RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: AIR FORCE

CASE NUMBER: PD0900221 BOARD DATE: 20100721

SEPARATION DATE: 20050804

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SUMMARY OF CASE: This covered individual (CI) was a MSgt/E7 (Information Manager) medically separated from the Air National Guard in 2005 after nine years of active service and twenty-five years of combined service. The medical basis for the separation was Asthma, Mild Persistent. The CI was referred to the Physical Evaluation Board (PEB), found unfit for continued military service, and separated at 10% disability using the Veterans Affairs Schedule for Ratings Disabilities (VASRD) and applicable Air Force and Department of Defense regulations.

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CI CONTENTION: ‘The PME board and VA minimum rating for asthma is 30%. I was on active duty when I got sick and was discharged. I was on call 24 hours a day and for the board to divide that by a 8 hour shift is not right. I also think the memo from the DOD office of general counsel dated March 25, 1985 is unfair to anyone who has given a good part of their life to the military. I have been rated with 19 service connected problems by the VA.’

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RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Service** | | | | **VA (3 Months after Separation)** | | | | |
| **Unfitting Conditions** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| Asthma, Mild Persistent | 6602 | 10% | 20050504 | Asthma | 6602 | 30% | 20051128 | 20050805 |
| History of Tobacco Abuse | CAT III | | 20050504 | No VA Entry |  |  |  |  |
|  | NARSUM | | | S/P Total Abdominal Hysterectomy, with Residual Scars | 7617 | 50% | 20051129 | 20050805 |
|  | Not in DES | | | Gastroesophageal Reflux Disease | 7346 | 30% | 20051128 | 20050805 |
|  | Not in DES | | | Headaches | 8100 | 30% | 20051128 | 20050805 |
|  | Not in DES | | | Degenerative Joint Diseases, C-Spine, with Muscle Spasm | 5237 | 20% | 20051128 | 20050805 |
|  | Not in DES | | | Sprain, Lumbosacral Spine | 5237 | 10% | 20051128 | 20050805 |
|  | Not in DES | | | Patellar Subluxation, Right Knee | 5257 | 10% | 20051128 | 20050805 |
|  | Not in DES | | | Patellar Subluxation, Left Knee | 5257 | 10% | 20051128 | 20050805 |
|  | NARSUM | | | Carpal Tunnel Syndrome, Left Wrist, with Residual Scar (Major) | 8515 | 10% | 20051128 | 20050805 |
|  | Not in DES | | | Osteopenia | 5013 | 0% | 20051129 | 20050805 |
|  | Not in DES | | | Bilateral Plantar Fasciitis | 5299-5276 | 0% | 20051128 | 20050805 |
|  | NARSUM | | | Allergic Rhinitis | 6522 | 0% | 20051128 | 20050805 |
|  | Not in DES | | | S/P Cholecystectomy with Residual Scar | 7318 | 0% | 20051128 | 20050805 |
|  | Not in DES | | | Carpal Tunnel Syndrome, Right Hand (Minor) | 8515 | 0% | 20051128 | 20050805 |
|  |  | | | Left Shoulder Condition (Major) | NSC |  |  |  |
| **TOTAL Combined: 10%** | | | | **TOTAL Combined (Includes Non-PEB Conditions):**  **90% Bilateral Factor of 1.9 for 5257, 5257** | | | | |

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ANALYSIS SUMMARY:

The CI was determined to be unfit for military service secondary to mild persistent Asthma and was separated with a disability rating of 10%. The Informal Physical Evaluation Board (PEB) determined the 10% rating for 6602 was appropriate on 20050801. The CI appealed and the Formal PEB concurred with the 10% rating. The CI then appealed to the Air Force Personnel Council and it also concurred with the 10% rating. It noted her Asthma had been reportedly brought under control with Advair (inhaled corticosteroid) and Albuterol (bronchodilator). The CI was then separated from service with a disability severance payment. At the time she separated from service DoDI 1332.39 was in effect and it stated that response to therapy was to be considered in all cases. She later appealed to the Air Force Board of Corrections for Military Records (BCMR) contending that she had not been advised that she could choose between the disability severance pay and a Reserve retirement and she preferred the Reserve retirement at age 60 over the severance pay. In December 2007 the BCMR recommended her record be changed to reflect transfer to the Retired Reserve Section on 4 August 2005 to await pay at age 60 rather than discharged due to physical disability with entitlement to severance pay.

