RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: air force

CASE NUMBER: PD0900572 SEPARATION DATE: 20050506

BOARD DATE: 20110324

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSgt (3M071, Customer Service), medically separated for diabetes mellitus (DM). The CI was hospitalized in 11 December 2002 for acute diabetic ketoacidosis (DKA) secondary to diabetes and was subsequently diagnosed with Type II DM. The CI was treated with daily lantus insulin. CI was offered oral medication, but chose to remain on insulin. While the CI responded well to insulin therapy, his work week was restricted to eight-hour days due to fatigue and episodes of hyperglycemia associated with work stress. Later, the CI was able to work unrestricted, but his commander indicated his illness affected his performance and he missed work due to illness and medical appointments. He was unable to perform within his Air Force Specialty or meet physical fitness standards. He was issued a temporary P4 profile and underwent a Medical Evaluation Board (MEB). DM Type II was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AFI 48-123. The PEB adjudicated the DM as unfitting, rated 20%, with application of the DoDI 1332.39. The CI made no appeals, and was medically separated with a 20% disability.

CI CONTENTION: The CI states: “I firmly believe that my rating did not comply with the severity of my illness (type II diabetes). Upon initial diagnosis, my primary care provider stated that my condition warranted a rating of or near 100%. I feel that I was low-balled on my benefits and would like the matter investigated. Left Shoulder Tendinitis, Diabetic Retinopathy, Surgically Repaired Right Knee, Right Hip Strain”.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20050321** | | | **VA (7 Mos. After Separation) – All Effective Date 20050507** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| DM, Requiring Insulin… | 7913 | 20% | DM, Type II | 7913 | 20% | 20051201 |
| Adjustment Disorder | Not Unfitting | | No VA Entry until 2009 | | | |
| Overweight | Not Unfitting | | No VA Entry | | | |
| ↓No Additional MEB/PEB Entries↓ | | | L Knee S/P ACL … | 5257 | 10% | 20060111 |
| R Hip Strain | 5299-5252 | 10% | 20060111 |
| R Ankle Arthritis … | 5003-5271 | 10% | 20060111 |
| L Shoulder Tendinitis | 5024 | 10% | 20060111 |
| 0% x 0 / Not Service Connected x 6 | | | 20060111 |
| **Combined: 20%** | | | **Combined: 50%** | | | |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impact that his service-incurred conditions have had on his current earning ability and quality of life reflected in his higher VA disability rating. However, the Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. While the DES considers all of the service member's medical conditions, compensation can only be offered for those medical conditions that cut short a service member's career, and then only to the degree of severity present at the time of final disposition. However, the Veterans’ Affairs (VA), operating under a different set of laws, is empowered to periodically re-evaluate veterans for the purpose of adjusting the disability rating should the degree of impairment vary over time, as well as considering service-incurred conditions that were not unfitting for continued service. This case focuses on the issue of rating the CI’s unfitting DM condition at separation and his required therapy of insulin, and diabetic diet for diabetes control, as well as re-assessment of other conditions for fitness determinations.

Diabetes Mellitus, Adjustment Disorder and Overweight. The CI was diagnosed with DM in 2002 as a result of an episode of diabetic ketoacidosis (DKA) and started on insulin. The initial DKA episode was the only one that resulted in a hospitalization and work restrictions. The CI was advised to follow a diabetic diet. The narrative summary (NARSUM), eleven months prior to separation, and updated nine months prior to separation, documented that, although the CI continued to complain that work related stress interfered with his glycemic control, the overall hemoglobin A1Cs (HgbA1C) revealed that the glycemic control was well under control. The CI was no longer on work restrictions, aside from non-deployability and access to care. The CI had no additional hospitalizations or emergency room visits, and was followed no more than once a month by a diabetic specialist. The VA compensation and pension (C&P) examination, seven months post-separation documented that the CI was using lantus insulin once daily. However, the CI’s blood glucose was significantly elevated with abnormal urine test for glucose in the urine (negative for ketone or protein). The CI was a full-time student, with some daily activity limits “because of the condition of the hips and diabetes.” There were no post-separation hospitalizations, and CI was seen on average four visits per year. Skin, kidney, sexual impotency and blood pressure conditions were attributed or linked to DM. The examiner linked the subjective factor of fatigue to the DM. The VA C&P exam 21 months post-separation documented that the CI had “no restrictions of activity or occupation because of diabetes”. Both of these exams were rated at 20% by the VA. Subsequent VA exams and ratings indicated a 20% DM rating through December 2009, with additional compensable ratings associated with DM added in 2009 [depressive disorder (30%), left leg peripheral neuropathy (10%)] which are not attributable to rating at separation and adjudged post-separation worsening of the CI’s condition.

