

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD12001034
BOARD DATE: 20130201

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20060329

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty, MAJ/O-4 (21B/Combat Engineer), medically separated for bipolar disorder, Type I. The CI experienced a manic episode in 1997, then a major depressive episode in 2001, followed by waxing and waning depression in June 2004 with symptoms worsening in March 2005. The CI did not improve adequately with medications and treatment to meet the physical requirements of her Military Occupational Specialty (MOS) or satisfy physical fitness standards. She was issued a permanent S4 profile and referred for a Medical Evaluation Board (MEB). A bilateral knee arthritis condition, identified in the rating chart below, was also identified and forwarded by the MEB. The Physical Evaluation Board (PEB) adjudicated the bipolar, Type I condition as unfitting, rated 10%, with application of the Veteran Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: "I feel my condition was more severe than it was rated at the time. When I finally reopened my VA claim, they increased my disability rating for the bipolar from 10% to 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. The bipolar, Type I condition requested for consideration meets the criteria prescribed in DoDI 6040.44 for Board purview, and is accordingly addressed below. Any condition 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 20051222			VA (~4 Mos. Post-Separation) – All Effective Date 20060330			
Condition	Code	Rating	Condition	Code	Rating	Exam
Bipolar Disorder, Type I	9432	10%	Bipolar Disorder	9432	10%*	20060724*
Bilateral Knee Arthritis	Not Unfitting		Degenerative Joint Disease, R Knee	5257-5003	10%	20060712
			Degenerative Joint Disease, L Knee	5257-5003	10%	20060712
No Additional MEB/PEB Entries			Residuals, Left Ankle Strain	5271-5024	10%	20060712
Combined: 10%			Combined: 40%			

* Bipolar D/O 9432 increased to 50% effective 20101208 (date VA claim received) utilizing C&P exam 20110221 all documented in VARD 20111101

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI's application regarding the significant impairment with which her service-incurred condition continues to

burden her. The Board also notes the current VA ratings listed by the CI for her bipolar Type I condition. The Board wishes to clarify that it is subject to the same laws for service disability entitlements as those under which the Disability Evaluation System (DES) operates. 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. That role and authority is granted by Congress to the Department of Veterans Affairs (DVA), operating under a different set of laws (Title 38, United States Code). The Board evaluates DVA evidence proximal to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness decisions and rating determinations for disability at the time of separation. 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 DVA, however, is empowered to compensate 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.

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 will be premised on the psychiatric acuity at the time separation. Waxing and waning depressive symptoms led to a manic episode with associated hallucinations and delusions that required hospitalization in March 2005. A 10 day inpatient treatment program resulted in marked improvement in her condition, "close to her self-stated baseline." The mental status exam (MSE) at time of discharge on 28 March 2005 (12 months prior to separation) noted appropriate grooming and normal orientation. Speech displayed a mildly increased rate, but thought processes were normal and there was no evidence of suicidal or homicidal ideations, or of hallucinations or delusions. Mood was "good" and affect euthymic and reactive. Judgment, impulse control and insight were good, and memory was unimpaired. Global Assessment of Functioning (GAF) was 65 (connoting mild symptoms or impairment). She was discharged on one psychotropic medication. At the time of a psychiatric narrative summary (NARSUM) update on 23 November 2005 (4 months prior to separation) the CI was considered to be in a depressive episode of bipolar disorder. Despite good compliance with medications and individual psychotherapy, she had continued to experience recurrent mild to moderate depressive symptoms during the previous 6 months. However, the current depressive episode occurred in the context of discontinuation of her two psychotropic medications due to possible side effects. MSE revealed normal orientation and intact memory, concentration, and speech. Mood was depressed, but affect was full ranging, reactive and appropriate to content. There was no agitation. Thought processes were normal and thought content showed no evidence of suicidal or homicidal ideations, delusions or hallucination. Judgment, insight and impulse control were unimpaired. Because a new medication regimen was just being instituted, the examiner could not yet assess a therapeutic response. Degree of military impairment was considered "marked" and impairment for social and industrial adaptability "definite." GAF was 51 (connoting moderate symptoms or impairment). Five years after separation a VA examiner (see below) referred to a prior to separation evaluation performed on 12 January 2006 by the NARSUM examiner (2 months prior to separation), at which time the bipolar condition was considered to be in partial remission and the GAF was 80+. At the VA Compensation and Pension (C&P) exam on 24 July 2006 (4 months after separation) the CI reported living with her sister and stated she "wants to find work but can't get motivated." She last worked while in the service in April 2005. Some problems with sleep initiation and maintenance were noted. She expressed being recently mildly depressed "somewhat chronically." MSE revealed appropriate grooming and normal orientation. Mood was anxious and affect was congruent. Speech was not pressured. Thought was coherent and unimpaired, and there were no signs of delusions or hallucinations. There were no apparent short or long term memory difficulties, and no

problems with impulsivity. Panic attacks were denied. The GAF was 75 (connoting transient symptoms, no more than slight impairment). The assessment was bipolar disorder with a recent episode of mild depression considered to be in partial remission. At a C&P evaluation on 21 February 2011 (5 years after separation), the examiner stated that since separation the CI had been unable to maintain full-time employment at a level commensurate with her educational background and experience due to work inefficiency and absenteeism caused by depressive symptoms.

The Board directs attention to its rating recommendation based on the above evidence, and considered if a rating higher than the 10% adjudicated by the PEB was justified. Board members agreed that the 50% rating criteria were not met at the time of separation; therefore, deliberations centered on a 10% versus a 30% rating. The 10% rating specifies “occupational and social impairment due to mild or transient symptoms which decrease work efficiency only during periods of significant stress, or; symptoms controlled by continuous medication.” The next higher 30% rating specifies “occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks.” The two threshold symptoms of depressed mood and sleep impairment documented by the first VA examiner could suggest the 30% level of disability. In this regard, the Board also deliberated the significance of the CI’s unemployed status due to lack of motivation at the time of the first VA exam, and the last VA examiner’s statement regarding a history since separation of work inefficiency and absenteeism. Board members further considered that although manic and psychotic symptoms did not recur after her hospitalization, some depressive symptoms did appear to persist in a waxing and waning fashion. However, the episode of depression proximal to the time of separation occurred in the context of discontinuing a medication, and the prior to separation follow-up visit by the NARSUM examiner and the post-separation C&P evaluation both documented a positive response to the new medication regimen. The status of the condition at the time of separation was described by both examiners as “in partial remission” and GAF scores denoted no more than slight impairment. The Board also considered that all MSE evidence described above was essentially unremarkable. On balance, the Board concluded that there was not adequate reasonable doubt favoring the next higher 30% rating, and agreed that at the time of separation the condition more nearly approximated the criteria for the 10% rating. After due deliberation in consideration of the preponderance of the evidence, the Board concluded that there was insufficient cause to recommend a change in the PEB fitness determination for the bipolar disorder 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 condition and IAW VASRD §4.130, 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
Bipolar Disorder, Type I	9432	10%
	COMBINED	10%

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120427, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXX, DAF
Acting Director
Physical Disability Board of Review

SFMR-RB

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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation
for xxxxxxxxxxxxxxxxxxxx, AR20130003105 (PD201201034)

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)

SFMR-RB

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

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Deputy Assistant Secretary
(Army Review Boards)