RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD0900153 COMPONENT: reserve

BOARD DATE: 20090624 SEPARATION DATE: 20020802

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SUMMARY OF CASE: This covered individual (CI) was a CW2 reserve helicopter pilot medically separated from the Army in 2002 after 9 years of service. The medical basis for the separation was chronic intermittent vertigo with an acute onset in Korea. CI was referred to the PEB and was placed on TDRL. At the end of the 5 year TDRL period, CI was found unfit and separated at 0% disability. The VA rated CI’s condition at 30% both when he started TDRL, and following CI’s discharge. The VA later increased CI’s rating to 100% based on a 2008 VA exam and civilian evidence. The CI contends that he should be rated higher by the military as VA rated his condition at 30%, it prevented non-military flying, his symptoms worsened, led to depression, and he was totally and permanently disabled (SSA).

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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. The Board carefully discussed the CI’s condition including the PEB rebuttal, PEB return from the PDA, FPEB, congressional interest, and final rating of 0%. No mental health condition (depression) was noted by the PEB or noted as a factor for finding the CI unfit.

The crux of the Army rating appeared to hinge on the final diagnosis being Meniere’s Syndrome or not (20011115 PDA memo): ‘Does the Soldier have Meniere’s Syndrome as described in VASRD Code 6205, with a minimum 30% despite no confirming studies and no history of hearing loss or tinnitus, or does he have a peripheral vestibular disorder, VASRD 6204?’ The Board used the comprehensive 20020207 WRAMC otolaryngologist evaluation and diagnosis of ‘right-sided endolymphatic hydrops’, in conjunction with VA examination to adjudicate the case using the VASRD in effect in 2002. The exams used for rating are fairly similar and differences may be accounted for by the episodic waxing and waning symptoms of endolymphatic hydrops, although there is debate in the final diagnosis and a diagnosis of Ménière’s is not made or required.

It is administratively final that CI’s condition was unfitting so this case focused on VASRD coding. The VA rating rationale for analogous coding at 30% was compelling and in the CI’s favor. The very recent subspecialist diagnosis of Ménière’s provided by the CI, and the VA’s increased rating in 2008, are opined to be a worsening of CI’s condition and not applicable to the time of discharge.

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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 disability retirement, effective as of the date of his prior medical separation.

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| Unfitting Condition | VASRD Code | Rating |
| Residuals of Vertigo | 6299-6205 | 30% |
| Combined | 30% |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090211, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veteran's Affairs Treatment Record.

