RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: ARMY

CASE NUMBER: PD09000263 SEPARATION DATE: 20050614

BOARD DATE: 20100826

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

SUMMARY OF CASE: This covered individual (CI) was an active duty SSG/E6 (MOS 92A, Automated Logistic Specialist), medically separated from the Army in 2005 after 15 years of service. The medical basis for the separation was asthma. The CI developed breathing symptoms in 1999 that were worse with running and environmental triggers. He was initially controlled on episodic inhaled medication (Albuterol). His symptoms gradually increased and in March 2003 pulmonary function testing (PFTs) led to a diagnosis of mild persistent asthma and increased medications for control. In June 2003 he required a course of oral steroids. Although he was stable on medications in garrison, he had to avoid the triggers of stressful environments, and could not go to the field or deploy. The CI was placed on a permanent P-3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded the Asthma condition to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions were noted on the DA Form 3947 and there were no additional conditions supported in the Disability Evaluation System (DES) packet. The PEB determined the Asthma condition unfitting, with placement into the Temporary Duty Retirement List (TDRL) at 30%. On final TDRL reevaluation, the Narrative Summary (NARSUM) added a diagnosis of Seasonal Allergic Rhinitis (SAR). For permanent rating the PEB found the SAR not unfitting, and the Asthma unfitting. The Asthma was rated at 10% using the Veterans Affairs Schedule for Ratings Disabilities (VASRD). The CI did not appeal for a formal PEB (failure to elect memo was noted) and was thus medically separated with a 10% disability rating.

CI CONTENTION: “The rating should be changed for the condition I was found unfit bronchial asthma, because I was/am taking daily inhalational or oral bronchodilator therapy; or inhalational ant-inflammatory medication. Daily medication will always be needed to control my battle with the mild obstructive disease. The Advair Diskus 500/50 breathing device was used daily as part of my bronchial asthma treatment. The Advair Diskus is an inhaled, long-acting, long term bronchodilator comprised of an inhaled corticosteriod. I was taking one inhalation of this product approximately 12 hours apart dart (sic). Advair is supposed to allow for more symptom free days. However Advair contains (Serevent) Salmeterol which has been proven to increase the risk of asthma related death even more so in African Americans. Albuterol was the second medicine used for treatment. Albuterol was and still is needed for the sudden symptoms that occur from different triggers. This disease has placed limitations and inconveniences in my life.”

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20050413** | | | **VA (while in TDRL status) – All Effective 20031121** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Asthma | 6602 | 10% | Asthma | 6602 | 30% | 20040120 |
| Seasonal Allergic Rhinitis (SAR) | Not Unfitting | | Allergic Rhinitis | 6522 | 0% | 20040109 |
| ↓No Additional DA 3947 Entries.↓ | | | Non-PEB X 2 / NSC X 1 | | |  |
| **TOTAL Combined: 10%** | | | **TOTAL Combined (*Includes Non-PEB Conditions*): 30%** | | | |

ANALYSIS SUMMARY:

