RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD0900254 BOARD DATE: 20100114

SEPARATION DATE: 20050129

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SUMMARY OF CASE: This covered individual (CI) was an active duty NCO (Ammunition Specialist) medically separated from the Army in 2005 after nearly 5 years of service. The medical basis for the separation was obstructive sleep apnea (OSA). He had an onset of snoring and daytime somnolence in 2001. OSA was diagnosed by sleep study. He underwent ENT surgeries and successful weight reduction, but required CPAP (a nocturnal assisted breathing device). The condition improved, but he continued to have issues with alertness and there were deployment concerns relative to the CPAP requirement. He was referred for a MEB and the OSA condition was forwarded to the PEB as medically unacceptable. Mild reactive airway disease and bilateral knee problems were addressed in the NARSUM as medically acceptable additional conditions. Allergic rhinitis and restless leg syndrome were documented in the NARSUM as well. OSA was the only condition entered on the DA 3947 and specifically adjudicated by the PEB. The CI was found unfit for OSA and separated at a 0% rating IAW DoDI 1332.39.

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CI CONTENTION: The CI did not elaborate his contention; review of the OSA rating is implicit. He did list ‘mild reactive airway disease, restless leg syndrome, s/p uvuoplasty, tonsillectomy and septal surgery, chronic allergic rhinitis and patellofemoral pain syndrome for both left and right knee’ as additional conditions for review.

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RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Service PEB** | | | | **VA (VARD dtd 20060724\*)** | | | | |
| **Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| OSA ‘Requiring CPAP’ | 6847 | 0% | 20041201 | OSA | 6847 | 50% | \* | 20050130 |
| No Additional DA 3947 Entries. | | | | Non-PEB X 3 / NSC X 9 | | | \* | 20050130 |
| **TOTAL Combined: 0%** | | | | **TOTAL Combined (*Includes Non-PEB Conditions*): 50%** | | | | |

\* Information is extrapolated from a VARD of 20080812, which is the only one in evidence. It cites the VARD referenced above. The original rating exam is unavailable and the date unknown. Since Board recommendations are unaffected by this evidence, the case was not delayed in pursuit of these additional records.

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ANALYSIS SUMMARY:

OSA. The CI’s functional status regarding the condition was well summarized in this excerpt from the NARSUM.

At this time, he is able to do all of the functional activities required of a soldier except for wearing a gas mask which he says causes him some problems. He recently successfully completed an Army physical fitness test using the walk for an aerobic function. He is able to do upper and lower body weight training. He is only able to run at his own pace and distance but he can do unlimited walking. He can lift a large amount of weight without any difficulty. Functionally, he seems to be able to perform all of the requirements of his MOS without any difficulty. Unfortunately, he has obstructive sleep apnea which is a chronic disorder and does require the continuous use of C-PAP at night and therefore requires access to a reliable electrical outlet at all times. He has had a trial of C-PAP for at least twelve months and his condition is felt to be maximally medically improved. There are no psychiatric overtones or problems in this patient. Prognosis is good. The condition is stable. The compliance has been good.

It was also noted in the evidence that the CI successfully deployed to Iraq as a civilian after separation. Currently none of the service PEB’s are adjudicating OSA as unfitting based on deployment restrictions, but this case was adjudicated prior to wide-spread adoption of that practice. The Commander’s statement and the Behavioral Health screening exam do, however, document issues with somnolence and alertness which could be an unfitting impairment. This is a moot discussion in that it goes to fitness, not rating. IAW DoDI 6040.44, the Board cannot override a PEB adjudication of unfitness. Regarding rating, the NARSUM excerpt supports the assigned rating under DODI 1332.39, E2.A1.2.21. This, of course, is also moot since Board recommendations are based solely on the VASRD. VASRD §4.100 mandates a minimum rating of 50% under 6847 for OSA requiring CPAP. This is therefore the Board’s recommendation in regards to this condition.

Bilateral Knee Condition. This condition, diagnosed as patellofemoral pain syndrome, was evidenced in the service medical record as an intermittent problem managed conservatively. He had undergone physical therapy and received temporary profiles for it in the past. He did not require orthopedic specialty care or surgery. X-rays were normal as were range of motion exams. He was on a permanent L2 profile for his knees at the time of separation, but the only restriction was running (encompassed by the P3 profile for OSA). His Commander’s statement did not note the knee condition or any impairment to performance referable to orthopedic limitations. Although not entered on the DA 3947, the knee condition was addressed in the NARSUM and judged to be medically acceptable. The VA rating was 0% for each knee. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a Board recommendation for adding the knee conditions as a separately unfitting.

Other Conditions. All of the CI’s additional conditions enumerated in his application were covered in the NARSUM. The mild reactive airway disease, occasionally requiring rescue inhaler, was judged to be medically acceptable IAW AR 40-501. There was no profile for it or mention of it in the Commander’s statement. Restless leg syndrome and the residuals of the uvuloplasty, tonsillectomy and septal surgery were incorporated into the OSA rating by the VA. Even if evidence existed which would justify a recommendation of these conditions as additionally unfitting (which it does not), they would not be eligible for additional rating. The only remaining condition coded and service connected by the VA was allergic rhinitis. This was rated 0 % and no link to fitness is in evidence. The Board, therefore, has no reasonable basis for recommending any additional unfitting conditions for separation rating.

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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. As discussed above, PEB reliance on DoDI 1332.39 for rating OSA was operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the obstructive sleep apnea condition, the Board unanimously recommends a rating of 50% coded 6847 IAW VASRD §4.100. In the matter of the bilateral patellofemoral pain syndrome, restless leg syndrome, residuals of prior ENT surgeries, allergic rhinitis and all of the CI’s other medical conditions; the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

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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 his prior medical separation.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Obstructive Sleep Apnea Requiring CPAP | 6847 | 50% |
| **COMBINED** | **50%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090323, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

