RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXX BRANCH OF SERVICE: NAVY

CASE NUMBER: PD0900387 BOARD DATE: 20090916

SEPARATION DATE: 20071219

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

SUMMARY OF CASE: This covered individual (CI) was a Lieutenant Junior Grade Naval Aviator medically separated from the Navy in 2006 after 3 years and 4 months of service. The medical basis for the separation was Type 1 Diabetes. CI was referred to the Navy Physical Evaluation Board (PEB) and was initially found fit. The Informal PEB subsequently determined he was unfit for continued Naval service and the CI entered the Temporary Disabled Retired List (TDRL) with a 40% rating for 7913 Diabetes Mellitus. After his first TDRL periodic evaluation he was separated with a 20% disability rating for 7913 Diabetes Mellitus using the Veterans Affairs Schedule for Ratings Disabilities (VASRD) and applicable Navy and Department of Defense regulations.

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

CI CONTENTION: “My Type 1 Diabetes had not yet stabilized when I was separated from the United States Navy. My Endocrinologist has verified that I was still in the "honeymoon" phase of my diabetes at this time, and that I still had some "insulin secretion". (ref. A) Despite excellent work to control this disease, and daily intensive treatment, I have lost the ability to produce insulin. I am experiencing increased variability in my blood sugars which is requiring me to continually monitor and regulate my insulin regimen. Even though I am linked to an insulin pump 24 hours a day, closely monitor my blood sugar several times a day, and follow food/diet restrictions, I have experienced unexpected moments of hypoglycemia. (ref. B) I can no longer fully participate in extended physical activity I had once enjoyed (long runs, full sports games, etc) as I have experienced repeated episodes of hypoglycemia and must stop to regain control of my blood sugars.

 Two distinct VA rating decisions (March 2, 2006) and (August 22, 2008) have rated my Type I Diabetes at 40%. (ref. C)

 This disease is the primary factor that forced me to end my career as a Naval Aviator and to be separated from the United States Navy.

 The PEB rated my Type 1 Diabetes at 40% on Feb. 14, 2006, found me unfit for duty, and placed me on TDRL. (ref. D) I was medically discharged from the Navy on April 30, 2006. On Sept. 25, 2007, the PEB decreased my Diabetes rating to 20%, and I was separated with Severance Pay from the TDRL (ref. E) before my disease had stabilized. If I had been allowed to stay on the TDRL for the full allotted time, I believe that I would have been near the end of the "honeymoon" phase, and my disease would have been given a more accurate rating, and continue to be rated at 40%.

 I disagree with the 20% rating given by the PEB, and feel that this incorrect rating is due in part to the fact that I as prematurely released from the TDRL. Due to the impact this disease is having on my day to day life, as shown in the attached documents, I feel that my condition more appropriately warrants a 40% rating from the PEB.”

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

RATING COMPARISON:

|  |
| --- |
| **Previous Determinations**  |
| **Service** | **VA** |
| **PEB Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam Date** | **Effective date** |
| Type I Diabetes  | 7913 | 40% OnTDRL | 20060214 | Diabetes Mellitus Type 1 | 7913 | 40%40% | 2006032120080822 | 20060501 |
| Subclinical Hypothyroidism |  | Fit | 20060214 | Hypothyroidism | 7903 | 0%10% | 2006032120060824 | 2006050120060501 |
| Type I Diabetes  | 7913 | 20% | 20070916 | DJD, Left Knee | 5003 | 10% | 20060321 | 20060501 |
| Subclinical Hypothyroidism |  | Fit | 20070916 | Tinnitus | 6260 | 10% | 20060321 | 20060501 |
|  |  |  |  | Residual Left Hand Index Finger Fracture (Non-Dominant) | 5229 | 0% | 20060321 | 20060501 |
| TOTAL Combined: 20% | TOTAL Combined (*incl non-PEB Dxs):* 50% from 20060501  60% from 20060501 |

ANALYSIS SUMMARY:

Type I Diabetes Mellitus

Navy:

It appears the Navy PEB initially placed the CI on the TDRL in 2006 because his condition was not yet stable. At his first periodic evaluation in July 2007 it was noted that the CI had had not any hospitalizations for emergency room visits while on the TDRL and had not missed any work except for routine follow-up visits with endocrinology. It was also noted that he had an insulin pump and was complying with both diet therapy and regular exercise to improve control of his diabetes. His hemoglobin A1C was 7.1 at this time.

