RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Air force

CASE NUMBER: PD1000066 SEPARATION DATE: 20081103

BOARD DATE: 20111103

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a Reserve member, SSgt/E-5 (2A573A, Communication and Navigation Systems Technician) medically separated for a cerebrovascular accident (CVA/stroke). The condition began in 2005 and was not associated with a surgical indication. The stroke symptoms improved and he was returned to duty. In 2006 he developed atrial fibrillation in a non-duty status for which anticoagulant medication was prescribed in part due to the history of the prior stroke. The use of anticoagulation interfered with medical qualification for worldwide performance of his Air Force specialty (AFS) or meet physical fitness standards. He was issued a permanent P4 profile and underwent a Medical Evaluation Board (MEB). Cerebral artery thrombosis with cerebral infarction was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AFI 48-123. No other conditions appeared on the MEB’s AF IMT 618 submission. Other conditions included in the Disability Evaluation System (DES) file will be discussed below. The Informal PEB (IPEB) adjudicated the stroke due to Factor V Leiden deficiency and atrial fibrillation conditions as unfitting, rated 10% each IAW with the Veterans Administration Schedule for Rating Disabilities (VASRD). A Formal PEB (FPEB) upheld the 10% rating for the stroke but adjudicated the following as Category II, conditions that can be unfitting but are not currently compensable or ratable: atrial fibrillation requiring medication, bilateral tinnitus, mitral valve prolapse and palpitations. On appeal to the Secretary of the Air Force Personnel Council (SAFPC), the stroke adjudication was upheld. The final Category II adjudicated conditions were: atrial fibrillation, mitral valve prolapse, Factor V Leiden deficiency, history of premature ventricular contractions and mood disorder. The CI was medically separated with a 10% disability rating.

CI CONTENTION: The CI states: “The SAF Personnel Council incorrectly discharged me through severance of 10% (2008) for Coumadin therapy from an in LOD injury in 2005 suffering a stroke in Germany (2005). Since 2008 review of submitted military med records, Vet Admin exams I was rewarded Jan 2009 90% service connected disability for residuals of a stroke.” He further states that all of the category II conditions are ratable and determined by the VA to be service connected, and that he served over 8 years of active duty. He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service FPEB – Dated 20081001** | | | **VA (15 Mo. Pre Separation) – All Effective 20051210** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Cerebrovascular Accident | 8008 | 10% | CVA Residual/Migraine | 8009-8100 | 30% | 20080903 |
| CVA Residual/R. Arm Weakness | 8009-8615 | 10% | 20070814 |
| CVA Residual/R. Leg Weakness | 8009-8624 | 10% | 20070814 |
| Atrial Fibrillation | 7010 | Cat II | Atrial Fibrillation | 7010 | 10% | 20070814 |
| Mitral Valve Prolapse | 7000 | Cat II | Mitral Valve Prolapse | 7000 | 10% | 20070816 |
| Factor V Leiden Mutation | 7799-7704 | Cat II | No VA Entry | | | 20070814 |
| Ventricular Ectopy | 7099-7011 | Cat II | No VA Entry | | | 20070814 |
| Mood Disorder | 9435 | Cat II | CVA Residual/Dementia-Mood\* | 9435 | 70% | 20090408 |
| ↓No Additional MEB Entries↓ | | | Bilateral Tinnitus | 6260 | 10% | STR |
| 0% x 1 / Not Service Connected x 5 | | |  |
| **Combined: 10%** | | | **Combined: 60%\*\*** | | | |

\*Effective 20080819

\*\*90% effective 20080819

ANALYSIS SUMMARY: The Board acknowledges the CI’s contention that suggests service ratings should have been conferred for other conditions documented at the time of separation. The Board wishes to clarify that it is subject to the same laws for Service disability entitlements as those under which the Military Disability Evaluation System (MDES) operates. While the MDES considers all of the service member's medical conditions, compensation can only be offered for those medical conditions that cut short a service member’s career, and then only to the degree of severity present at the time of final disposition. However the Department of Veteran’s Affairs (VA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate service connected conditions and to periodically re-evaluate said conditions for the purpose of adjusting the veteran’s disability rating should his degree of impairment vary over time.

