RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Air force

CASE NUMBER: PD201000024 SEPARATION DATE: 20030206

BOARD DATE: 20110607

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSGT (2E151/Satellite, Wideband & Tele Systems) medically separated for asthma. By policy, asthma was medically disqualifying for worldwide duty, and he was issued a permanent profile and underwent a Medical Evaluation Board (MEB). Asthma was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AFI 48-123. Two other conditions, as identified in the rating chart below, were forwarded on the MEB submission as medically acceptable conditions. The Informal PEB (IPEB) adjudicated the asthma condition as unfitting, rated 10%, with application of DoDI 1332.39 and Veterans’ Administration Schedule for Rating Disabilities (VASRD). The CI appealed to FPEB for return to duty contending he was fit for his military duties. The FPEB upheld the findings of the IPEB and he was medically separated with a 10% disability rating.

CI CONTENTION: “I was discharged for asthma at 10%. My rating from the VA is 30% effective 3 days after my discharge. I also had multiple sinus surgeries which I was brought before a medical board for also, a year earlier. My sinus rating is 50% now. I have an overall 90% rating but was 70% within a year of my discharge”. The CI also lists current service connected ratings for depression rated 50%, knee condition rated 10%.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service FPEB – Dated 20021108** | | | **VA (9 Mos. After Separation) – All Effective Date 20030207** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Asthma | 6602 | 10% | Asthma | 6602 | 30%\* | 20031104 |
| Chronic Pansinusitis | 6510 | Cat II | Chronic Maxillary Sinusitis w/Headaches | 6514 | 30%\* | 20031104 |
| Seasonal Allergic Rhinitis | 6522 | Cat II | Allergic Rhinitis | 6522 | 0% | 20031104 |
| No Additional MEB/PEB Entries | | | Adjustment Disorder w/Depressed Mood | 9440 | 30%\* | 20050603 |
| 0% x 2/Not Service Connected x 5 | | | 20031104 |
| **Combined: 10%** | | | **Combined: 70%** | | | |

\*Initial VARD May 29, 2003 granted 10% for chronic sinusitis and 0% for asthma, allergic rhinitis, knee, and adjustment disorder based on service treatment records. VARD May 2004 increased ratings effective the day after separation based on C&P examinations November 4, 2003 as shown in chart.

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impact that his service-incurred condition has had on his current quality of life. However, the Disability Evaluation System (DES) has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions resulting in medical separation. This role and authority is granted by Congress to the Veterans Administration. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations compared to VASRD standards, as well as the fairness of PEB fitness adjudications. The Board’s threshold for countering DES fitness determinations is higher than the VASRD §4.3 reasonable doubt standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 “fair and equitable” standard.

Asthma. The VASRD provides rating guidance for asthma based on clinically significant exacerbations resulting in either respiratory failure or requirement for frequent visits to a physician for treatment, nature of medication treatment, and spirometry testing results (pulmonary function test). There were three spirometry test results in evidence which the Board weighed in arriving at its rating recommendation. These exams are summarized in the chart below:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Spirometry | | ~6 Mos Pre Sep | ~3 Mos Pre-Sep | C&P  ~9 Mos Post Sep |
| Pre-Bronchodilator | FVC | 4.08 (74%) | 4.84 (104%) | 4.30 (101%) |
| FEV1 | 2.86 (66%) | 3.22 (82%) | 2.98 (83%) |
| FEV1/FVC | 70% | 67% | 69% |
| Post-Bronchodilator | FVC | 4.42 (80%) | 4.60 (99%) | 4.46 (104%) |
| FEV1 | 2.81 (64%) | 3.44 (87%) | 3.28 (92%) |
| FEV1/FVC | 64% | 75% | 74% |
| Comments | | Intermittent therapy? | Intermittent therapy? | Intermittent therapy? |
| §4.97 Rating | | 30% | 10% v 30% | 10% v 30%  (VA 30%) |

Review of service treatment records including the MEB narrative summary (NARSUM) showed no evidence of exacerbations or attacks of asthma that would warrant ratings of 100% or 60%. The Board made note of treatment with medications including chronic low dose oral corticosteroids and oral asthma-type medications (including leukotriene-singulair) that were prescribed for the CI’s chronic allergic rhinitis and sinusitis (rather than for his asthma), but that also treat the underlying airway reactivity of asthma. He was prescribed inhaled bronchodilator therapy that the NARSUM indicated he used intermittently. The FPEB rationale, a November 2002 allergy clinic appointment, and the post-separation compensation and pension (C&P) examination indicated rare, if any, use of the inhaled bronchodilator. The Board discussed the spirometry results outlined in the above chart showing some results that support a 30% rating (particularly the results six months before separation), while the post bronchodilator results three months before separation and nine months after separation support a 10% rating. The Board noted that, although nearly all the medications the CI was prescribed were for the chronic allergic rhinitis and sinusitis, these oral medications also served to treat the asthma condition. Absent these medications it was speculated that it was just as likely as not that the CI would require daily inhalational therapy, particularly based on his earlier spirometry results and reported symptoms. This aspect of his condition combined with the spirometry results that favored the higher rating IAW VASRD §4.7 was discussed. All evidence considered, and mindful of VASRD §4.3 (reasonable doubt), the majority of the Board recommends a disability rating of 30% as the fair permanent separation rating for asthma (6602) in this case.

