RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXX BRANCH OF SERVICE: navy

BASE NUMBER: PD1000448 SEPARATION DATE: 20090512

BOARD DATE: 20110420 TDRL DATE: 20060119

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty LTJG (1395/Student Aviator) medically separated for insulin-dependent diabetes mellitus (IDDM).He was unable to perform within his rating, and he underwent a Medical Evaluation Board (MEB). IDDM was addressed in the September 2005 MEB narrative summary (NARSUM), and was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. The Navy PEB found the IDDM condition unfitting, but not sufficiently stable for final adjudication. The CI was placed on the Temporary Disability Retired List (TDRL) with 40% disability. In August 2007, a 2nd Navy PEB convened. He was found unfit, and separation was recommended at 20%. However, a Reconsideration of the PEB findings was performed. It was determined that he would remain on TDRL at 40%. In March 2009, another Navy PEB convened. The CI was found unfit, and was recommended for separation at 20%. On 7 April 2009, a Reconsideration of the PEB findings was performed. The CI was then medically separated from service with a 20% rating.

CI’s CONTENTION: The CI states, “I respectfully request that the board re-evaluate the decision issued on 12 May 2009 by the Department of the Navy Physical Evaluation Board. On 12 May 2009, I was issued a disability rating of 20% and honorably discharged from the United States Navy with severance pay. Since 2006, I have been awarded on three separate occasions a rating of over 40% for my service connected insulin dependent diabetes mellitus.” The CI then lists the three occasions on which he was given a disability rating over 20%. He then goes on to say, “My insulin dependent diabetes requires, and has required, me to wear an insulin pump at all times and monitor my blood glucose levels from 8-10 times daily since diagnosis. My issue with the final rating of 20% is that my condition that I was originally rated at 40% by the United States Navy and 60% by the Department of Veterans’ Affairs has not improved since initial diagnosis. I am unclear how a rating for a condition can be reduced when no improvement to the condition has occurred and how there can be such a disparity between the rating of 60% by the Department of Veterans’ Affairs, the initial rating by the United States Navy of 40%, and the final rating of 20% by the United States Navy for the same condition.” The CI then brings up various members of his family who have honorably served as military members. He ends his contention by stating that “nothing has given me more pride than serving in the United States Navy. I respectfully thank you in advance for any time or efforts afforded to this appeal.”

RATING COMPARISON:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Navy IPEB Reconsideration – (20090407)** | | | | **VA – All Effective 20060122** | | | |
| **Condition** | **Code** | **Rating** | | **Condition** | **Code** | **Rating** | **Exam** |
|  | **TDRL** | **Sep.** | **No VA Rating at time of TDRL.** |
| Insulin-Dependent DM | 7913 | 40% | 20% | Diabetes Mellitus (DM) | 7913 | 20% | STR |
| 60% | 20060413 |
| ↓No Additional Entries.↓ | | | | Neuropathy with DM… | 8599-8520 | 20% | 20060413 |
| 2 Other Conditions, Not Service Connected (NSC) | | | 20060413 |
| **Final Combined (Permanent): 20%** | | | | **Total Combined: 70%** | | | |

ANALYSIS SUMMARY:

Insulin-Dependent Diabetes Mellitus. The CI was in excellent health until May 2005, when he was diagnosed with IDDM. After his first PEB (Oct 2005), he was removed from active duty and placed on TDRL for 40 months. As noted above, he underwent subsequent PEB adjudication, and was separated from the Navy in May 2009, with a disability rating of 20%.

In his contention, the CI opined that his condition had not improved since his initial diagnosis. This opinion could be either supported or questioned, based upon various clinical notes in the treatment record. The Board takes the position that the presence or absence of subjective improvement should not influence its rating recommendation. It is recognized, in fact, that the PEB may have applied a generous initial rating in order to meet the retirement threshold of 30% disability, for placement on TDRL. This was in the CI’s best interest at that time and does not mean that a lower final rating is unfair. The sole basis for the Board’s final rating recommendation is the CI’s clinical condition at the time of separation from service.

The Board examined all evidentiary information available. As mentioned above, the Board must base its permanent disability rating recommendation on the CI’s medical condition at the time of separation from service. Review of the treatment record shows that the CI was evaluated by an internist at Naval Hospital Bremerton on 5 March 2009. The CI was married, and working full-time as an accountant. He had excellent glycemic control, and was using a subcutaneous insulin infusion pump. The CI denied any recent hospitalizations or emergency department visits. It is clear that he required insulin and was on a restricted diet. However, at the time of separation, there is not sufficient evidence that he required regulation of activities. After considerable discussion and due deliberation (and mindful of VASRD §4.3 – reasonable doubt), the Board unanimously recommends a 20% rating for the IDDM condition.

Peripheral Neuropathy. The CI experienced occasional numbness of the left leg. This was diagnosed as peripheral neuropathy. On the March 2009 examination of lower extremities, he had normal pulses, and his sensation (light touch) was intact to monofilament testing. There is no clearly documented evidence that this condition caused any significant interference with the performance of his military duties. The Board therefore unanimously recommends that peripheral neuropathy be considered not unfitting at the time of separation from service.

Remaining Conditions. Bronchitis was identified in the Disability Evaluation System file. It was not clinically active during the MEB period, did not require limited duty, and was not implicated in the non-medical assessment. This condition was reviewed by the action officer and considered by the Board. It was determined that it could not be argued as unfitting and subject to separation rating. No other conditions were service connected with a compensable rating by the VA within twelve months of separation, or contended by the CI. 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. In the matter of the IDDM (coded 7913), the Board unanimously recommends a TDRL rating of 40%. The Board unanimously recommends a permanent rating of 20% following separation IAW VASRD §4.119.

In the matter of the peripheral neuropathy, bronchitis, or any other condition 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 re-characterization of the CI’s disability and separation determination, as follows:

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

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100410, 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 USN

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 4 May 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 Physical Disability Board of Review Mr. XXXX’s records not be corrected to reflect a change in either his 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)