RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900035 BOARD DATE: 20091029

SEPARATION DATE: 20060330

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SUMMARY OF CASE: This covered individual (CI) was an active duty warrant officer in flight training, medically separated from the Army in 2006 after 4 years of service. The medical basis for the separation was obstructive sleep apnea (OSA). This was diagnosed in 2005 during the course of a work-up for fatigue and palpitations. There was a favorable response to CPAP (nocturnal assisted breathing device), but the flight surgeon directed a MEB which, in turn, determined that the condition was medically unacceptable. The CI had an additional history of persistent back pain dating to 2003. The back condition was specifically addressed by the MEB and forwarded as not unfitting on the DA 3947. The CI’s palpitations were evaluated by cardiology, and suspected to be related to the OSA. The arrhythmia was discussed in the NARSUM and noted to have been improved with CPAP, but was not forwarded on the DA 3947. There was a history of various other medical conditions, including moderate obesity, but none of significant acuity or severity at the time of the MEB. The CI was referred to the PEB, found unfit for OSA only and separated at 0% disability.

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CI CONTENTION: The CI contends that he should have been rated under the VASRD instead of ‘the DoDI 1332.39 standards’. The application also stated his desire to acquire a new MOS and remain on active duty at the time he was separated.

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RATING COMPARISON:

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| **Service PEB** | **VA (3 Mo. after Separation)** |
| **Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| OSA | 6847 | 0% | 20051216 | OSA | 6847 | 50% | 20060616 | 20060331 |
| CHRONIC LOW BACK PAIN | NOT UNFITTING | 20051216 | CHRONIC LUMBAR STRAIN | 5237 | 10% | 20060616 | 20060331 |
| NO DA 3947 ENTRY. | PVC’s | 7010 | 10% | 20060616 | 20060331 |
| NO ADDITIONAL DA 3947 ENTRIES. | NON-PEB X 5 / NSC X 3 | 20060616 | 20060331 |
| **TOTAL Combined: 0%** | **TOTAL Combined (*Includes Non-PEB Conditions*): 60%**   |

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ANALYSIS SUMMARY:

OSA Rating. This issue is uncomplicated from a Board decision-making standpoint. Although the OSA was stable on CPAP, the PEB adjudicated the condition as unfitting. This was perhaps because of the CI’s flight training status. IAW DoDI 6040.44, the Board cannot override a PEB adjudication of unfitness; its purview lies only with adjudications as fit. The DA 199 makes it clear that the PEB 0% rating was derived from DoDI 1332.39 (E2.A1.2.21), ‘rated for mild industrial impairment’. The Board, of course, must adjudicate IAW VASRD §4.100 which compels a 50% rating for OSA requiring CPAP. The obligatory Board recommendation, therefore, is a rating of 50% for OSA.

Back Condition. The CI’s back condition was adequately evaluated and determined to be medically acceptable by the MEB. There is nothing in the medical record which would challenge the PEB adjudication that it was not unfitting. The NARSUM is explicit regarding the lack of limitations imposed by the condition and states, ‘intermittent, mild lower back pain with a very low level of intensity and this is not felt to be disabling from his activities thus far’. The Commander’s statement was cursory, but did not implicate the back as an impediment to duty. The medical profile was L2. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for the back condition.

Cardiac Arrhythmia. The CI’s irregular heart rhythm was diagnosed as symptomatic PVC’s (premature ventricular contractions) by cardiology, a fairly benign condition. It was treated with medications for a brief period, but the irregularity improved after the OSA was controlled on CPAP. Medications were discontinued. This condition had already been cleared for flight status prior to the MEB. A formal AR 40-501 determination by the MEB and specific fitness adjudication by the PEB would have been preferable. There is no reason, however, to suspect the condition would have been considered unfitting by the PEB and no basis for a Board recommendation as unfitting.

Other Conditions. The CI was evaluated by gastroenterology during the MEB process for episodic diarrhea following a cholecystectomy in 2004, and was also noted with mild reflux disease. These were stable, mild conditions at the time of separation. He had a BMI of 34.7, but still was within weight standards. The VA noted a number of minor orthopedic conditions in addition to the lumbar condition. Only 2 were service-connected, and those were rated 0%. The Board, therefore, has no reasonable basis for recommending any additional unfitting conditions for separation rating.

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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. As discussed above, PEB reliance on DoDI 1332.39 for rating OSA was operant in this case and the condition was adjudicated independently of that instruction by this Board. In the matter of the OSA condition, the Board unanimously recommends a rating of 50% under 6847 IAW VASRD §4.100. In the matter of the back condition, cardiac arrhythmia and all of the CI’s other medical conditions; the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation.

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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 his prior medical separation.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| OBSTRUCTIVE SLEEP APNEA | 6847 | 50% |
| **COMBINED** | **50%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090120, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