Stroke Condition: Due to the significant differences between the ratings adjudicated by the PEB and VA, the Board carefully considered the whole record in order to develop a consistent picture of the CI’s stroke condition. The stroke symptoms began April 1, 2005 while deployed to Germany on extended active duty status. Serial radiologic evaluations identified a small abnormality in the left brain consistent with a stroke. Electrodiagnostic studies showed no clinically relevant abnormalities. Extensive evaluation revealed no clear cause of the condition, although brain hemorrhage, multiple sclerosis and tumor were ruled out. An initial cardiac evaluation that included trans-esophageal echocardiography failed to identify a cardiac source of embolic events (clots that travel to the brain) that could cause a stroke. Mild mitral valve prolapse was identified months after the event, but its association with stroke is tenuous (mitral valve prolapsed is a developmental condition not caused by service). Testing did reveal Factor V Leiden deficiency (an inherited genetic condition), which can cause abnormal clotting. While a hematologist stated that the CI’s particular deficiency pattern does not generally cause a stroke, other providers continued to consider it or other clotting disorders a possible cause. Although the CI developed atrial fibrillation (a condition that may lead to a stroke) greater than one year later (August 5, 2006, while in a non-duty status), it was not in evidence at the time of the stroke (extensive monitoring in hospital and following hospitalization did not show any atrial fibrillation). The CI was placed on Coumadin (an anti-coagulant or “blood thinner”) subsequent to the onset of atrial fibrillation to prevent the stroke-related clotting that it can cause.

The CI’s presenting stroke symptoms were right-sided weakness and speech impairment, and they improved quickly and dramatically. A physical therapy (PT) evaluation performed five months after the event found no evidence of functional deficits and therefore no need for PT. In October 2005 a formal driving evaluation cleared him to drive and an Air Force neurologist cleared him for full duty with no restrictions. He was subsequently released from active duty on December 9, 2005. During the time after release from active duty until the MEB (December 18, 2007), the CI received medical care by civilian and VA providers. Several examinations reported “mild” or “residual” right-sided weakness. He reported to one examiner that he sometimes slurred his speech, but objective speech difficulty was never noted by interviewers. A performance report for the period October 24, 2005 – October 23, 2007 documented that he successfully demonstrated the skills required of an avionics technician and that he completed all seven-level upgrade requirements.

The MEB neurologist (December 13, 2007; two years after release from active duty and 11 months prior to separation) stated that the CI was able to return to his duties, was functioning without significant impairment, and was able to pass his fitness tests and other training requirements. The neurologic examination at that time was entirely normal. The neurologist further stated that the CI should not engage in activities with a high risk of causing internal bleeding (due to being on Coumadin), but that his activity was otherwise unrestricted. A VA neurology evaluation performed September 2, 2008 (two months prior to separation, almost three years after release from active duty) reported unquantified decreased strength in the right upper and lower extremities and impaired tandem gait. The assessment was “mild residual deficit status post stroke.”

The Board now directs its attention to its rating recommendations based on the evidence just described. While the diagnosis of the stroke is undisputed, and the CI may experienced some variable residual mild symptoms, the PEB’s ultimate determination left room for elucidation of the unfitting condition. The final AF 356 lists cerebrovascular accident without residual impairment as the unfitting condition, but its rationale found the CI unfit primarily due to his requirement for anticoagulation therapy (Coumadin). This explanation is supported by the evidence described above, which revealed virtually no functional impairment from the stroke, as well as the MEB neurologist’s statement regarding the need for activity modification to reduce risk of bleeding. The PEB further opined that, although Coumadin was instituted for the atrial fibrillation condition that developed well after the stroke, the history of prior stroke may have been part of the reason for its use. This view was endorsed by a civilian cardiologist who on August 21, 2006 stated that the stroke was an important factor in deciding to recommend using Coumadin. It is apparent from the evidence that the residual extremity weakness was not severe enough to be independently unfitting. After due deliberation in consideration of the totality of the evidence, the Board concluded that there was insufficient cause to recommend a change from the PEB fitness adjudication for the stroke condition.

