and still cared for her 2-1/2 -year-old son. She was unemployed, was out of the Navy, and had hopes to go back to college. On MSE she had a restricted affect and described her mood as somewhat down, with fair to good insight and judgment. The exam was otherwise unremarkable without suicidal or homicidal ideations. The examiner confirmed the diagnoses of PTSD and depression, and assigned a GAF of 55 connoting moderate symptoms. The examiner further opined the GAF was for the above two Axis I diagnoses and could not be divided up due to overlapping nature of these disorders and further opined impulse control disorder and anxiety disorder were umbrellaed under the PTSD and panic disorder symptoms.

The Board directs its attention to the question of §4.129 applicability, the separate fitness determinations, and its rating recommendations based on the evidence just described. The Board considered that the MEB and VA psychiatrists made an Axis I diagnosis of PTSD, implying that they believed that Criterion A stressors were present from a traumatic childhood event, not a combat/service event. The Board did surmise that the CI's MOS duty impairment was accounted for by symptoms typical of MDD and additionally by symptoms typical of PTSD. The Board concludes therefore that the PEB's fitness determinations for MDD was acceptable, however the Board cannot find enough strength in the PEB position to overcome the sound arguments favoring the CI's position regarding the PTSD fitness adjudication. The Board, therefore, recommends that it be rated as an additionally unfitting condition. Regarding its recommendation in regard to §4.129 applicability, the Board must note that the VA elected not to apply it. The Board also points to two collateral issues which mitigate any practical import of applying §4.129 to this case. One such issue is that, although the fitness implications of each psychiatric disorder can be differentiated, the §4.130 ratable impairment from MDD and PTSD cannot be separated without undue speculation; nor does the VASRD allow for separate ratings of co-existent psychiatric conditions. The Board's rating recommendation will therefore encompass a *de facto* rating for PTSD regardless of fitness adjudication or §4.129 application. The additional issue is that the Board's permanent rating recommendation, were §4.129 to be followed, would rest on the C&P evaluation which is already significantly probative to the Board's assessment of a fair permanent rating recommendation as the examination is almost 6 months after separation and reflects the stress of transition to civilian life, which is a core intent

of §4.129. The Board therefore sees neither firm support for, nor significant practical value to, application of §4.129 in the circumstances of this case.

Turning attention to the permanent rating recommendation, all members agreed that the §4.130 threshold for a 10% rating was easily exceeded and that the 70% threshold was not approached. The Board's deliberations were centered therefore on arguments for a 30% vs. 50% permanent rating recommendation. The Board agreed that the MEB psychiatric evaluation could justify a §4.130 rating of 50% (occupational and social impairment with reduced reliability and productivity) based on the distinct evidence for declining duty performance due to the pervasive symptoms of depression and PTSD. There is, however, also an argument for a 30% rating (occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks), considering the CI's generally intact interpersonal functioning and PTSD and MDD symptoms not controlled by medications, the VA examiner's assignment of a GAF similar to that on separation and the NMA statement that she was functioning but not eligible for shipboard duty. The Board could not weigh employment issues as she was on maternity leave, but did weigh her hopes to go back to college as a sign of improvement in her depression. After due deliberation, and in consideration of the totality of evidence and VASRD §4.3, the Board recommends 30% as the fair permanent separation rating for the mental health 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 mental health condition, the Board unanimously recommends that PTSD be added as an additionally unfitting condition for separation rating and unanimously recommends a disability rating of 30% for the mental health condition, coded 9411-9434 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 her prior medical separation:

UNFITTING CONDITION	VASRD CODE	RATING
PTSD with Major Depression Disorder	9411-9434	30%
	COMBINED	30%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120612, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXXXXXX
Director
Physical Disability Board of Review

MEMORANDUM FOR DEPUTY COMMANDANT, MANPOWER & RESERVE AFFAIRS
COMMANDER, NAVY PERSONNEL COMMAND

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATIONS

Ref: (a) DoDI 6040.44
(b) PDBR ltr dtd 29 Jan 13 ICO XX
(c) PDBR ltr dtd 15 Jan 13 ICO XX
(d) PDBR ltr dtd 22 Jan 13 ICO XX

1. Pursuant to reference (a) I approve the recommendations of the Physical Disability Board of Review set forth in references (b) through (d).

2. The official records of the following individuals are to be corrected to reflect the stated disposition:

a. XXXXXXXXX former USN: Disability retirement with a final disability rating of 30 percent with retroactive placement on the Permanent Disability Retired List effective 23 October 2002.

b. XXXXXXXXXXX former USMC: Disability retirement with a final disability rating of 30 percent with retroactive placement on the Permanent Disability Retired List effective 31 January 2002.

c. XXXXXXXXXXX former USMC: Disability separation with a final disability rating of 20 percent (increased from 10 percent) with entitlement to disability severance pay effective 30 September 2002.

3. Please ensure all necessary actions are taken, included the recoupment of disability severance pay if warranted, to implement these decisions and that subject members are notified once those actions are completed.

XXXXXXXXXXXXX
Assistant General Counsel
(Manpower & Reserve Affairs)