RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: AIR FORCE

CASE NUMBER: PD0900602 BOARD DATE: 20100728

SEPARATION DATE: 20040601

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SUMMARY OF CASE: This covered individual (CI) was an Air Transportation Senior Airman medically separated from the Air Force in 2004 after more than 5 years of service. The medical basis for the separation was Asthma. The CI was referred to the Physical Evaluation Board (PEB), determined unfit for the condition, and separated at 10% disability using the Veterans Affairs Schedule for Ratings Disabilities (VASRD) and applicable Air Force and Department of Defense regulations.

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CI CONTENTION: The CI states: “low disability rating for medical conditions which caused medical discharge asthma only considered other conditions not considered.”

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RATING COMPARISON:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Service PEB** | | | | **VA (<1 Month after Separation)** | | | | |
| **Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| Asthma | 6602 | 10% | 20040329 | Asthma | 6602 | 30% | 20040618 | 20040602 |
|  |  | NARSUM | | Chronic Lumbosacral Strain | 5237 | 10%  20% | 20040618  20090504 | 20040602  20090324 |
| **TOTAL Combined: 10%** | | | | **TOTAL Combined (*Includes Non-PEB Conditions*):**  **40% from 20040602** | | | | |

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ANALYSIS SUMMARY:

Asthma

The CI was diagnosed with Asthma and was treated with Advair inhaler twice a day and albuterol as needed and prior to exercise. The Medical Evaluation Board (MEB) narrative summary (NARSUM) 20040302 reported he needed and used albuterol once or twice a week in addition to using it prior to exercise. His pulmonary function tests (PFT) were normal on medication. The VA Compensation and Pension (C&P) exam 20040615 also reported these medications and PFT showed FVC of 95% predicted, FEV1 of 101% of predicted, and FEV1/FVC ratio of 87% predicted.

While PFT results do not reach the compensable level, a 30% disability rating is warranted IAW VASRD §4.96 and §4.97 based on the use of daily inhaled anti-inflammatory and bronchodilator therapy. The CI used Advair daily and it contains inhalational anti-inflammatory and bronchodilator medications.

Chronic Lumbosacral Strain

This condition was included in the NARSUM but the PEB did not make a fitness determination. The NARSUM stated the CI had a history of low back pain with recurrence. Initially he responded to conservative therapy given in February 2001. He suffered a recurrence on 1 Mar 04 and again was given conservative therapy including physical therapy and lifting restrictions. The examiner anticipated return to unrestricted duty. A profile dated 20040405 included an exemption from Fitness testing (which could be due to asthma or back pain) and no lifting greater than 25lbs (which more likely than not was due to back pain).

Both the NARSUM and VA examinations documented normal strength, sensation, and reflexes as well as negative straight leg raise bilaterally. The VA examination also noted a decrease in extension secondary to pain on range-of-motion (ROM) examination. The NARSUM did not include ROM measurements.

Lumbosacral spine X-rays done 20010222 showed no significant abnormalities. There was a limbus vertebra affecting the L4 vertebral body with partial non-union of the superior plate apophysis. The bony alignment was anatomic and the disk spaces were well preserved. The sacroiliac joints also appeared normal. Lumbosacral spine X-rays done at the VA on 20040608 showed transitional lumbosacral anatomy without acute osseous abnormality.

The commander’s letter states the CI is not able to perform his required duties of lifting cargo and mail and deploy due to his medical condition. While this may be an intermittent problem, it was present at the time the CI separated from service and he was unable to perform some of his required duties. Therefore the condition should be considered unfitting and a disability rating should be applied.

(Separation Date 20040601)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Movement  Thoracolumbar | Normal ROM | ROM Mil  20040302 | ROM VA  20040618 |  |
| Flex | 0-90 | Not Measured (NM) | 90 |  |
| Ext | 0-30 | NM | 20 |  |
| R Lat flex | 0-30 | NM | 30 |  |
| L lat flex | 0-30 | NM | 32 (30) |  |
| R rotation | 0-30 | NM | 30 |  |
| L rotation | 0-30 | NM | 30 |  |
| COMBINED | 240 |  | 230 |  |
| Notes: |  | Strength 5/5 bilateral lower extremities; DTR 2+/- bilaterally at patella and ankle; Sensation intact to light touch to lower extremities bilaterally.; Straight leg raise test negative bilaterally.  Hamstring muscles noted to have decreased flexibility. | No sensory deficit or weakness and normal DTRs; Negative straight leg raise bilateral |  |

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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. The PEB most likely rated the CI’s asthma IAW DoDI 1332.39 which was in effect at the time the CI separated from service. This instruction stated that response to therapy should be considered in all cases. The asthma was adjudicated independently of that instruction by the Board. After careful consideration of all available information the Board unanimously determined that the CI’s Asthma is most appropriately rated at a 30% disability as 6602 Asthma. The CI was using Advair twice a day and this medication includes inhalational anti-inflammatory and bronchodilator therapy. This warrants a 30% rating for 6602 Asthma

The Board also considered the condition of Chronic Lumbosacral Strain and unanimously determined that this condition was unfitting at the time of separation from service and a 10% disability rating is warranted for painful motion IAW VASRD §4.59 Painful motion. The CI was unable to perform his required duty of lifting cargo and mail. The intent of the VASRD is to recognize painful motion with joint or periarticular pathology as productive of disability. It is the intention to recognize actually painful, unstable, or malaligned joints, due to healed injury, as entitled to at least the minimum compensable rating for the joint.

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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.

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Asthma | 6602 | 30% |
| Chronic Lumbosacral Strain | 5237 | 10% |
| **COMBINED** | **40%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20091001, 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-2009-00602.

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 not appropriate under the guidelines of the Veterans Administration Schedule for Rating Disabilities. Accordingly, the Board recommended your separation be re-characterized to reflect disability retirement, rather than separation with severance pay.

I have carefully reviewed the evidence of record and the recommendation of the Board. I concur with that finding, accept their recommendation and determined that your records should be corrected accordingly. The office responsible for making the correction will inform you when your records have been changed.

As a result of the aforementioned correction, you are entitled by law to elect coverage under the Survivor Benefit Plan (SBP). Upon receipt of this letter, you must contact the Air Force Personnel Center at 1-800-531-7502 to make arrangements to obtain an SBP briefing prior to rendering an election. If a valid election is not received within 30 days from the date of this letter, you will not be enrolled in the SBP program unless at the time of your separation, you were married or had an eligible dependent child, in such a case, failure to render an election will result in automatic enrollment.

Sincerely

Director

Air Force Review Boards Agency

Attachment:

Record of Proceedings

cc:

SAF/MRBR

DFAS-IN

PDBR PD-2009-00602

MEMORANDUM FOR THE CHIEF OF STAFF

Having received and considered the recommendation of the Physical Disability Board of Review and under the authority of Section 1554, Title 10, United States Code (122 Stat. 466) and Section 1552, Title 10, United States Code (70A Stat. 116) it is directed that:

The pertinent military records of the Department of the Air Force relating to xxxxxxxxxxx, are corrected to show that:

a.  The diagnosis in his finding of unfitness was Asthma, VASRD code 6602, rated at 30% rather than 10%; and Chronic Lumbosacral Strain, VASRD code 5237, rated at 10%; with a combined rating of 40%.

b.  On 31 May 2004, he elected to decline coverage under the Survivor Benefit Plan (SBP).

c.  He was not discharged on 1 June 2004 with entitlement to disability severance pay; rather, on that date he was relieved from active duty and on 2 June 2004 his name was placed on the Permanent Disability Retired List.

Director

Air Force Review Boards Agency