RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900246 BOARD DATE: 20090917

SEPARATION DATE: 20030910

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SUMMARY OF CASE: This covered individual (CI) was an active duty officer placed on TDRL in 2003 and medically separated from the Army in 2005 after 16 years of service. The medical basis for the separation was a liver condition. He experienced an onset of flu-like symptoms in 1998, following a series of deployment vaccinations. This was associated with marked elevation of liver enzymes and he ultimately underwent a liver biopsy. This yielded a diagnosis of autoimmune hepatitis, suspicious for linkage to the vaccinations. The condition required immunosuppressive medications, including high doses of prednisone. The prednisone treatment was complicated by significant weight gain and cushingoid response (cortisol disturbance), but attempts to taper the dose resulted in rebound hepatitis. He developed hypertension, judged to be medication-related as well. The disorder was additionally associated with fatigue, malaise, abdominal pain, subjective weakness and decreased concentration. The CI was transferred to a desk job, but was unable to be tapered from his medications and was sent for a MEB in 2003. The autoimmune hepatitis was determined to be medically unacceptable IAW AR 40-501. The cushingoid steroid complications and hypertension were determined to be medically acceptable. The CI was referred to the PEB, found unfit for the liver condition only and placed on TDRL with a 40% rating. In 2005, at his 18 month TDRL evaluation, he was medically separated for autoimmune hepatitis with 20% disability.

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CI CONTENTION: In his application, the CI notes continuing symptoms and medications, and believes that his disability should have remained at the 40% TDRL rating. He attaches a letter elaborating his clinical condition relative to the VASRD rating, with supporting letters from his current physicians.

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RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Service PEB** | | | | **VA (2 Wk. after Separation)** | | | | |
| **Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| AUTOIMMUNE HEPATITIS | 7345 | 40%  20% | 20030416  (TDRL)  2005000819  (Separation) | AUTOIMMUNE HEPATITIS WITH CUSHINOID [*SP*] FEATURES | 7354-7907 | 30%  30% | 20031009  20050830 | 20030730 |
| CUSHIONOID [*SP*] FEATURES SECONDARY TO CHRONIC STEROID  THERAPY | FIT | | 20030416 | INCORPORATED ABOVE | N/A | N/A | N/A | N/A |
| HYPERTENSION | FIT | | 20030416 | HYPERTENSION | 7101 | 0% | 20031009 | 20030730 |
| NO ADDITIONAL DA 3947 ENTRIES. | | | | NON-PEB X 3 | | |  |  |
| **TOTAL Combined: 20%** | | | | **TOTAL Combined (*Includes Non-PEB Conditions*): 40%** | | | | |

ANALYSIS SUMMARY:

Autoimmune Hepatitis. The PEB applied the accurate VASRD code for rating autoimmune hepatitis. The VA coding is confusing. The 7354 hepatitis code chosen was wrong, although the rating formula is identical to the 7345 correct code. The VA chose to code it as a single condition with the cushingoid steroid complications and rate it according to the 7907 Cushing’s syndrome criteria. Language in the rating decision implied, but did not specifically state, that the only ratable features were those attributable to the Cushing’s complications. It is clear from a medical perspective that there are two distinct conditions, one caused by the treatment of the other. The initial VA rating examiner’s report discussed all of the symptoms under autoimmune hepatitis, but if the VA rater believed that the hepatitis symptoms were not ratable, a code and 0% rating should still have been applied. The MEB did appropriately separate the conditions, although doubt is raised whether the Cushing’s component was confined to physical features in their estimation. The initial NARSUM and the TDRL NARSUM describe the same symptoms, all of which are elaborated in the 7345 rating criteria. The only differences in VASRD rating between 40% and 20% is the presence of weight loss or hepatomegaly and the total weeks per year of incapacitating symptoms (2 - 4 = 20%; 4 - 6 = 40%). The CI suffered the opposite of weight loss as an artifact of therapy, rendering that an irrelevant criterion. Hepatomegaly was not present on any Army or VA exam, and is insensitive for liver function at any rate. Therefore any rating distinction in this case rests on the duration of incapacitating symptoms. The history recorded in both Army exams does not provide enough information to quantify this feature. The CI’s application explicitly notes that the examiners did not elicit specific information in this regard. The first VA rating exam stated that the CI lost 3 months of work from the disorder (challenging the rater’s decision to not rate according to hepatitis criteria). The 2005 VA rating examiner stated that the condition ‘resulted in 1 time lost from work per month’, but does not quantify days lost per year or non-workday symptoms. The CI’s application states that his symptoms (*incapacitating* implied, but not stated) were and continue to be a *minimum* of 4 weeks annually. His attached physicians’ letters document the severity of his condition, but do not provide quantifiable details. The PDBR Action Officer personally contacted one of them, Kent C. Holtzmuller, M.D. (a retired Army Colonel). The CI has been under his care since he was placed on TDRL. He unequivocally stated that the duration of incapacitating symptoms was ‘at least’ 4 weeks annually throughout the TDRL period and to the present. IAW VASRD §4.3, reasonable doubt is resolved in favor of the CI in recommending a separation rating of 40% for the hepatitis condition.

