RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1000007 SEPARATION DATE: 20060630

BOARD DATE: 20110607

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Sergeant (25F2O, Network Switching Systems Operator) medically separated from the Army in 2006. The medical basis for the separation was restricted lung disease. The CI sought medical care in February 2003. He presented with lung symptoms of exertional dyspnea, recurrent pneumonia, and bloody cough. He was diagnosed with cancer and later underwent surgery to remove his right middle and lower lung lobes and his cancerous tumor. He did not respond adequately to perform within his military occupational specialty, was issued a permanent P3 profile and underwent a Medical Evaluation Board (MEB). The condition was addressed in the narrative summary (NARSUM) and forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. One other condition, obstructive sleep apnea (OSA) was forwarded as medically acceptable IAW AR 40-501. The Informal PEB adjudicated the restrictive lung condition as unfitting, rated 10%; with likely application of DoDI 1332.39. The CI appealed to the Formal PEB (FPEB) without change in the final determination. The CI was then medically separated with a 10% combined disability rating.

CI CONTENTION: The lawyer of the CI states (in summary): “Mr. Sanchez requests that the PDBR recommend that his disability rating be changed to 100% and that he is placed on the Permanent Disability Retired List (PDRL) with an effective date of June 30, 2006. If the PDBR does not agree with our position regarding the 100% rating, the evidence clearly supports at least a 30% rating, with placement on the PDRL. In addition, the CI requests review of the PEB's findings regarding his Sleep Apnea and an award of a 50% rating for this condition.” The contentions discuss decreased work capacity (estimated METS indicating under 11-14 ml/kg/min O2) and lung function (DLCO) parameters for VA Schedule for Rating Disabilities (VASRD) rating other than lung volumes and flows (FEV-1 or FEV-1/FVC).

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service FPEB – Dated 20060613** | | | **VA (1Mo. Pre-Separation) – All Effective Date 20060701** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Restricted Lung Disease | 6819-6844 | 10% | Sleep Apnea, to include Restrictive Pulmonary Disease | 6847 | 50% | 20060524 |
| Sleep Apnea | Not Unfitting | |
| ↓No Additional MEB/PEB Entries↓ | | | Sensitive Scar, S/P Bilobectomy | 7804 | 10% | 20060524 |
| 0% x 0/Not Service Connected x 2 | | | 20060524 |
| **Combined: 10%** | | | **Combined: 60%** | | | |

ANALYSIS SUMMARY: The Board considered the VASRD §4.96, absent paragraph (d) (special provisions/PFTs) which were effective 6 October 2006 which is subsequent to the CI’s date of separation.

Lung Condition. The CI underwent thoracic surgery with resection of the right middle and right lower lobe, as well as complete removal of his lung tumor on 2 February 2004. This resulted in 80% of his right lung being removed with retention of the right apex. Repeat bronchoscope indicated no tumor recurrence. The MEB examiner stated, “Since lung resection service member has overall done well but has continued to have significant dyspnea with minimal exertion. He is short of breath after climbing 1 flight of stairs or walking 50 meters...His exercise capacity has not improved despite a significant attempt at an exercise training program.” The commander’s comments stated the CI was limited to performing administrative tasks only and, “Distance from the security building to the work area is too far to walk for the SM (unspecified distance).” Post-operative testing showed that his pulmonary function test (PFT) on 6 May 2005 was FEV1 71, FEV1/FVC% 79, with DLCO (SB) 57 and DLCO/VA 83.Cardiopulmonary exercise test on 7 May 2005 stated, “Significantly reduced exercise tolerance with no obvious cardiopulmonal limitation to exercise. No oxygen desaturation. Most consistent with deconditioning.” Bronchoscopy on 1 June 2005 showed normal bronchial stump without evidence of recurrence of tumor. The CI underwent an echocardiogram (ECHO) and another cardiology consultation in order to discount a cardiac etiology for his dyspnea. The echocardiogram with "bubble study" was suggestive of a patent foramen ovale but of uncertain clinical significance and the NARSUM indicated mild pulmonary hypertension based on the ECHO. A repeat cardiolopulmonary exercise test failed to show any evidence of oxygen desaturation and was “overall consistent with deconditioning.” The consulting cardiologist opined the CI had reached his maximum benefit for treatment and no further evaluation was required. He was then diagnosed with restrictive lung disease secondary to bilobeclomy for bronchial carcinoid tumor with moderate impairment on pulmonary function studies and significant functional impairment. The pre-separation VA compensation and pension (C&P) examination on 24 May 2006 noted the CI was able to walk 300 to 400 feet (an improvement) and on good days up to two blocks, but developed shortness of breath and had to stop to rest. At that examination, PFTs showed FEV1 73, FEV1/FVC% 83, DLCO 59, and DLCO adjusted 58 with DLCO/VA of 86.

