RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: AIR FORCE

CASE NUMBER: PD0900738 SEPARATION DATE: 20040714

BOARD DATE: 20101223 TDRL DATE: 20030113

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

SUMMARY OF CASE: This covered individual (CI) was an active duty SRA/E4 (2E154, Television Intrusion Detection Systems) medically separated from the Air Force (AF) in 2004 after 6 years of service. The medical basis for separation was Asthma. The CI was initially seen by a physician at Ramstein Air Force Base for exercise induced Asthma. The CI was treated for asthma in 1999 with preventive medications and routine Pulmonary Function Testing (PFT) to evaluate the effectiveness of the medications. The CI underwent allergy testing and a Pulmonary workup with the recommendation that there be no worldwide qualifications and no gas mask use. She did not respond adequately to perform within her military specialty or participate in a physical fitness test, was issued a P-4 profile and underwent a Medical Evaluation Board (MEB). The MEB listed “Allergic rhinitis, asthma” as the single diagnosis and finding and forwarded to the Physical Evaluation Board (PEB) on the AF Form 618. The informal PEB (IPEB) adjudicated the Asthma as unfitting and rated 10% with likely application of DoDI 1332.39 which was in effect at the time. The PEB adjudicated the Allergic Rhinitis as a Related Category II diagnosis (“Conditions that can be unfitting but are not currently compensable or ratable”). Following appeals (Formal PEB (FPEB) and Secretary of the Air Force (SAF) Personnel Council Revised Findings), the CI was found unfit at 30% and placed on the Temporary Disability Retirement List (TDRL) on 20021105. The CI was reevaluated on TDRL (January 2004) and the IPEB found the CI unfit at 10% for asthma. This 10% medical separation was upheld (following appeal) by the FPEB, the SAF Personnel Council, and the CI was therefore medically separated with a combined 10% disability rating. Subsequent appeals, finalized from the AF Board for Correction of Military Records (BCMR) on 20051018 and 20060414, upheld the 10% separation determination for the Asthma condition.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

CI CONTENTION: The CI states: ‘‘I was discharged for severe asthma, the board failed to recognize the medications that used at the time and have continued to use. They also failed to address the severity the asthma had/has on my ability to function.”

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service FPEB - 20040420** | **VA (3Mo. Prior to Separation) – All Effective 20030114** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| **On TDRL - 20030113** | **TDRL** | **Sep.** | **No VA Rating at TDRL** |
| Asthma | 6602 | 30% | 10% | Asthma | 6602 | 60% | STR & RX notes to 20040108 |
| Allergic Rhinitis | Category II | - | Allergic Rhinitis | 6552 | 0% | *as 6602* |
| ↓No Additional MEB Entries↓ | Left Wrist, CTS … | 8599-8515 | 10% | *as 6602* |
| Right Wrist, CTS … | 8599-8515 | 10% | *as 6602* |
| Sinusitis with HA | 8100-6512 | 10% | *as 6602* |
| GERD with IBS | 7399-7346 | 10% | 20030417 |
| Fibromyalgia | 5025 | 10% | *as 6602* |
| Ear Inf, Eustachian Tube …  | 6211 | 0% | 20030417 |
| Right Wrist, Cyst … | 7819 | 0% | 20030430 |
| Shin splints, hearing, Larynx, Irreg cycle, Cyst, Furuncle | NSC |

ANALYSIS SUMMARY: The original VA Rating Decision (VARD - 20030923) of Asthma 30% and GERD 10% (combined 40%) was retroactively changed to Asthma 60% (combined 80%) on appeal (Decision Review Officer (DRO) VARD of 20050511) based on evidence of service medical records and treatment records from 20030421 to 20040108 from Wilford Hall Medical Center (prior to removal from TDRL). A subsequent DRO VARD of 20061108 granted Individual Unemployability (effective 20030114) due to “severe asthmatic condition” and inability “to secure or follow a substantially gainful occupation” with consideration of additional data and exams up to 20061108. The CI had multiple appeals to the AF on entry into TDRL, exit from TDRL, and subsequent to separation. Those appeals were obtained and considered part of the Disability Evaluation System (DES) package for Board consideration. The FPEB noted the CI’s medication use and stated “based on the member's current level of functionality and normal PFTs, she is appropriately rated at 10 percent. The opinions for the subsequent appeals clearly specify the use of DoDI 1332.39 to vary from the provisions of rating IAW the Veterans Administration Schedule for Rating Disabilities (VASRD) due to consideration of “the intent to rate the degree of impairment in civilian occupational earning capacity” and references VASRD §4.1 (Essentials of evaluative rating), DoD latitude in application of §4.7 (Higher of two evaluations), and that “The presence of the conjunction ‘or’ does not require that rating officials must grant the higher rating.” The later BCMR denial was based on lack of sufficient evidence of occupational impairment, but made similar arguments regarding the provisions and interpretation of DoD 1332.39 as the earlier BCMR that medication use/requirements were not considered determinant in their rating. NOTE: Changes in VASRD §4.96 Special provisions regarding evaluation of respiratory conditions, para (c), regarding PFTs, were added after the CI’s separation date and do not apply to code 6602 or have bearing on this case.

