RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: air force

CASE NUMBER: PD1000577 SEPARATION DATE: 20031007

BOARD DATE: 20110311

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SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a lieutenant colonel (12S/Navigator), medically separated from the Air Force Reserve in 2003 with approximately 16 years of active service. The medical basis for the separation was reactive airway disease (RAD-Asthma). The CI was had a long history of spontaneous pneumothoraxes (collapsed lung), and subsequently underwent a thoracotomy surgery. His symptoms of shortness of breath and chest pain occurred, not only at or above 5,000 feet mean sea level, but also at sea level. He was granted three waivers for continued military service and flying status. In October 2002, the CI was disqualified from flying duties due to his symptomatology. His need for daily asthma medications, which were not approved for use in flyers, and his need to use an oxygen mask during flight to reduce the severity of symptoms led to this decision. The CI was issued a P4 profile, and underwent a Medical Evaluation Board (MEB). The MEB’s diagnoses were forwarded to the Physical Evaluation Board (PEB). The informal PEB (IPEB) adjudicated RAD associated with history of pneumothoracies and emphysematous bleb as unfitting and rated 10%, with likely application of DoDI 1332.39, which was in effect at the time. The CI appealed to a formal PEB (FPEB) and, subsequently, to the Secretary to the Air Force Personnel Council. Both upheld the PEB unfit and rating determination, as appropriate. The CI made no further appeals and was separated with a 10% combined disability rating.

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CI CONTENTION: “Since initial diagnosis, and throughout the MEB process, my condition has met the VASRD standard determination for 30 percent disability on Codes 6602-6699 and 6840-6845. The VA also agreed and issued determination of 30 percent within 8 months of receiving my records. The AF MEB dismissed this rating and issues its own, stating my condition was minimized by medicine. At no point do regulations indicate that a degree of wellness or disability is offset by medications. The AF rating guide DoDI 1332 has no numerical value, instead using references as mild, moderate or severe which have no corresponding percentage number to cross reference. Their vagueness has no basis or arguable defense as it is not held to an equitable standard such as the VASRD. The AF MEB is full of opinion and contradiction. They acknowledge the 30 percent VASRD rating, then discount it, and then still rate me unfit even though they claim I am normal. They seem to say I am disabled, but not really. In accordance with the Congressional mandate that established the PDBR, the reasoning behind it, and the definitive ratings of the VA versus the AF MEB, my rating should be adjusted to a minimum 30 percent and the corresponding active duty retirement for medical reasons established.”

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Rating Comparison chart on page 2.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service FPEB – 20030422** | | | **VA (6 Mo. After Separation) – All Effective 20030930** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| RAD… | 6602-6699 | 10% | Asthma | 6843-6602 | 30% | 20040426 |
| L Chest Scars, … | 7805 | 0% | 20040426 |
| ↓No Additional PEB Entries↓ | | | Cervical & Thoracolumbar Spine Conditions… | 5243-5010 | 10% | 20040426 |
| Tinnitus | 6260 | 10% | 20040426 |
| 0%x1/Not Service Connected x 6 | | | 20040426 |
| **Final Combined: 10%** | | | **Total Combined: 40%** | | | |

ANALYSIS SUMMARY: The Board makes note that the following records are referenced, but not in evidence: IEB, MEB, narrative summary (NARSUM), and commander’s statement. Per the PDBR Record Intake Unit (San Antonio), the PEB files for this case cannot be located despite contacting the PEB office at AFPC and the ARMS file. The CI was contacted and he does not have a copy of the requested records. The VA was contacted, and they also do not have copies of the missing documents. Further such attempts would likely be futile and would introduce further delay in processing the case. The missing evidence will be mentioned where it is relevant. It is not suspected that any of the evidence would significantly alter the Board’s recommendations. The FPEB and detailed SAF/MRBP letter of 2 July 2003 are in evidence and described the CI’s unfitting condition, treatments, and rating. The SAF/MRBD noted that the CI’s condition had been brought under reasonable control under his current treatment regimen and that the CI was rated appropriately at 10%. They noted that the CI had a seven year history of spontaneous pneumothoracies, and underwent a thoracotomy in 1995. The FPEB noted the CI’s medication use and quarterly pulmonary evaluations, but stated that “due to his relatively high level of functionality, the Board opines that a 10% rating is appropriate.” This case focuses primarily on rating the CI’s unfitting condition IAW the VASRD alone, absent the specific DoDI 1332.39 criteria, in effect at the time.