The PEB psychiatric exam, four months pre-separation documented the CI experienced stress from his work duty because he was cautioned by his first sergeant not to let his medical appointments interfere with his work schedule. The CI reported feeling depressed most of the time, but really did not endorse neurovegetative symptoms. He had occasional fleeting suicidal thoughts but denied intent or plan. The examiner opined that the CI suffered from adjustment disorder with depressed mood manifested by a two-year history of depressed mood without other neurovegetative symptoms of depression. He further opined that the diagnosis of diabetes approximately two years prior to this exam which caused ongoing occupational problems was identified as the psychosocial stressor. The CI had a global assessment of functioning (GAF) during the prior 12 months and at this exam of 75 which is mild for impairment of social and vocational adaptability. The examiner concluded that the CI’s condition met retention standards, did not require permanent profile restrictions, and was likely to be a temporary problem. The CI has a long history of weight control problems. This condition is well-documented and associated with the CI’s diabetes. The CI was placed on a diabetic diet. At each clinic visit for the diabetes, the CI was weighed and both the weight gains and losses were well-documented.

The VA applied the code 7913 for DM. The Board reviewed the symptomatology that the CI exhibited and agreed that the rating of 20% was fully IAW VA Schedule for Rating Disabilities (VASRD) criteria. The Board does not believe that an increase in rating is appropriate due to the fact that under 7913, a rating of 40% for “requiring insulin, restricted diet, and regulation of activities” is not justifiable by the record. The CI’s condition did require insulin and he was on a restricted diabetic diet. The CI may have arguably had complications that would not be compensable if separately evaluated (blood pressure, etc.); however, the CI did not have episodes of ketoacidosis or hypoglycemic reactions requiring one or two hospitalizations per year or twice a month visits to a diabetic care provider and there was no regulation of activities as defined under VASRD code 7913.

Obesity is a condition not constituting a physical disability, is not compensable or ratable, and was appropriately indicated as Category III (not unfitting) by the PEB. Adjustment disorder was discussed with consideration of post-separation VA exams and ratings. There was no apparent error in mental health diagnosis and the CI did not have a compensable VA mental health condition until June of 2009. The adjustment disorder is a condition not constituting a physical disability and is not compensable or ratable, and was appropriately indicated as not unfitting (Category III) by the PEB. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication not unfitting (Category III) for the adjustment disorder or overweight conditions.

All evidence considered there is not reasonable doubt in the CI’s favor for supporting a change from the PEB’s 20% rating decision for the DM condition.

Other PEB Conditions. The CI had a left knee injury and an anterior cruciate ligament (ACL) surgical repair proximate to separation. The PEB obtained an orthopedic addendum for the left knee in February 2005 and there was no indication that the left knee was impaired to the level of being unfitting. Analysis of post-separation VA exams substantiate the level of impairment would not have been unfitting. All evidence considered, there is not reasonable doubt in the CI’s favor supporting addition of the left knee as an unfitting condition for separation rating.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for left shoulder, diabetic retinopathy, surgically right knee, or right hip conditions. All of these conditions were reviewed by the action officer and considered by the Board. There was no evidence for concluding that any of the conditions interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore that none of the stated conditions were subject to a disability 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. In the matter of the DM condition and IAW VASRD §4.119, the Board unanimously recommends no change in the PEB adjudication of 7913 at 20%. In the matter of the adjustment disorder and obesity conditions, the Board unanimously recommends no recharacterization of the PEB adjudications as not unfitting (Category III). In the matter of the left knee condition or any other medical conditions eligible for Board consideration, the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

RECOMMENDATION: The Board, therefore, recommends that there be no recharacterization of the CI’s disability and separation determination, as follows:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Diabetes Mellitus | 7913 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090915, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

Deputy Director

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-2009-00572.

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