**6602** Asthma, bronchial (*extract*):

60%: FEV-1… or; FEV-1/FVC …, or; at least monthly visits to a physician …, or; intermittent (at least three per year) courses of systemic (oral or parenteral) corticosteroids

30%: FEV-1… or; FEV-1/FVC …, or; daily inhalational or oral bronchodilator therapy, or; inhalational anti-inflammatory medication

Asthma and Allergic Rhinitis: The CI’s unfitting Asthma and her history and medication use have been well summarized in her numerous DES and BCMR appeals. The CI had consistently greater symptoms than her only slightly abnormal PFTs would indicate. IAW rating by the VASRD alone, the CI’s medication history and use are the crux of the rating deliberations. Records from pre-TDRL, through TDRL, and post-separation VA records all indicate that the CI required and used daily inhalational bronchodilator and/or anti-inflammatory medications which would support a minimum 30% rating IAW disability code 6602. The record was also examined to determine if the CI met the criteria for the 60% rating of “at least monthly visits to a physician for required care of exacerbations, or; intermittent (at least three per year) courses of systemic (oral or parenteral) corticosteroids.” The record indicated less than monthly physician visits for required care for her asthma. The pre-TDRL record indicated that the CI had been on a prolonged course of systemic steroids. The allergist noted “becoming steroid dependant” on 20020912 with a plan for a long steroid taper, and requirement for a steroid burst on 20020920. The Board deliberated if the two courses of systemic corticosteroids, with one much more prolonged than a “burst” equated to the CI being closer to the 60% criteria than the 30% criteria on entry into the TDRL period. The Board determined that there was not sufficient reasonable doubt in the CI’s favor to increase the TDRL entry rating above 30%. The most proximate sources of comprehensive evidence on which to base the permanent separation rating recommendation following TDRL in this case is a combination of the Pulmonary Clinic evaluation and NARSUM-Pulmonary Consultation for TDRL 6 months pre-separation (20040130), the CI’s multiple appeals, and extensive treatment records for asthma (including Pulmonary and Allergy/Immunology) prior to and proximate to her separation from TDRL (20040714). The Board noted the VA grant of Individual Unemployability; however, the BCMR discussion of evidence was compelling in decreasing the probative value of the VA’s assessment of the CI’s occupational impairment. As noted above, the records consistently demonstrated daily asthma medication use to meet the Asthma 6602 30% criteria as a minimum. The FPEB and subsequent appeals noted that the CI had “required Prednisone three to four times since being placed on TDRL, with last usage in Feb ’04.” Detailed review of all records indicated the CI had been on systemic steroids four to six times prior to separation including a prolonged course (over six weeks) of high dose systemic steroids. The Board deliberation focused on the 60% vs. 30% rating level based primarily on required medication use. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a permanent separation rating of 60% for the Asthma condition.

Other DES Mentioned Conditions: Sinusitis with Headaches [HA], GERD with Irritable Bowel Syndrome [IBS], Fibromyalgia, and Carpal Tunnel Syndrome [CTS], Left Wrist Tendonitis; CTS, Right Wrist Tendonitis): The sinusitis with headaches and GERD with IBS conditions were noted in the original DES package. The GERD and IBS were noted as potentially leading to increased weight and ability to meet AF weight standards, but were not considered unfitting. Headaches were noted by the Commander to interfere with the CI’s Personnel Reliability Program (PRP) duties, but that she was still able to work in her AFSC. Any contributions from sinusitis on the CI’s primary unfitting asthma condition were considered above. The Fibromyalgia and CTS were noted on the TDRL Narrative Summary (NARSUM). Symptoms retrospectively attributable to fibromyalgia and/or CTS would not have been unfitting at the time of entry into the TDRL period. No condition other than the PEB-adjudicated conditions of asthma and allergic rhinitis were profiled. No other conditions were noted in the NARSUM, identified by the CI on the MEB physical, TDRL NARSUM or found elsewhere in the DES file including the CI’s appeals. No other conditions were contended in the application or identified and rated at 10% or greater by the VA within 12 months of separation. The Board therefore has no basis for consideration of any other conditions eligible for additional rating at separation. All evidence considered, there is not reasonable doubt in the CI’s favor supporting addition of Sinusitis with HA, GERD with IBS, Fibromyalgia, or Carpal Tunnel Syndrome (either wrist) as 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. As discussed above, DES reliance on DoDI 1332.39 for rating the Asthma condition was operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the Asthma condition, the Board unanimously recommends no change to the original 30% rating for entry into the TDRL period; and a permanent separation rating (following TDRL) of 60% coded 6602 IAW VASRD §4.97. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as additionally unfitting for rating at separation.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified to reflect that the discharge with severance pay following TDRL be recharacterized to reflect permanent 60% disability retirement, effective as of the date of her prior medical separation from TDRL.

|  |  |  |  |
| --- | --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **TDRL RATING** | **PERMANENT****RATING** |
| Asthma | 6602 | 30% | 60% |
| **COMBINED** | **30%** | **60%** |

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20091218, 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-2009-00738.

 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 recharacterized 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 direct that your records be corrected as set forth in the attached copy of a Memorandum for the Chief of Staff, United States Air Force. The office responsible for making the correction will inform you when your records have been changed.

 Sincerely

Director

Air Force Review Boards Agency

Attachments:

1. Directive

2. Record of Proceedings

cc:

SAF/MRBR

DFAS-IN

PDBR PD-2009-00738

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.  Upon Temporary Disability Retired List (TDRL) re-evaluation, the diagnosis in her finding of unfitness for Asthma, VASRD Code 6602, was rated at 60% rather than 10%.

 b. She was not discharged with severance pay on 15 July 2004; rather, on that date her name was placed on the Permanent Disability Retired List.

 Director

 Air Force Review Boards Agency