Stroke Residual Conditions: The VA rated two additional conditions as stroke residuals. Migraine headaches were experienced by the CI since he was 12 years old, and appeared to increase in frequency after the stroke. In June 2005 a neurologist prescribed a daily medication to prevent headaches. On October 27, 2005 neurology noted the headaches to have decreased in frequency and then gave the CI an unrestricted profile. The headache condition was not mentioned in the commander’s statement and was never profiled. In the CI’s lengthy appeal to SAFPC, no reference to the headache condition was found. All evidence considered, there is not reasonable doubt in the CI’s favor supporting addition of migraine headaches as an unfitting condition for separation rating. Vascular dementia and mood disorder was rated 70% by the VA, effective August 19, 2008 (three months prior to final separation, 32 months after release from active duty). While an internist prescribed medication for a depressed affect soon after the stroke, a mood disorder condition was never considered significant enough to require psychiatric care. Mood disorder was not mentioned in the commander’s statement and was never profiled. Due to the presence of other factors, such as marital and family stress, legal difficulties and alcohol abuse, some of which pre-dated the stroke, the Board agrees with the final PEB’s report that questions the link between the stroke and a mood disorder. However, even if a link is conceded, there is no evidence the condition was unfitting. The Board also notes the addition by the VA of vascular dementia to its rating of the mood disorder residual. Neuropsychiatric testing performed on June 18, 2009 showed mild cognitive impairment, but test results did not confirm that vascular dementia, with its implied link to the stroke, was present. Nevertheless, due to the VA examiner’s clinical suspicion a connection between the stroke and mild cognitive impairment was made. Concern about cognitive impairment was not reported by the CI or any of his physicians prior to the MEB. The MEB neurologist saw “no apparent cognitive deficits.” It was not mentioned in the commander’s statement and was never profiled. Also, the CI’s performance report for the period October 24, 2005 – October 23, 2007 documented excellent duty performance and completion of all seven-level upgrade requirements as an avionics technician. The Board finds no evidence in the record that cognitive impairment was present to a degree that could be called unfitting. All evidence considered, there is not reasonable doubt in the CI’s favor supporting addition of vascular dementia and mood disorder as an unfitting condition for separation rating.

Other PEB Conditions: The other conditions adjudicated as not unfitting by the PEB were atrial fibrillation, mitral valve prolapse, Factor V Leiden deficiency, and premature ventricular contractions (PVCs). The first three conditions were not acquired while the CI was on a period of extended active duty, and were therefore determined to have existed prior to service. The PVCs were present since 1988 and were treated symptomatically as needed. None of these conditions were profiled, implicated in the commander’s statement or noted as failing retention standards. All were reviewed by the action officer and considered by the Board. There was no indication from the record that any of these conditions significantly interfered with satisfactory performance of MOS requirements. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for any of the stated conditions.

Remaining Conditions: Other conditions identified in the DES file were tinnitus, right upper and lower extremity radiculopathy, and carpal tunnel syndrome. None of these conditions were clinically or occupationally significant during the MEB period, none carried attached profiles 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. Additionally a left elbow condition, back condition and several other non-acute conditions 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.

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. The Board did not surmise from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised. In the matter of the stroke condition and IAW VASRD §4.124a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the atrial fibrillation, mitral valve prolapse, Factor V Leiden deficiency, and premature ventricular contractions conditions, the Board unanimously recommends no change from the PEB adjudications as not unfitting. In the matter of the right arm and leg weakness conditions, migraine headache condition, vascular dementia and mood disorder condition, the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation. 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 therefore recommends that there be no recharacterization of the CI’s disability and separation determination.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Cerebrovascular Accident | 8008 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090204, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

President

Physical Disability Board of Review

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

Reference your application submitted under the provisions of DoDI 6040.44 (Section 1554, 10 USC), PDBR Case Number PD-2010-00066.

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 appropriate. Accordingly, the Board recommended no re-characterization or modification of your separation with severance pay.

I have carefully reviewed the evidence of record and the recommendation of the Board. I concur with that finding and their conclusion that re-characterization of your separation is not warranted. Accordingly, I accept their recommendation that your application be denied.

Sincerely,

Director

Air Force Review Boards Agency

Attachment:

Record of Proceedings