VA:

Using an evaluation completed one month after the CI was placed on the TDRL in 2006, the Veterans Administration (VA) rated this disability as 7913 Diabetes Mellitus Type I at 40%. This rating was continued after a second evaluation in 2008, approximately eight months after the CI left the TDRL. Both of these ratings were based on a reported history of avoidance of strenuous activities by the CI. Routine VA rating procedures do not consider regulation of activities to be present unless the limitation has been prescribed by a healthcare provider and there is no evidence that any limitation had been recommended. The CI’s hemoglobin A1C was tested by the VA in December 2007, June 2008, and August 2008 with results of 5.8, 6.4, and 6.0 respectively.

Hypothyroidism

There is no evidence that this condition interfered with the CI’s ability to perform the duties required of his rank or 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 PDBR to the extent they were inconsistent with the VASRD in effect at the time of the adjudication. After careful consideration of all available information, the Board unanimously concluded that the CI’s condition is appropriately rated at a 20% for 7913 Diabetes Mellitus.

The 20% rating is appropriate because the CI’s type I diabetes mellitus required insulin and a restricted diet at the time of separation from the TDRL in December 2007. The CI does not meet the criteria of regulation of activities as defined by the VASRD. A court case in 2005 determined that regulation of activities in the 40% rating criteria is defined the same as it is elaborated in the 100% rating criteria, i.e. avoidance of strenuous occupational and recreational activities. Routine VA rating procedures do not consider regulation of activities to be present unless the limitation has been prescribed by a healthcare provider. There is no evidence of any healthcare provider advising avoidance of strenuous occupational and recreational activities including Dr. Amanda Denney, the CI’s endocrinologist. Her letter mentions regularly re-evaluating his diet and insulin regimen to prevent hypoglycemia with activity, not the avoidance of activity.

In fact evidence exists that the CI was able to engage in strenuous activities without episodes of hypoglycemia that required visits to a healthcare provider or hospitalizations. Naval healthcare providers advised the CI to engage in regular exercise in order to improve control of his diabetes and documented that he was engaging in regular exercise. VA treatment records note that the CI noticed a large benefit on glycemic control when he exercised and that he exercised nearly every day, usually a five mile run and/or weight lifting for an hour and a half. The CI’s repeated hemoglobin A1C values of less than 6.5 in 2007 and 2008 (two and three years after initial diagnosis in 2005) and his maintenance of a body mass index (BMI) around 25 attest to his strict compliance with all regimens recommended: appropriate diet, proper use of insulin, and regular exercise.

The Board also examined Hypothyroidism and did not find it to be unfitting. The other diagnoses rated by the VA were not mentioned in any PEB paperwork and could not be considered by the Board.

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

RECOMMENDATION: The PDBR therefore recommends that there be no re-characterization of the CI’s disability and separation determination.

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

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090530, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

 President

 Physical Disability Board of Review

MEMORANDUM FOR DIRECTOR, SECRETARY OF THE NAVY COUNCIL

 OF REVIEW BOARDS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR)

 RECOMMENDATION ICO XXXXXX

Ref: (a) DoDI 6040.44

 (b) PDBR ltr dtd 29 Sep 09

 I have reviewed the subject case pursuant to reference (a) and approve the recommendation of the Physical Disability Board of Review (reference (b) that Mr. XXXXXX’s records not be corrected to reflect a change in either his characterization of separation or in the disability rating previously assigned by the Department of the Navy’s Physical Evaluation Board.

 Assistant Secretary of the Navy

 (Manpower & Reserve Affairs)