RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXX BRANCH OF SERVICE: marine corps

CASE NUMBER: PD0900736 TDRL Entry date: 20060430

BOARD DATE: 20100524 TDRL Exit DATE: 20090129

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SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Lance Corporal (5937, Aviation Communication System Technician) medically separated from the Marine Corps in 2006. The medical basis for the separation was diabetes mellitus type I, uncomplicated. The CI’s condition was deemed incompatible with military service. Therefore, she was placed on limited duty and underwent Medical Evaluation Board (MEB). Diabetes mellitus type I was addressed in the narrative summary (NARSUM) and forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. The PEB adjudicated the diabetes as unfitting but not stabilized and the CI was placed on the Temporary Disability Retired List (TDRL) with ratings as reflected in the chart below. At the time of TDRL reevaluation nearly three years later, the Informal PEB adjudicated a permanent 20% rating for diabetes mellitus type 1, rated 20%. The CI made no appeals and was medically separated with a 20% combined disability rating.

CI CONTENTION: The CI elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Final Service IPEB – Dated 20081211** | | | | **VA (3 Yrs. Before TDRL Exit) - All Effective Date 20060501** | | | |
| **Condition** | **Code** | **Rating** | | **Condition** | **Code** | **Rating** | **Exam** |
| **On TDRL – 20060430** |  | **TDRL** | **Sep.** |
| DM Type I | 7913 | 40% | 20% | DM Type I | 7913 | 40% | 20060417 |
| ↓No Additional MEB/PEB Entries↓ | | | | 0% x 7 | | | 20060417 |
| **Combined: 20%** | | | | **Combined: 40%** | | | |

\* VA rating based on exam most proximate to date of permanent separation.

ANALYSIS SUMMARY:

Diabetes Mellitus, Type I: The CI was diagnosed with type I diabetes mellitus in November 2004 and started on insulin treatment along with diet counseling. She was placed on limited duty with the only stated restriction of no deployment. By the time of the December 2005, NARSUM, the CI was asymptomatic without loss of strength or weight loss, and there was no evidence of complications (e.g. end organ damage to eye, nerve, kidney, vascular system). There had been no hospitalizations for ketoacidosis or hypoglycemic reactions. An internal medicine resident added a hand written note at the end of a clinic entry on August 1, 2005 stating no running more than three miles, without explanation regarding the basis for this recommendation. The commander’s assessment stated the CI was working in her military specialty and was capable of participating in most of the unit’s physical training activities except formation runs without indication of the reason why. Endocrinology clinic notes did not indicate any activity restrictions (“released without restrictions”) and recorded that the CI participated in activities including softball for one hour three times per week, running for 20 minutes two times per week and cardio exercise one hour daily.

The PEB, noting poor disease control and problems with treatment compliance, placed the CI on TDRL with a rating of 40%. At the time of TDRL reevaluation in December 2008, the CI remained asymptomatic without loss of strength, weight loss, or evidence of end organ complications. There were no reported hospitalizations for complications of diabetes. Control of diabetes was judged to be poor, thought possibly due to compliance issues (CI did not have a blood glucose meter or a log of results, and was unable to report any of her glucose readings). The PEB rated her diabetes 20% and the CI was removed from the TDRL and separated. At both the time of placement on the TDRL and permanent disposition the CI’s diabetes condition did not meet diabetes mellitus rating criteria (7913) for either the 100% or the 60% rating levels since there were no episodes of ketoacidosis or hypoglycemic episodes requiring hospitalizations or frequent visits to a diabetic care provider, or complications. Because she required insulin and dietary restrictions, she met the 20% rating level, both at the time of TDRL and permanent disposition. In addition to the requirement for insulin and dietary restrictions, the 40% rating requires that there be regulation of activities defined as avoidance of strenuous occupational and recreational activities.

In granting a 40% service connected rating for diabetes mellitus, the VA rating decision on June 20, 2006 cited the “limited duty” status and the August 1, 2005 internal medicine note stating no running more than three miles. In addition, the decision cited CI report of feeling weak and having low energy. Service treatment records up the last available record February 18, 2006 consistently recorded absence of weakness or fatigue. The April 2006 compensation and pension (C&P) examination indicated mild to moderate restrictions due to knee and ankle problems, but did not indicate any physical activity restrictions due to diabetes. The CI had a history of iliotibial band syndrome causing activity limiting knee pain since 2002. Board concluded it was more likely than not that the three-mile limit to running applied to her knee problem and not diabetes. Furthermore, the limit to running no more than three miles was not considered to represent a limitation or regulation of normal activities, recreational or strenuous occupational activities. The CI was capable of participating in all other military unit physical training activities and she regularly participated in soft ball, running and cardio exercise. At the time of removal from the TDRL, there is no mention of activity restrictions. There is no report of hypoglycemic episodes associated with normal activities, or complications of diabetes that would otherwise adversely affect ability to perform physical activity within the meaning of regulated activities for rating purposes. Although there was no evidence of any change in the diabetes condition between the time of placement on the TDRL and permanent separation the Board notes that service guidance regarding placement on TDRL includes circumstances when an unfitting condition with the potential for serious worsening has not stabilized. It is recognized in fact that PEBs across the services sometimes apply an overly generous initial rating in such circumstances in order to meet the requirement of a minimum 30% disability for placement on TDRL. This is in the member’s best interest at the time and does not mean that a final lower rating is unfair, even if the applicant does not perceive any improvement. In this case, the CI’s diabetes remained stable over two years on TDRL and could be appropriately rated for permanent disposition. The sole basis for the Board’s recommendation is the optimal VASRD rating for disability at separation. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for diabetes mellitus, type 1, without complications (7913) at 20% at the time of permanent separation.

Remaining Conditions. Other conditions identified in the Disability Evaluation System (DES) file were sprained wrist, and right knee pain due to iliotibial band syndrome. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were clinically active during the MEB period and none were the basis for limited duty. Although the commander’s assessment may have reflected restriction from formation running due to lower extremity pain, the CI was capable of all other unit physical training and performance of military duties. These conditions were reviewed by the action officer and considered by the Board. It was determined that none could be argued as unfitting and subject to separation rating. Additionally bilateral wrist strain with ganglion cyst, musculoligamentous strain of lumbar spine, patellofemoral pain syndrome of left and right knee, and right and left ankle sprain were noted in the VA rating decision proximal to separation, but were not documented in the DES file. 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. The Board thus has no basis for recommending any additional unfitting conditions 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. In the matter of diabetes mellitus type I, and IAW VASRD §4.119 the Board unanimously recommends no change in the PEB adjudication at permanent separation. In the matter of the knee and wrist conditions, 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 permanent separation determination.

|  |  |  |  |
| --- | --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **TDRL RATING** | **PERMANENT**  **RATING** |
| Diabetes Mellitus Type I | 7913 | 40% | 20% |
| **COMBINED** | **40%** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294 dated 20091217, 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 COUNCIL OF REVIEW

BOARDS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

ICO XXXXX, FORMER USMC

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 16 Jun 11

I have reviewed the subject case pursuant to reference (a) and, for the reasons set forth in reference (b), approve the recommendation of the PDBR Ms. XXXX’s records not be corrected to reflect a change in either her characterization of separation or in the disability rating previously assigned by the Department of the Navy’s Physical Evaluation Board.

Assistant General Counsel

(Manpower & Reserve Affairs)