RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Air force

CASE NUMBER: PD0900230 BOARD DATE: 20090715

SEPARATION DATE: 20061023

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SUMMARY OF CASE: This covered individual (CI) was a Technical Sergeant Security Craftsman medically separated from the Air Force National Guard in 2006 after over 19 years of service.

He had a long history of back pain that worsened in 2004 and limited his ability to run and perform strenuous activity. His duty was limited to performing administrative duties only. Appropriate conservative therapy failed to alleviate his symptoms and he was referred to the Air Force Physical Evaluation Board (PEB). The Informal PEB determined he was unfit for continued military service. He was then separated with a 10% disability rating for 5238 Chronic back pain with mild spinal canal stenosis L4-L5 and foraminal stenosis L5-S1 using the Veterans Affairs Schedule for Ratings Disabilities (VASRD) and applicable Air Force and Department of Defense regulations. The Formal PEB concurred with the Informal PEB’s decision. However, the formal PEB medical officer wrote a dissenting opinion stating that the CI’s sleep apnea was not well controlled and was therefore unfitting. He recommended the addition of 6847 Obstructive sleep apnea rated at 50% because of the requirement for use of a CPAP machine.

Using an evaluation completed prior to the time of separation from the Air Force, the Veterans Administration (VA) rated this disability as 5242 Degenerative disc disease of the lumbar spine at 10%. The VA also rated 6847 Obstructive sleep apnea at 50%, 6260 Tinnitus at 10%, 6513 Rhinosinusitis at 10%, 7346 Gastroesophageal reflux disease at 10%, 5276 bilateral plantar fasciitis at 10%, and 6100 Bilateral hearing loss at 0% for an initial combined total of 70%. His back condition worsened over time and after a subsequent evaluation done approximately eighteen months after separation, the VA increased this rating to 40%. At the same time, his plantar fasciitis improved and this rating was decreased to 0%; the combined total was then 80%.

The CI contends that he had several medical conditions that were not considered by the PEB, including sleep apnea, chronic allergic rhinitis, bilateral plantar fasciitis, and hiatal hernia.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

BOARD FINDINGS: IAW DoDI 6040.44, the Board used the Veteran’s Affairs Schedule of Rating Disabilities (VASRD) as the most favorable basis for rating. After careful consideration of all available information, the Board unanimously concluded that the CI’s condition is appropriately rated at a 10% for 5238 Chronic back pain with mild spinal canal stenosis L4-L5 and foraminal stenosis L5-S1 using the VASRD general rating formula for diseases and injuries of the spine. This rating is based on the limitation of range of motion (ROM) of the lumbosacral spine documented on examinations by both the service and the VA. While the Air Force ROM exam only included flexion and extension, the flexion measurement was similar to that measured by the more complete VA examination done in January 2007. The Air Force measured flexion of the lumbosacral spine at 65 degrees and the VA measured 70 degrees. The VA examination also documented a combined ROM of greater than 120 degrees but not greater than 235 degrees (190 degrees), tenderness to palpation in the paraspinal muscles that did not result in abnormal gait or spinal contour, and no increase in symptoms with repetitive motion. A subsequent examination done by the VA done in May 2008 documented a more severely limited ROM (10 degrees of flexion and combined ROM of 35 degrees) with pain that increased with repetitive motion and this warranted a 40% rating. This is evidence that the CI’s back condition worsened over time but the board must rate the disability of unfitting conditions as they are at the time of separation.

The Board also examined each of the other conditions rated by the VA and did not find any to be unfitting. The CI had obstructive sleep apnea that required the use of a CPAP machine and the Commander’s letter implied that this condition had a negative impact on his daily duty performance along with his back pain. The Commander also stated that the CI could not deploy or participate in overnight training in a field environment because he would not be able to use his CPAP machine. However, at the time of separation the Air Force did not separate service members simply because they were not able to deploy. Personnel who could not deploy were retained and given assignment limitations. In addition, battery operated CPAP machines have been used by other servicemembers. The CI did have severe sleep apnea and his symptoms of non-restorative sleep and excessive daytime sleepiness were improved but not completely controlled with a nasal CPAP. At the time of separation he had begun using a full face CPAP mask in an attempt to control his symptoms but there is little documentation concerning the effectiveness of this. One entry in his service treatment record states his symptoms had improved with the full face mask but the existence or level of residual symptoms was not described. There is no documentation of his level of daytime sleepiness or whether it interfered with his duty performance. There is no mention of falling asleep on duty or difficulty arriving to work on time as might be expected with uncontrolled symptoms. After careful consideration of all available information, the Board unanimously concluded there was insufficient evidence to support designating the CI’s sleep apnea as an unfitting condition.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

RECOMMENDATION: The Board recommends that there be no recharacterization of the CI’s separation.

|  |  |  |
| --- | --- | --- |
| Unfitting Condition | VASRD Code | Rating |
| Chronic back pain with mild spinal canal stenosis L4-L5 and foraminal stenosis L5-S1 | 5238 | 10% |
| Combined | 10% |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090309, w/atchs.

Exhibit B. Service Treatment Record.

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

President

Physical Disability Board of Review

SAF/MRB

1535 Command Drive, Suite E-302

Andrews AFB, MD 20762-7002

Reference your application submitted under the provisions of DoDI 6040.44 (Section 1554, 10 USC), PDBR Case Number PD-2009-00230.

After careful consideration of your application and treatment records, the Physical Disability Board of Review determined that the rating assigned at the time of final disposition of your disability evaluation system processing was appropriate. Accordingly, the Board recommended no re-characterization or modification of your separation with severance pay.

I have carefully reviewed the evidence of record and the recommendation of the Board. I concur with that finding and their conclusion that re-characterization of your separation is not warranted. Accordingly, I accept their recommendation that your application be denied.

Sincerely

Director

Air Force Review Boards Agency

Attachment:

Record of Proceedings

cc:

SAF/MRBR