RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: NAVY

CASE NUMBER: PD0900676 SEPARATION DATE: 20071015

BOARD DATE: 20110216

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty first class petty officer (SK-1, Integrated Logistics Support, Logistics Manager), medically separated from the Navy in 2007 after over 14 years of service. The medical basis for the separation was Insulin Requiring Type 2 Diabetes Mellitus (DM). The CI had a history of non-compliance with medications causing his diabetes to be poorly controlled. He was hospitalized twice for episodes of diabetic ketoacidosis (DKA) Dec 06 and Apr 07. He was granted one six-month period of Limited Duty (LIMDU) with a one-month extension. Despite changes in oral hypoglycemic medication, insulin, and diabetic counseling, the CI’s DM remained poorly controlled and the CI was referred to the Medical Evaluation Board (MEB). The MEB indicated that the CI had a high likelihood of developing DKA again depending on compliance with medication, diet and exercise. The MEB listed Insulin Requiring Type 2 Diabetes; Hypertension, Controlled; Hyperlipidemia; and Hypertriglyceridemia as diagnoses on the NAVMED 6100/1. The Informal Physical Evaluation Board (IPEB) adjudicated the Insulin Requiring Type 2 Diabetes as unfitting rated at 40% with a deduction of 20% (total 20%) due to non-compliance with application of SECNAVIST 1850.4E and/or DoDI 1332.39 (E2.A1.3.2.23) which were in effect at the time. The IPEB adjudicated the hypertension as Category III (“Conditions that are not separately unfitting and do not contribute to the unfitting condition(s)”) and the Hyperlipidemia and Hypertriglyceridemia as Category IV (“Conditions which do not constitute a physical disability”). The CI did not appeal and was thus medically separated with a 20% disability rating.

CI CONTENTION: The CI states: ‘’I think that I received an unfair rating of 20% for my unfitting conditions. I believe that I should have received at least an 80% rating for my conditions. I did receive an overall rating of 80% from the Department of Veterans Affairs in which the majority of that was based on my diabetes. The Department of Veterans Affairs is currently reviewing my disability rating for diabetes. I would like to request the PDBR to reevaluate my disability rating. I do believe that it should have been awarded to me more than a 20%.”

\*\* Rating Comparison Table is located on the next page.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB – Dated 20070730** | **VA (1 Mo. Pre- Separation) – All Effective 20071016** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Insulin Requiring Type 2 DM  | 7913 | 20% | Diabetes Mellitus Type II with HTN, Fatigue and ED | 7913 | 40% | 20070905 |
| Hypertension, Controlled | Category III:  |
| Right Upper Extremity Peripheral Neuropathy a/w …DM | 7913-8515 | 10% | 20070905 |
| Left Upper Extremity Peripheral Neuropathy a/w …DM | 7913-8515 | 10% | 20070905 |
| Left Lower Extremity Neuralgia a/w …DM | 7913-8521 | 10% | 20070905 |
| Right Lower Extremity Neuralgia a/w …DM | 7913-8521 | 10% | 20070905 |
| Hyperlipidemia | Category IV | No VA Entry |  |  |  |
| Hypertriglyceridemia | Category IV | No VA Entry |  |  |  |
|  |  | Pseudofolliculitis Barbae | 7813-7806 | 30% | 20070905 |
|  |  | Lumbar Spine Strain | 5237 | 20% | 20070905 |
|  |  | Gastro esophageal Reflux Disease with Esophageal Dysmotility | 7346 | 10% | 20070905 |
|  |  | NSC x1 |  |  |  |
| **TOTAL Combined: 20%** **(Non Compliance: 40% reduced to 20%)** | **TOTAL Combined (*Includes Non-PEB Conditions*): 80%** |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application, i.e., that there should be additional ratings assigned for conditions which were connected with his diabetes condition and the gravity of his condition and predictable consequences which merit consideration for a higher separation rating. It is a fact, however, that the DES has neither the role nor the authority to compensate service members for conditions that did not impair duty performance, or potential complications of conditions resulting in medical separation. This role and authority is granted by Congress to the Veterans Administration. This case focuses on the issue of rating the CI’s DM condition at separation with a military-specific deduction in final rating due to non-compliance. The specific DoDI 1332.39 rating criteria for diabetes (E2.A1.3.2.23) were not applied by the Board. Additionally complicating this case is the issue of DM-related conditions (or residuals) that would not individually be considered unfitting, but may be considered within the coding of DM (7913). The VA does not deduct for non-compliance, and evaluates only service-connectedness without regard to fitness for duty.

Insulin Requiring Type 2 Diabetes, Hypertension, Controlled, Hyperlipidemia and Hypertriglyceridemia. The CI was diagnosed with DM in 2003 and started on oral hypoglycemic medication and advised to take his finger sticks daily. He was counseled by his physician on diet control, exercise and reduction in alcohol consumption. The CI has a long history of medication non-compliance and continued intake of approximately 12 beers per week which interfered with his medical condition and was diagnosed as alcohol abuse. The CI had two hospitalizations for DKA (Dec 06 and Apr 07), was on insulin and oral hypoglycemic medications, and had hypertension and hyperlipidemia well controlled on medications. His DM was not well controlled (elevated blood sugars; elevated glycosylated hemoglobin (HgbA1C); frequent protein and sugar in the urine). The CI additionally complained of “tingling in toes and fingers.”