Cushingoid Steroid Complications. As noted above, there is no question that the steroid-induced Cushing’s symptoms constitute a distinct condition. The MEB acknowledged it as cushingoid ‘features’, possibly referring only to the moon fascies and body habitus, but the CI manifested the full systemic pathology and laboratory abnormalities of Cushing’s syndrome. His 2005 VA rating physician, for example, stated, ‘as a result of the Cushing's Syndrome, he has loss of muscle strength, high blood pressure and weakness’. The PEB’s adjudication of the condition as fit is not on firm footing, unless they believed they were evaluating physical features only. Although the DA 3947 noted it as medically acceptable, no rationale or AR 40-501 reference was provided. AR 40-501 is silent regarding this or equivalent disorders. If the general AR 40-501, 3-41 (paragraph e), provision is applied, in fact, similar conditions would commonly be designated as below retention standards. Most significant to the fitness adjudication of this condition is the Commander’s statement. He stated, ‘The most obvious issue with [CI]’s condition is the physical changes brought on by the consumption of large doses of prednisone.’ He went on to elaborate the weight gain, deterioration in physical fitness scores and overall impact on performance. IAW VASRD §4.3, reasonable doubt is resolved in favor of the CI for recommending the Cushing’s complication as an additionally unfitting condition by the Board. It is appropriately coded 7907 and meets the criteria for the minimum 30% rating. The 2005 VA rating exam quotes ‘muscle weakness’, which is a 60% rating criterion under 7907. Since the rating decision quoted ‘objective’ muscle weakness (of which there was none) as the threshold, however, 30% remains a fair recommendation.

Other Conditions. The hypertension and other ratable conditions are not relevant for consideration as additionally unfitting.

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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 PDBR to the extent they were inconsistent with the VASRD in effect at the time of the adjudication. The Board did not surmise from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised. In the matter of the hepatitis condition, the Board unanimously recommends a permanent rating of 40% at separation IAW VASRD §4.114. In the matter of the Cushing’s condition, the Board voted 2:1 to recommend it as an additionally unfitting condition for separation rating; coded 7907 and rated 30% IAW VASRD §4.120. The single voter for dissent did not elect to submit a minority opinion.

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RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows; TDRL at 60% for 6 months following CI’s prior medical separation and then a permanent combined 60% disability retirement as below.

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| **UNFITTING CONDITION** | **VASRD CODE** | **TDRL RATING** | **PERMANENT**  **RATING** |
| AUTOIMMUNE HEPATITIS | 7345 | 40% | 40% |
| CUSHINGOID DISORDER SECONDARY TO CHRONIC STEROID THERAPY | 7907 | 30% | 30% |
| **COMBINED** | **60%** | **60%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090319, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