Asthma Condition. The PEB’s DA Form 199 dated 20050413 indicated “Asthma, with normal spirometry, on intermittent inhalational bronchodilator therapy.” The PEB specified “Medication profile shows no controller medication between March – April 2004 and 15 February 2005.” The PEB permanent separation rating was 6602 at 10%; and the VASRD 10% criteria contains the phrasing “intermittent inhalational or oral bronchodilator therapy.” There is therefore no evidence that the provisions of DoDI 1332.39 were applied. The CI’s PFTs were over 80 percent for both ratable parameters (FEV-1 and FEV-1/FVC), and rating hinges on frequency of medication for asthma. There was conflicting evidence in the record about what medication the CI was prescribed and/or taking during the TDRL period. The medication profile appeared to be based solely on the DoD pharmacy and the gap in documentation was as noted by the PEB. The NARSUM noted that the CI related that he was on a lower dose of Advair (combination inhaled corticosteroid and bronchodilator) that he obtained from the VA: “he is supposed to be on a stronger dose of Advair, but the VA Hospital where he obtained his medications doesn't carry the proper dose.” The examiner also noted that the CI “seems to be compliant with medication regimens” which included Advair 500/50 one puff twice a day. The medication profile indicated that the CI was prescribed and obtained Advair 500/50 at the military pharmacy within two weeks of seeing the MEB provider. He was therefore prescribed and using daily inhalational therapy at the time of his separation from TDRL. At clinical evaluations, the CI was prescribed chronic daily controller medications, and his condition was such that he should have been on daily inhalational medications. Given the clinical notes prescribing continuous medication use rather than rescue medication only (CI was also on rescue medications), the CI is adjudged to have required chronic daily inhalational asthma medication for his condition. The Board obtained a historical VA pharmacy profile which documented that the VA had prescribed Advair 250/50 one puff twice a day as of 20041015 in addition to other asthma medications. This new evidence shows that the CI was on controller medication between October 2004 and 15 February 2005 and supports the NARSUM indications of compliance on daily medication. There was no evidence of civilian pharmacy medication prescription in the record. There remained approximately 6 months during the TDRL 11 month period noted by the PEB where no controller medication was available, per the VA and DoD medication profiles. This period without daily controller medication is adjudged as likely non-compliance. Given the combined medication profiles, the requirement for chronic daily inhalational medication, and IAW §4.3 reasonable doubt, the CI is adjudged to be closer to the 30% criteria of “daily inhalational or oral bronchodilator therapy, or; inhalational anti-inflammatory medication” than the 10% criteria of “intermittent inhalational or oral bronchodilator therapy.” All evidence considered, including the newly obtained VA medication profile of 2004, the Board recommends coding 6602 at 30% as the fair permanent separation rating for Asthma in this case.

Other Conditions. The NARSUM formally identified Seasonal Allergic Rhinitis (SAR) condition as a diagnosis without indicating if it was unacceptable IAW AR 40-501 on both entry into TDRL and on re-evaluation. The PEB at the end of the CI’s TDRL period specifically addressed SAR as not unfitting. The SAR was controlled by medications and there was no indication that any SAR symptoms approached the level of being unfitting, although they may have exacerbated the CI’s unfitting asthma. Any asthma contribution from SAR exacerbations is rated within the Asthma coding. Several other relatively minor medical conditions were identified in the NARSUM and MEB physical. They had no connection with fitness and are not relevant for Board consideration as additionally unfitting and ratable. No other conditions were service connected with a compensable rating by the VA within twelve months of separation. There are therefore no additional conditions in this case appropriate for Board recommendation as additionally unfitting for separation rating.

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, there is no firm evidence that there was PEB reliance on DoDI 1332.39 for the CI’s permanent rating for Asthma; regardless, Asthma was adjudicated independently of that instruction by the Board. In the matter of the Asthma condition, the Board by a vote of 2:1 recommends a rating of 30% coded 6602 IAW VASRD §4.97. The single voter for dissent (who recommended 6602 at 10%/no recharacterization) submitted the addended minority opinion. In the matter of the Seasonal Allergic Rhinitis (SAR) condition, the Board unanimously recommends no recharacterization of the PEB adjudication as not unfitting. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as additionally unfitting for rating at separation.

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.

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Asthma | 6602 | 30% |
| **COMBINED** | **30%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090326, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

The CI was placed on the TRDL for Asthma in August 2003 and was re-evaluated in February 2005. The CI was removed from the TDRL and separated from the Army in June 2005.

Rating asthma at the 10% level requires FEV-1 of 71 to 80% predicted, or, FEV-1/FVC of 71 to 80%, or; intermittent inhalation or oral bronchodilator therapy.

Rating asthma at the 30% level requires FEV-1 of 56 to 70% predicted, or, FEV-1/FVC of 56 to 70%, or; daily inhalation or oral bronchodilator therapy.