The VA Compensation and Pension (C&P) examination was one month prior to separation (5 Sep 07) and documented: “Peripheral nerve: The veteran has abnormal peripheral nerve findings over both deep peroneal nerve distribution and bilateral median, ulnar, and radial nerve distribution. It is neuritis and neuralgia. It involves sensory only. He has decreased sensitivity to touch over both hands and both feet.” The VA examiner opined that the hypertension, erectile dysfunction and peripheral neuropathy were caused by the diabetes; however, the hypertension is deemed essential hypertension and more likely than not caused by the diabetes. The examiner did not document the history of noncompliance that the CI had with his treatment regimen, his alcohol abuse, nor the fact that he had two episodes of DKA requiring hospitalization within the last year. The VA rated this exam as in the above chart: DM at 40% and ratings for individual extremity neuropathies at 10% each.

The Board noted that the VA’s rating did not consider the CI’s two hospitalization for DKA (not in the examiner’s history or the VA rating decision). The VA also elected for separate ratings for extremity neuropathies, versus considering them within the rating for DM to achieve a higher DM rating which was IAW Notes 1 and 2 for disability code 7913. Both of these issues are critical to the coding and rating of the CI’s condition. Independently rating the CI’s DM at separation, considering the evidence in the military and pre-separation VA records, absent any non-compliance deduction, and considering “complications that would not be compensable if separately evaluated” (by the military) the CI would best fit the 60% 7913 criteria of “Requiring insulin, restricted diet, and regulation of activities with episodes of ketoacidosis or hypoglycemic reactions requiring one or two hospitalizations per year or twice a month visits to a diabetic care provider, plus complications that would not be compensable if separately evaluated.”

The Board also considered that IAW DoDI 1332.38, the long history of the CI’s non compliance was “not reasonable,” and that the PEB’s 20% rating deduction was “consistent with medical facts that are so reasonable and logical as to create a virtual certainty that they are correct.” Given the difference in pre-deduction DM rating level determination between the Board and the PEB, the Board considered the appropriate deduction for non-compliance de novo. During the CI’s Apr 07 hospitalization, he required a second course of intravenous insulin drip titration to obtain blood sugar control; which may indicate a more resistant or brittle response to insulin in this individual. The Board agreed that a 20% deduction for non-compliance as applied by the PEB was reasonably supportable by the medical records and the DoDI language. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), and §4.7 (Higher of two evaluations) the Board recommends a separation rating of 60% minus a 20% non-compliance deduction for a final 40% separation rating for the diabetes and associated symptoms conditions.

Other Conditions Associated with DM. Fatigue and Erectile Dysfunction, Right Upper Extremity Peripheral Neuropathy, Fatigue Left Upper Extremity Peripheral Neuropathy, Fatigue, Left Lower Extremity Neuralgia Right Lower Extremity Neuralgia all related to diabetes were considered in the rating of the CI’s primary unfitting DM conditions. None of the conditions standing alone would have met the level of being unfitting and therefore would not be compensable outside of the DM 7913 rating schema. The Board, therefore, has no reasonable basis for recommending any additional unfitting conditions for separation rating.

Other Conditions. Lumbar Spine Strain was noted in the Disability Evaluation System (DES). Neither the LIMDU, nor the NMA statement identified any conditions other than the DM as interfering with duty performance. The only documented physical limitations were those attributed to the adjudicated conditions. No link to fitness can be drawn for the lower back condition. Pseudofolliculitis Barbae, and Gastro esophageal Reflux Disease with Esophageal Dysmotility were rated by the VA, but were not noted in the DES package. The Board does not have the authority under DoDI 6040.44 to render fitness or rating recommendations for any conditions not considered by the DES.

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 DM was operant in this case and the condition was adjudicated independently of that instruction by the Board. The more stringent military-specific deductions for non-compliance IAW DoDI 1332.38 were applicable and appropriate in this case. In the matter of the Insulin Requiring Type 2 Diabetes condition and IAW VASRD §4.120, the Board unanimously recommends a rating of 60% minus a 20% deduction for a final 40% separation rating for the diabetes and associated symptoms conditions. In the matter of the lower back and other diabetes-related conditions or any other medical conditions eligible for Board consideration; the Board unanimously agrees that it cannot recommend any findings of separately unfit for additional 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.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Insulin Requiring Type 2 Diabetes with HTN, Fatigue and Not-Unfitting Peripheral Neuropathies; With Deduction for Non-Compliance: (60% deduct 20%=40%) | 7913 | 40% |
| **COMBINED** | **40%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090802, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

 Deputy Director

 Physical Disability Board of Review

MEMORANDUM FOR DIRECTOR, SECRETARY OF THE NAVY COUCIL OF REVIEW BOARDS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

Ref: (a) DoDI 6040.44

 (b) PDBR ltr dtd 25 Feb 11

 I have reviewed the subject case pursuant to reference (a) and non-concur with the recommendation of the Physical Disability Board of Review as set forth in reference (b). Therefore, I direct XXXXXXX 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.

 Principal Deputy

 Assistant Secretary of the Navy

 (Manpower & Reserve Affairs)