She applied to the PDBR requesting a minimum rating of 30% for her asthma and consideration of the other conditions service-connected by the VA.

The Medical Evaluation Board (MEB) Narrative Summary (NARSUM) of 20041117 for Atypical Chest Pain reported her Asthma was well controlled with Advair, Singulair, and Albuterol PRN. Multiple records state this same information. One states Advair, Singulair, and prn Albuterol. The VA Compensation and Pension (C&P) examination states Advair was twice a day, Singulair once a day, and Albuterol as needed 2-3 times a week.

Daily inhalational anti-inflammatory or daily inhalational or oral bronchodilator therapy warrants a 30% rating. The CI was on inhaled Advair and it has both anti-inflammatory (fluticasone) and B-agonist or bronchodilator (Salmeterol) components. Fluticasone is in a class of medications called steroids. It works by reducing swelling in the airways. Salmeterol is in a class of medications called long-acting beta-agonists (LABAs). It works by relaxing and opening air passages in the lungs, making it easier to breathe.

Other Conditions (all mentioned in NARSUM)

S/P Total Abdominal Hysterectomy, w/Residual Scars; Carpal Tunnel Syndrome, Left Wrist, with Residual Scar (Major); and Allergic Rhinitis

There is no evidence any of these conditions were unfitting at the time of separation from service. There were no duty restrictions attributable to any of these conditions and none interfered with satisfactory performance of required duties.

Other Conditions Not in the Disability Evaluation System (DES)

Gastroesophageal Reflux Disease; Headaches; DJD, C-Spine, with Muscle Spasm; Sprain, L-Spine; Patellar Subluxation, Right Knee; Patellar Subluxation, Left Knee; Osteopenia; Bilateral Plantar Fasciitis; S/P Cholecystectomy with Residual Scar; and Carpal Tunnel Syndrome, Right Hand (Minor).

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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. It is apparent that the 10% disability rating was assigned in accordance with DoDI 1332.39 which was in effect at the time the CI separated from service. This rating was based on the results of the CI’s pulmonary function testing. However, the PDBR adjudicated this condition independently of DoDI 1332.39. After careful consideration of all available information the Board unanimously determined that the CI’s condition is most appropriately rated at a 30% disability for 6602 Mild Persistent Asthma.

The CI had a diagnosis of Asthma and was taking Advair twice a day, Singulair once a day and Albuterol as needed. Advair is an inhaled medication that contains an anti-inflammatory medication as well as a bronchodilator. Although her pulmonary function tests were not at a compensable level, a 30% rating is warranted based on the daily use of inhalational anti-inflammatory or bronchodilator therapy.

The Board also considered S/P Total Abdominal Hysterectomy, with Residual Scars; Carpal Tunnel Syndrome, Left Wrist, with Residual Scar (Major); and Allergic Rhinitis and unanimously determined that none of these conditions were unfitting at the time of separation from service and therefore no disability rating is applied.

The other diagnoses rated by the VA [Gastroesophageal Reflux Disease; Headaches; DJD, C-Spine, with Muscle Spasm; Sprain, L-Spine; Patellar Subluxation, Right Knee; Patellar Subluxation, Left Knee; Osteopenia; Bilateral Plantar Fasciitis; S/P Cholecystectomy with Residual Scar; and Carpal Tunnel Syndrome, Right Hand (Minor)] were not mentioned in the Disability Evaluation System (DES) package and are therefore outside the scope of the Board. The CI retains the right to request her service Board of Correction for Military Records (BCMR) to consider adding these conditions as unfitting.

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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 her prior medical separation.

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

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090303, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

PDBR PD-2009-00221

MEMORANDUM FOR THE CHIEF OF STAFF

Having received and considered the recommendation of the Physical Disability Board of Review and under the authority of Section 1554, Title 10, United States Code (122 Stat. 466) and Section 1552, Title 10, United States Code (70A Stat. 116) it is directed that:

The pertinent military records of the Department of the Air Force relating to XXXXX, are corrected to show that:

a.  The diagnosis in her finding of unfitness was Asthma, Mild Persistent, VASRD Code 6602, rated at 30% rather than 10%.

b.  On 3 August 2005, she declined coverage under the Survivor Benefit Plan (SBP).

c.   She was not discharged on 4 August 2005 with entitlement to disability severance pay; rather, on that date she was relieved from active duty and on 5 August 2005 her name was placed on the Permanent Disability Retired List.

JOE G. LINEBERGER

Director

Air Force Review Boards Agency