The PEB coding of 6819-6844 [6819 neoplasms, malignant, any specified part of respiratory system exclusive of skin growths - 6844 post-surgical residual (lobectomy, pneumonectomy, etc.)] was interpreted to be an analogous rating for restrictive lung disease due to lobectomy (6844) secondary to removal of a neoplasm versus a dual or bundled rating as the CI did not have any neoplasm at the time of rating or separation. The VA, IAW §4.96 guidance indicating a single pulmonary coding, did not provide a separate restrictive lung rating, but rated the CI was “based on the severity of your sleep apnea because this condition provides the higher evaluation.”

The Board considered the above information in rating the CI’s lung condition with predominate coding being under restrictive lung disease, 6844 post-surgical residual (lobectomy, pneumonectomy, etc.). The general rating formula for restrictive lung disease includes multiple criteria, and the Board considered each criteria and the CI’s overall level of disability level for rating IAW VASRD §4.100 and §4.96 special provisions regarding evaluation of respiratory conditions prior to the 6 October 2006 VASRD change. The CI’s FEV1 and FEV-1/FVC from all exams proximate to separation are within the criteria range of a 10% rating. The DLCO (SB) findings are within the 30% criteria range, while the volume adjusted DLCOs indicate normal functioning of the remaining lung tissue. The CI’s maximum exercise capacity (METs) was not found in the record (normally from cardiac exercise tolerance testing [ETT-source test missing]). The NARSUM indicated a CET on 7 November 2005 with “significantly reduced exercise tolerance;” however, the comments indicated attribution to deconditioning versus pulmonary or cardiac limitations. Estimating METs had similar difficulties of attribution of limitations to potential deconditioning and differing levels of exercise ability noted in the record from the very low tolerance noted in the NARSUM and VA C&P history conflicting with greater ability noted in treatment and therapy notes. The NARSUM indicated ECHO evidence of “mild pulmonary hypertension,” which may support a 100% rating was not documented elsewhere in the record (source ECHO missing). Given the CI’s low functional ability and his consistent DLCO(SB)s of under 65 percent of predicted, as well as the weighting of probative values of all evidence, the Board considered that the CI’s disability picture was best described by the 30% rating criteria. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a separation rating of 30% for the restrictive lung condition coded 6844.

Other PEB Condition. In September 2004, The CI underwent a sleep study and was diagnosed with sleep apnea (OSA) with use of CPAP and then changed to an oral appliance. OSA was deemed medically acceptable by the MEB. His sleep apnea was judged to be within AR 40-501 standards, was not profiled and was not identified as an impairment in the commander’s statement. Routinely OSA is not considered unfitting solely on the basis of field and operational impediments to the use of CPAP. There is no evidence in this case that OSA was associated with any unfitting impairments not corrected by CPAP. The PEB’s fitness adjudication was therefore expected and reasonable. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for the OSA condition.

Remaining Conditions. Several additional non-acute conditions or medical complaints were also documented (sinusitis, gastroesophageal reflux disease [GERD], hearing, and vision). None of these conditions were significantly clinically or occupationally active during the MEB period, carried attached profiles or were implicated in the commander’s statement. 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. The Board therefore has no reasonable 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. As discussed above, PEB reliance on DoDI 1332.39 for rating the lung condition was operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the lung condition, the Board unanimously recommends a rating of 30% coded 6819 IAW VASRD §4.100. In the matter of the sleep apnea condition, the Board unanimously recommends no recharacterization of the PEB adjudication as not unfitting. In the matter of the sinusitis, GERD, hearing and vision 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 unanimously 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** |
| Restrictive Lung Disease S/P Resection Carcinoid Lung Tumor | 6844 | 30% |
| **COMBINED** | **30%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20091113, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.



