

RECORD OF PROCEEDINGS  
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX  
BRANCH OF SERVICE: NAVY

CASE: PD-2021-00096  
SEPARATION DATE: 20070420

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**SUMMARY OF CASE:** Data extracted from the available evidence of record reflects this covered individual (CI) was an active duty, E5, Navigation Equipment Operator, medically separated for "chronic major depression" with a disability rating of 10%.

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**CI CONTENTION:** "My symptoms were not mild, limited to high stress, nor were they controlled by medication...The VA originally rated at 30%, but corrected to 50% due to an error on the part of the rater. I am currently at 70% for mental health." The complete submission is at Exhibit A.

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**SCOPE OF REVIEW:** The panel's scope of review is defined in DoDI 6040.44. It is limited to review of disability ratings assigned to those conditions determined by the Physical Evaluation Board (PEB) to be unfitting for continued military service, and when specifically requested by the CI, those conditions identified by the Medical Evaluation Board (MEB), but determined by the PEB to be not unfitting or non-compensable. Any conditions outside the panel's defined scope of review, and any contention not requested in this application, may remain eligible for future consideration by the Board for Correction of Military Records. The panel's authority is limited to assessing the fairness and accuracy of PEB rating determinations and recommending corrections when appropriate. The panel gives consideration to VA evidence, particularly within 12 months of separation, but only to the extent that it reasonably reflects the severity of disability at the time of separation.

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**RATING COMPARISON:**

SERVICE FPFB - 20070110			VARD - 20080212			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Major Depression	9434	10%	PTSD with Depression	9411	30%	20071030
Generalized Anxiety Disorder		Cat II				
Dysthymic Disorder		Cat II				
Post- Traumatic Stress Disorder (PTSD)		Cat III				
<b>COMBINED RATING: 10%</b>			<b>COMBINED RATING OF ALL VA CONDITIONS: 30%</b>			

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**ANALYSIS SUMMARY:**

**Chronic Major Depression.** According to the service treatment record (STR) and MEB narrative summary (NARSUM), the CI was initially referred for mental health (MH) consultation in August 2005 after being removed from his ship because of expressed suicidal and homicidal thoughts, which had increased in intensity over the previous year. He reportedly had experienced stressors that included difficulties being accepted by his crew and sexual abuse which went unreported. At a psychology visit on 31 October 2005, 18 months before separation, the CI reported he was sexually assaulted on board a submarine in 2003 and felt guilt and anger for not doing more to stop the perpetrator. He denied any suicidal or homicidal ideation, plan, or intent.

Controlled by: DAF Controlled by: SAF/MRBD CUI Categories: SP-MIL/SP-PRVCY Limited Dissemination Control: N/A POC: SAF.MRBD.Workflow@us.af.mil
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The 4 August 2006 MEB NARSUM examination, 8 months before separation, noted CI complaints of frequent panic attacks (character or frequency not documented), fear of sea duty, excessive worry and anxiety, and depressed mood. His prescribed medication improved his appetite and sleep, but did not resolve the panic attacks. The mental status examination (MSE) showed the CI was alert and appropriately dressed, and exhibited no psychomotor abnormalities. His eye contact was good with normal speech rate and rhythm. He demonstrated an anxious mood with congruent affect and strained facial expressions, and he seemed to struggle with minor stressors. There was no evidence of a formal thought disorder or psychosis and he denied suicidal or homicidal thoughts. Insight and judgment were fair with grossly intact cognition. The examiner diagnosed dysthymic disorder, chronic major depression, and generalized anxiety disorder.

The 10 December 2006 reconsideration memorandum to the PEB from the treating (also MEB) psychiatrist, 4 months prior to separation and 3 months after the informal PEB decision, noted changes to the CI's diagnoses, which included PTSD related to the alleged sexual assaults. The psychiatrist noted he was receiving treatment for PTSD. One month later, the formal PEB adjudicated the case, adding the PTSD diagnosis as a not unfitting condition.

The 15 December 2006 non-medical assessment noted the CI was initially assigned as a dispatcher, but was unable to qualify due to medical reasons and job demands. In his new duty as a facility manager, the commander noted he was productive and a "true asset" with performance "well above board." He required no supervision and "was capable of accomplishing any assigned task associated with his new assignment." The commander made no recommendation to retain the CI, but stated medical limitations prevented him from performing duties of a stressful nature.

At the 30 October 2007 VA Compensation and Pension (C&P) examination, 6 months after separation, the CI reported he was sleeping well (about 8 hours) but he had nightmares several times a week that involved him being belittled by somebody. He had intrusive thoughts of previous attacks on him and reported depressed mood. He endorsed treatment for depression during service, and stated that he was currently better than when he was in the military. The CI stated he felt comfortable at home and preferred to stay there rather than engage in social activities. He avoided contact with groups in general, especially groups of men, and had one close friend. He had relatively good relationships with his parents and two brothers. He started driving a truck about 2 weeks prior, and felt it was a good job for him because it limited his interactions with others. The examiner did not document any current MH medication or therapy, but noted the CI endorsed being treated for lead and mercury exposure, for which he attributed his fatigue. The MSE was unremarkable, except for eye contact avoidance, slow and careful speech, and "somewhat down" mood. Cognitive functioning was intact with no evidence of impaired concentration or attention. The examiner diagnosed PTSD with depression.