RAD Associated with History of Pneumothoracies and Emphysematous Bleb (Including Chest Scars). The CI’s unfitting RAD and his history, pulmonary function tests (PFTs) and medication use were well summarized in his numerous rebuttals. The scars condition was rated 0% by the VA and was mentioned in the Disability Evaluation System (DES) and considered with this condition. There was no indication that the scars restricted the wear of military equipment or independently interfered with duty performance. The CI had consistently greater pulmonary symptoms than his slightly abnormal PFTs would indicate. IAW ratings by the VASRD alone, the CI’s medication history and use are the crux of the rating deliberations. Pre-separation service treatment records and post-separation VA Compensation and Pension (C&P) exams all indicate that the CI required and used daily inhalational bronchodilator medications which would support a minimum 30% rating IAW code 6602 (“daily inhalational or oral bronchodilator therapy, or inhalational anti-inflammatory medication”). 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.” According to the FPEB remarks, the CI was followed by a pulmonologist quarterly and required no urgent care, emergency room visits or hospitalizations. The VA used asthma coded 6843-6602 and based their 30% rating on an examination eight days prior to separation, which showed a forced expiratory volume in one second (FEV-1) of 56-70% predicted, along with daily inhalational or oral therapy. The Board also reviewed the PFT results which showed that, on 9 September 2002, the FEV-1 was in the range of 95-100%; however, on PFTs done 21 March 2003, (seven months pre-separation) the FEV-1 pre-bronchodilator was 68.4% and post bronchodilator FEV-1 showed a 30% improvement. The C&P exam, six months post-separation noted the CI to have pulmonary studies which showed a normal spirometry; however, the examiner also documented that the CI required daily oral and inhalational bronchodilator medications. The VA coding using 6843 (traumatic chest wall defect, pneumothorax, hernia, etc.) with 6602 [asthma, bronchial] appeared predominate to 6602-6699, as the CI had a history of a pneumothorax and a thoracotomy; however, the choice of disability code both use the rating criteria of 6602. The Board deliberated primarily between 30% and 60%, as the permanent rating recommendation focused 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 30% for the RAD, with no additional rating for post-surgical scars.

Degenertive Disc Disease (DDD), Spondylosis and Degenerative Changes, Cervical and Thoracolumbar Spine, Tinnitus. The cervical and thoracolumbar spine conditions was rated 10% by the VA. The tinnitus condition was rated 10% by the VA. These conditions were not noted in the DES (FPEB findings, SAF/MRBP memo, or the aeromedical summary), nor did the CI contend for these conditions. The Board does not have the authority under DoDI 6040.44 to render fitness or rating recommendations for any conditions not covered by the DES. The Board therefore has no reasonable basis for recommending any additional unfitting conditions for separation rating.

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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 RAD condition, the Board unanimously recommends a rating of 30% coded 6843-6602 IAW VASRD §4.100. In the matter of the left chest scars (from thoracotomy) condition 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.

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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** |
| Reactive Airway Disease | 6843-6602 | 30% |
| **COMBINED** | **30%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294 dated 20100518, 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-2010-00557.

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 re-characterized 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 determined that your records should be corrected accordingly. The office responsible for making the correction will inform you when your records have been changed.

As a result of the aforementioned correction, you are entitled by law to elect coverage under the Survivor Benefit Plan (SBP). Upon receipt of this letter, you must contact the Air Force Personnel Center at 1-800-531-7502 to make arrangements to obtain an SBP briefing prior to rendering an election. If a valid election is not received within 30 days from the date of this letter, you will not be enrolled in the SBP program unless at the time of your separation, you were married or had an eligible dependent child, in such a case, failure to render an election will result in automatic enrollment.

Sincerely,

Director

Air Force Review Boards Agency

Attachment:

Record of Proceedings

cc:

SAF/MRBR

DFAS-IN

PDBR PD-2010-00577

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 are corrected to show that:

a.  The diagnosis in her finding of unfitness was Reactive Airway Disease, VASRD code 6843-6602, rated at 30%; rather than Reactive Airway Disease associated with history of pneumothoraces, VASRD code 6602-6699, rated at 10%;

b.  On 7 October 2003, he elected coverage under the Survivor Benefit Plan (SBP) based on full retired pay.

c.  He was not discharged on 7 October 2003 with entitlement to disability severance pay; rather, on that date she was relieved from active duty and on 8 October 2003 his name was placed on the Permanent Disability Retired List.

Director

Air Force Review Boards Agency