

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX
BRANCH OF SERVICE: ARMY

CASE: PD-2022-00098
SEPARATION DATE: 20061010

SUMMARY OF CASE: Data extracted from the available evidence of record reflects this covered individual (CI) was an active duty E5, Fire Support Specialist, medically separated for “post-traumatic stress disorder (PTSD)” with a disability rating of 10%.

CI CONTENTION: “PTSD, patellofemoral syndrome, left knee.” The complete submission is at Exhibit A.

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.

RATING COMPARISON:

SERVICE PEB - 20060907			VARD - 20061211			
Condition	Code	Rating	Condition	Code	Rating	Exam
PTSD	9411	10%	PTSD	9411	10%	20060927
COMBINED RATING: 10%			COMBINED RATING OF ALL VA CONDITIONS: 30%			

ANALYSIS SUMMARY:

PTSD. According to the service treatment record (STR) and MEB narrative summary (NARSUM), the CI’s PTSD began following a combat tour in Iraq in 2005. He self-referred to treatment in June 2005 after having recurrent nightmares and violent sleep. His condition never required treatment in the psychiatry inpatient unit or the emergency room. There was no history of suicidal or homicidal ideation.

The 4 May 2006 MEB NARSUM examination, 6 months prior to separation, noted “difficulties” since returning from Iraq. He had sleep disturbance, irritability, and problems with concentration, and was prescribed antidepressant and anti-anxiety medication, as well as sleep medication. He reported significant improvement in his PTSD symptoms with medication and therapy, but continued to have problems with sleep, anger and irritability. The mental status examination (MSE) showed a mildly irritable affect and an angry mood. The CI reported approximately a “70%” improvement of his symptoms.” At the 27 September 2006 VA Compensation and Pension (C&P) examination, less than 1 month before separation, the CI reported notable improvement since starting medication. He reported a mild decrease in

enjoyment of social activities, and occasional mild irritability, but slept well with medication. The CI noted some mild occasional problems with concentration and focus, but no cognitive impairments. The MSE was unremarkable. His mood was normal, and his affect was pleasant.

The panel directed attention to its rating recommendation based on the above evidence. The PEB rated the PTSD 10%, coded 9411 (PTSD), citing that “his psychological difficulties will have a mild impact on his industrial and social capabilities.” The VA also rated the PTSD 10%, also coded 9411, based on the C&P examination, citing mild and transient symptoms that require continuous medication for control.

Rating by the PEB preceded the promulgation of the NDAA 2008 mandate for DOD adherence to VASRD section §4.129 (mental disorders due to traumatic stress) and will be applied when PTSD is an unfitting condition. Therefore, as a matter of policy, the PDBR must recommend placement of the CI on a period of constructive TDRL with a minimum rating of 50% IAW §4.129 with reassessment after six months. The panel next considered the §4.130 rating at TDLR placement. The panel agreed that the §4.130 criteria for a rating higher than 50% were not met near the time of separation, and therefore the minimum 50% initial TDRL rating is applicable.

The panel next considered whether the evidence at the time of removal from constructive TDRL supported a rating higher than the 10% rating adjudicated by the PEB. There were no mental health records available for the 6-to-12-month period after constructive TDRL. At the time of separation, the CI was taking medication for mood and anxiety symptoms and had a prescription for sleep medication. There were no reports of panic attacks, he was never treated in the ER, and was never hospitalized psychiatrically. There was no history of suicidal or homicidal ideation, and no history of domestic violence or violence in the community. The MSE during the NARSUM, 6 months prior to separation was essentially normal except for “angry” mood and mildly irritable affect. The examiner opined that the CI had mild social impairment. The C&P MSE was normal. The examiner assessed chronic mild PTSD. There was no report of memory impairment, poor impulse control or impairment in judgment. There was no history of violence in the home or in the community, no report of memory impairment interfering with duty performance, no report of problems with impulse control during Service. There was no evidence of chronic insomnia or chronic irritability interfering with daily functioning.

Panel members concluded, at the time of permanent separation (6 months after constructive TDRL), the CI’s symptoms were stable, his condition did not require emergency care or hospitalization, and his disability was most reflective of the 10% level for “occupational and social impairment due to mild or transient symptoms which decrease work efficiency and ability to perform occupational tasks only during periods of significant stress, or; symptoms controlled by continuous medication.” After due deliberation, considering all the evidence and mindful of VASRD §4.3 (reasonable doubt), the panel recommends a disability rating of 50% for 6 months of constructive TDRL and a 10% permanent rating thereafter for the PTSD, coded 9411.

BOARD FINDINGS: In the matter of the PTSD, the panel recommends a disability rating of 50%, coded 9411 IAW VASRD §4.129 for 6 months from the time of discharge consistent with a constructive period of TDRL and then a permanent separation rating of 10% 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
Post-Traumatic Stress Disorder	9411	50%	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20220912, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans Affairs Record

AR20230008324, XXXXXXXXXXXX

Dear XXXXXXXXXXXX:

I accept the recommendation of the Department of Defense Physical Disability Board of Review (DoD PDBR) to constructively place you on the Temporary Disability Retired List (TDRL) at 50% disability for six months effective the date of your original medical separation for disability with severance pay and then following this six month period your disability rating should be modified to 10% but not to the degree that would justify changing your separation for disability with severance pay to a permanent retirement with disability. I have reviewed the Board's recommendation and record of proceedings (copy enclosed) and I accept its recommendation.

The constructive TDRL period will result in an adjustment to your pay providing you 50% retired pay for six months from the date of your original medical separation. This will not result in any change to the amount of severance pay. A copy of this decision will be filed with your Physical Evaluation Board records. I regret that the facts of the case did not provide you with the outcome you may have desired.

This decision is final. Recourse within the Department of Defense or the Department of the Army is exhausted; however, you have the option to seek relief by filing suit in a court of appropriate jurisdiction.

The accepted DoD PDBR recommendation has been forwarded to the Army Physical Disability Agency for required correction of records and then to the U.S. Defense Finance and Accounting Service to make the necessary adjustment to your pay and allowances. These agencies will provide you with official notification by mail as soon as the directed corrections have been made. Due to the large number of cases in process, please be advised that it may be several months before you receive notification that the corrections are completed and pay adjusted. Inquiry concerning your correction of records should be addressed to the U.S. Army Physical Disability Agency, 1835 Army Boulevard, Bldg. 2000, JBSA, Fort Sam Houston, TX. 78234.

A copy of this decision has also been provided to the Department of Veterans Affairs.