At the TDRL evaluation in February 2005, a Pulmonary Function Test was performed. The results of the test show spirometry within normal limits and therefore a postbronchodilator study was not required. The PFTs were well outside the compensable rating criteria range, exceeding 80% (FEV 1 was 3.35 and 94% predicted; FVC was 4.09 and 99% predicted; and FEV1/FVC was 105% predicted). Therefore, the results of the PFT do not warrant a compensable rating and we then look at the medication usage to determine “intermittent or daily inhalation or oral bronchodilator therapy” in order to determine the appropriate rating.

The PEB requested medication profiles so medication usage could be determined. The CI responded with a letter stating he was unable to provide the VA medication profile because he was not able to personally pick it up and provide it to the board in a timely manner. In his letter he did not claim he was taking daily inhalation medication, he simply stated the medications he was receiving from the VA.

Based on the Army medication profile the last medication received prior to placement on the TDRL was a six month supply of Advair on 3 April 2003 with no refills. This would have lasted until the end of September 2003. The next time the CI received Advair was in March of 2004, a one month supply with no refills. Other medications were obtained between September 2003 and March of 2004 so there is no doubt that he was able to obtain prescriptions for medications but he did not obtain another prescription for his Advair until March 2004. The next refill provided by the Army was in January 2005 for one Advair diskus with two refills remaining and then on 15 February a new prescription (different RX #) for Advair was filled.

The PDBR requested the VA submit their medication profile. This showed the CI obtained Advair on 15 October 2004 with ample refills to last for 12 months. He again obtained Advair in December 2005.

The CI did not submit or allude to any civilian provided prescriptions for consideration. The CI was placed on the TDRL in November 2003. From 1 October 2003 until 15 October 2004, the medication profiles show the CI obtained a one month supply of Advair during this twelve and a half month period. The VA medication profile then shows Advair was obtained from October 2004 through final separation in June 2005. So, from October 2003 through June 2005, a twenty one month period, inhalation medication was obtained to last for approximately nine and a half of the twenty-one months.

The CI contends to be rated for daily inhalational or oral bronchodilator therapy. However, the evidence in this case does not support daily usage during the TDRL period. The evidence does show the CI obtained medication late in the TDRL period once he was notified he was being re-evaluated for his Asthma condition. Based on the medication obtained and available for usage, I do not believe the evidence in this case supports daily use of inhalation medication and therefore should be rated as intermittent usage at 10%.

DEPARTMENT,OF= THE ARMY' "

, ARMY REVIEW BoARDS AGENCY ,

1901 SO!JTH BELL S:rREET 2ND FLOOR

" ARLINGTON, VA 22202-4508

' ... . ' .'

XXXXXXXXXXXXXX

, . ' .

........ :=-

I Accept the 'recommendation of the Department of Defens'e Physical DisabilitY Board

of Review, (DoD PDBR) to rechara,cterize your separation as a disability retirement with the .

combined disability rating of 30% effective the date of your medical separation ,for disability

with severance pay. Enclosed i~ a copy of the Board's recommendation and record'of

procee~ings for your information." " '

, .

The rec;:haracterization .of your separation as a disability retirement will' result 'in an ,

adjustment to your pay providing, retirement pay from the date of your Original medical

, separation minU!~ the amount of severance pay' you were previously' paid ,at separation. ' .

. .' ,"

, 'The accepted DoD PDBR recommendation has been ~orwarded to the Army

, Physical Disability Agency for required correction of,records and then,to the U.S. Defense

Finance and Accounting Service to make the necessary adjustment to your pay and

, allowances. These agencies will provide you with official notification by mail as soon as the

directed ,corrections hav~ been made arid will provide information on 'your retirement '0

benefits. Due to the large number of cases *in* process, please be advised that it may be

several months b~fore you receive notification that the corrections are completed arid pay

adjusted. Inquiry concerning your. correction of records' should be addressed to the, '

U.S. Army Physi,~al Disabi!ity Agency, WRAMC, Building 7, Washington, D.C. 20~07-5001. '

A copy of this decision has been p'rovided to the Department of Veterans Affa:irs" '