A social work encounter on 12 November 2008, 17 months after separation, noted the CI had not received any treatment for his condition since separation, and that he denied needing treatment at the time, although he was referred to a PTSD recovery group by his primary care provider.

The panel directed attention to its rating recommendation based on the above evidence. The PEB rated the chronic major depression 10%, coded 9434 (major depression), and listed generalized anxiety disorder and dysthymic disorder as related Category II (contribute to the unfitting condition) diagnoses. The PEB also listed PTSD as a Category III condition (not separately unfitting and does not contribute to the unfitting condition). Panel members noted that a VASRD §4.130 rating is based on symptoms independent of diagnosis, thus all MH symptoms (major depression, dysthymic disorder, generalized anxiety disorder, and trauma related) are considered in the rating and reflected in the rating recommendation. The VA rated PTSD with depression 30%, based on the C&P examination, citing "occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks

(although generally functioning satisfactorily, with routine behavior, self-care, and conversation normal), due to such symptoms as depressed mood, anxiety and suspiciousness.”

Panel members first considered the provisions of §4.129 (mental disorders due to traumatic stress) and determined that the chronic major depression and related MH diagnoses were due to a “highly stressful event,” and that application of §4.129 was appropriate in this case. Thus, a minimum 50% rating for a retroactive 6-month period on the Temporary Disability Retired List (TDRL) is recommended. The panel next turned to its rating recommendation at the time of TDRL placement and agreed that the CI’s symptoms did not meet the higher 70% rating criteria for “occupational and social impairment, with deficiencies in most areas, such as work, school, family relations, judgment, thinking, or mood.” Therefore, the minimum 50% TDRL rating prescribed by §4.129 is applicable.

The panel then turned to its permanent rating recommendation at the time of TDRL removal. There were no treatment records during the constructive TDRL period, and the most proximate source of comprehensive evidence on which to base the permanent rating recommendation in this case was the VA C&P examination performed 6 months after TDRL placement. The C&P examiner noted that CI reported frequent panic attacks, but the frequency and character were not described. The MSE showed no cognitive impairment and good attention, concentration, memory. There was no evidence of chronic insomnia and the CI had remained stable despite no MH treatment in the previous 6 months. The social worker note indicated he expressed no interest in receiving any therapy. The panel considered the record in totality and noted no history of hospitalization, emergency room visits, or suicidal/homicidal attempts or intent. The CI was able to work full-time as a truck driver, and by his own assessment, needed no treatment. Although evidence of employment beyond the time of the C&P examination was not available, there no documented clinical opinion that the CI was incapable of working a full-time job. The CI was not taking any psychotropic medication and was not being treated for his condition in the 18 months after separation. The record demonstrated chronic symptoms, however, there was no indication of symptom instability. Panel members concluded the CI’s condition was stable at the time of permanent separation, and that the disability was most reflective of a 10% rating for “occupational or social impairment due to mild or transient symptoms which decrease work efficiency and ability to perform occupational tasks only during periods of significant stress.” After due deliberation, considering all the evidence and mindful of VASRD §4.3 (reasonable doubt), the panel recommends a retroactive 6-month period of TDRL with a rating of 50% (in accordance with §4.129), and a permanent rating of 10% for the MH condition, coded 9434.

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**BOARD FINDINGS:** In the matter of the chronic major depression, the panel recommends an initial TDRL rating of 50% in retroactive compliance with VASRD §4.129 as DoD directed; and a 10% permanent rating at 6 months IAW VASRD §4.130. There are no other conditions within the panel’s scope of review for consideration.

The panel recommends the CI’s prior determination be modified as follows, effective the date of medical separation:

CONDITION	VASRD CODE	RATING	
		TDRL	PERMANENT
Chronic Major Depression	9434	50%	10%

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20210824, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs Record

3/28/2023



THE ASSISTANT SECRETARY OF THE NAVY  
(MANPOWER AND RESERVE AFFAIRS)  
1000 NAVY PENTAGON  
WASHINGTON, D.C. 20350-1000

6040  
Memo00/01

MEMORANDUM FOR COMMANDER, NAVY PERSONNEL COMMAND

Subj: PHYSICAL DISABILITY BOARD OF REVIEW RECOMMENDATIONS

Ref: (a) DODI 6040.44  
(b) PDBR ltr dtd 28 Mar 23 XXXXXXXXXXXX  
(c) PDBR ltr dtd 23 Feb 23 XXXXXXXXXXXX

1. Pursuant to references (a), the recommendation of the Physical Disability Board of Review set forth in references (b) and (c) are approved. The official record of the following individuals are to be corrected as follows:

a. XXXXXXXXXXXXXXXX After carefully reviewing the application and medical separation case file, the PDBR recommended the records be corrected to reflect that upon separation the covered individual was placed on the Temporary Disability Retired List with a disability rating of 50% for a period of 6 months (IAW VASRD §4.129); and upon final disposition, discharged with severance pay with a combined disability rating of 10%.

2. Please take action to implement these decisions and provide notification to the above individuals once those actions are complete.