Contended Allergic Rhinitis with Chronic Sinusitis. CI had a long history of chronic allergic rhinitis and sinusitis. In the fall of 2000 he developed allergic fungal sinusitis complicated by erosive fungal sinusitis requiring surgery in November 2000. Following recovery from surgery, the CI underwent an MEB for the condition and was returned to full unrestricted duty by the IPEB in February 2001. Evidence of the military treatment record shows ongoing treatment for his sinus condition but no interference with performance of his military duties (CI’s enlisted performance report closing March 2002 reflected superior duty performance). Around the time of the initiation of the MEB for asthma, the CI was evaluated by otolaryngology, June 2002. The CI reported chronic symptoms, and a computed tomography (CT) scan in June 2002 of the sinuses was recorded as showing all sinuses clear except for slight mucosal thickening of the left ethmoid sinus. The 8 November 2002 allergy clinic note also documented ongoing chronic symptoms that were “fairly well controlled” with treatment. A repeat CT scan in November 2002 compared to a prior CT in December 2001 demonstrated stable post-operative changes, with the majority of sinuses remaining aerated (indicating functional drainage and absence of blockage; the right maxillary sinus was improved). There was new increased soft tissue thickening in region of right osteomeatal unit, later shown to be due recurrent growth of polyps which were surgically removed two months after separation. In the few months prior to separation, the CI required treatment with antibiotics and follow up consultation with allergy and otolaryngology. He was placed on quarters for 24 hours on 18 September 2002. A follow up clinic note on 27 September 2002 recorded he was feeling better. He was placed on 72-hours quarters for increased symptoms on 3 January 2003, and an Ear Nose Throat (ENT) follow up indicated a possible requirement for additional surgery. The CI was seen two more times for sinus pain of one day in duration prior to separation. Two weeks after separation, the CI had an appointment with his family physician, at which time the CI was in no acute distress and reported on and off sinus symptoms. Two months after separation, he underwent sinus surgery to remove the polyps blocking the right sinus. Although the CI’s chronic sinus condition worsened in the months prior to separation due to re-growth of polyps, and resulting in placement on quarters on two occasions, the condition was not otherwise cited as interfering with performance of duties. At the time of the FPEB, the CI contended for return to duty, and testified he had not missed work and was without limitations. The FPEB listed the CI’s allergic rhinitis and chronic sinusitis as category II conditions, concluding at that time they were not unfitting. The Board discussed the requirement for surgery two months after separation but noted this surgery was relatively minor compared to the surgery of 2000 after which the CI was returned to duty. The Board concluded that the CI’s allergic rhinitis and chronic sinusitis condition did not interfere with duty performance to a degree that arose to the level for a Board recommendation as an unfitting condition for separation rating.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for depression and knee problems. The CI was hospitalized in May 2001 for acute depression with suicide attempt by taking an overdose of percocet. He was released from the hospital to full employment. The enlisted performance report for the year following this hospitalization reflected superior duty performance. Recurrent symptoms of depressed mood without suicidal ideation developed in January 2003 in the setting of the stress of the MEB process, occupational stressors and family separation. He was diagnosed by psychiatry with adjustment disorder and provided supportive therapy without duty restriction. At the time of an appointment with his family physician two weeks after separation, there was no complaint referable to symptoms of depression recorded. At the time of the November 2003 C&P examination, the CI reported chronic low grade depressive symptoms since 2001 with worsening at the time of the C&P examination related to a recent job loss. All evidence considered, there is not reasonable doubt in the CI’s favor supporting addition of depression as an unfitting condition for separation rating. Service treatment records show surgery on both knees while on active duty for torn meniscus; right knee in May 2000 and left knee in November 2001. Following these surgeries the CI received periodic care for knee pain diagnosed as patellofemoral pain syndrome and was temporarily profiled in November 2000 for the right knee. Knee examinations on 16 May 2002 and 13 January 2003 were unremarkable with normal gait, normal range of motion (ROM), and absence of instability. At the time of the separation physical examination on 22 January 2003, the CI reported that the left knee continued to bother him since the November 2001 surgery, but the right knee was not bothering him. The examination was recorded as normal with normal gait and full ROM. All evidence considered, there is not reasonable doubt in the CI’s favor supporting addition of the left knee condition as an unfitting condition for separation rating.

Remaining Conditions. Other conditions identified in the DES file were heart murmur (trivial mitral valve regurgitation), left shoulder pain; glucose-6-phosphate dehydrogenase deficiency, conjunctivitis; and minor abdominal pain (NARSUM). Several additional non-acute conditions or medical complaints were also documented. None of these conditions were clinically or occupationally significant during the MEB period, and none 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 determined therefore that none of the stated conditions were subject to service disability 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 the asthma condition, the Board, by a 2:1 vote, recommends a rating of 30% (coded 6602) IAW VASRD §4.97. The single voter for dissent (who recommended no modification of the PEB adjudication) did not elect to submit a minority opinion. In the matter of the allergic rhinitis, chronic sinusitis, depression, knee 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 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% |
| **COMBINED** | **30%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20091229, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

PDBR PD-2010-00024

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 XXXXXXXXXXXX, be corrected to show that:

a.  The diagnosis in his finding of unfitness for Asthma, VASRD code 6602, was rated at 30% rather than 10%.

b.  On 6 February 2003, he elected child only coverage under the Survivor Benefit Plan (SBP) based on full retired pay.

c.  He was not discharged on 6 February 2003; rather, on that date he was relieved from active duty and on 7 February 2003 his name was placed on the Permanent Disability Retired List.

Director

Air Force Review Boards Agency