RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900044 BOARD DATE: 20100923

SEPARATION DATE: 20060105

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SUMMARY OF CASE: This covered individual (CI) was an Army Active Guard Reserve (AGR) SFC/E-7 (MOS 11B, Infantry) medically separated in January 2006 after 17.5 years of service. The medical basis for separation was Asthma. The CI developed breathing symptoms in 1999 that were made worse with running, and with certain environmental triggers. His respiratory symptoms increased markedly after a permanent change of station (PCS) in 2001. A civilian allergist diagnosed multiple environmental allergens, and began a course of desensitization shots. However, in spite of treatment, the respiratory symptoms showed little improvement. The CI (who is a former Master Fitness Trainer) could not complete a standard Army Physical Fitness Test, or perform many tasks crucial to his MOS. He was placed on permanent P-3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded two conditions (Asthma & Multiple allergies) to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Two other conditions (Hearing loss and Back pain) were forwarded on the DA Form 3947 as medically acceptable IAW AR 40-501. The PEB found the CI unfit for continued military service, due to Asthma with history of multiple allergies. The CI was then separated with a 10% disability rating.

CI CONTENTION: The CI states: “Service Member was awarded a 10% rating for his asthma with chronic allergic rhinitis, when this is a 30% evaluation rating IAW VA Rating schedule, see attached Veterans Affairs Rating Decision dated April 17, 2006.”

RATING COMPARISON:

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| --- | --- |
|  **Service PEB – Dated 20051028** | **VA– All Effective 20060106** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Asthma w/ multiple allergies | 6602 | 10% | Asthma | 6602 | 30% | 20060210 |
| Chronic mild back pain | Not Unfitting | Lumbar Strain | 5237 | 10% | 20060317 |
| Hearing loss | Not Unfitting | Hearing Loss Right Ear | 6100 | 0% | 20060317 |
| ↓No Additional DA 3947 Entries.↓ | Tinnitus | 6260 | 10% | 20060317 |
| Left Knee Injury | 5010 | 10% | DRO |
| Right Knee Injury | 5010 | 10% | DRO |
| Irritable Bowel Syndrome | 7319 | 10% | DRO |
| Non-PEB X 1 / NSC X 7 |  |
| **TOTAL Combined: 10%** | **TOTAL Combined (*Includes Non-PEB Conditions*): 60%**   |

ANALYSIS SUMMARY:

Asthma – The DA Form 199 (dated 20051028), section 8.b states: “Asthma with a history of multiple allergies with symptoms dating back to 1999 and were most notable with running.” That paragraph in section 8.b also says: “Rated at 10%, as Soldier has been, over time, intermittently using medications.”

The Board reviewed all evidentiary information available. In this case, the disability rating hinges on the frequency and type of anti-asthma medications that were being used to treat the CI’s respiratory symptoms. IAW VASRD §4.97, when asthma symptoms are severe enough to warrant use of inhalational anti-inflammatory medication, a rating evaluation of 30 percent is appropriate. Review of the treatment record and pharmacy profile reveals that the CI was using Advair, which contains the steroidal anti-inflammatory medication Fluticasone. In addition, there was evidence of daily inhalational non-steroidal bronchodilator therapy. The Board did not find compelling evidence that medication noncompliance was an issue. After lengthy discussion, the Board has determined that (IAW VASRD §4.3) reasonable doubt shall be resolved in favor of the CI. Given the medication profile, the CI is adjudged to have required chronic inhalational steroidal anti-inflammatory medication for control of his asthma condition.

All evidence considered, the Board unanimously recommends a disability rating of 6602 at 30%, as the fair permanent separation rating in this case.

History of Other Conditions (documented in Disability Evaluation System package) – Back pain, Hearing loss, Knee pain, and Irritable bowel syndrome (IBS) were all discussed and considered by the Board. There is no clearly documented evidence that any of these conditions caused a significant adverse effect on the performance of required military duties. These other conditions are all judged by the Board to be not unfitting at the time of separation from service, and are not relevant for disability rating. The Board therefore has no reasonable basis for recommending any additional unfitting conditions for separation rating.

History of Other Conditions (not documented in DES package) – Tinnitus was also considered by the Board. There is no clearly documented evidence that this condition was a matter of record in the DES package. Therefore, this condition is judged to be outside the scope of this Board.

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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. Furthermore, PEB reliance on DoDI 1332.39 for rating asthma may have been operant in this case, and the condition was adjudicated independently of that instruction by the Board.

In the matter of the Asthma condition, the Board unanimously recommends a rating of 30% (coded 6602) IAW VASRD §4.97.

In the matter of the Back pain, Hearing loss, Knee pain, IBS, or any other medical conditions eligible for Board consideration; the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

Tinnitus, rated by the VA, was not mentioned in the Disability Evaluation System (DES) package and is therefore outside the scope of the Board. The CI retains the right to request his service Board for Correction of Military Records (BCMR) to consider adding this condition as unfitting.

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows and that the discharge with severance pay be re-characterized to reflect permanent disability retirement, effective as of the date of his prior medical separation.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Asthma, bronchial | 6602 | 30% |
| **COMBINED** | **30%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090115, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

