RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: air force

CASE NUMBER: PD20100606 SEPARATION DATE: 20040629

BOARD DATE: 20111121

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty TSGT (3E771, Fire Protection Craftsman) medically separated for idiopathic hypersomnolence associated with obstructive sleep apnea (OSA)*.* Despite treatment with Lexapro, septoplasty and continuous positive airway pressure (CPAP) device, he was unable to perform within his career field or meet physical fitness standards. He was issued temporary P4/E2 profile and underwent a Medical Evaluation Board (MEB). OSA, idiopathic daytime hypersomnolence was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AFI 48-123. The PEB adjudicated the idiopathic hypersomnolence associated with OSA condition unfitting, rated 10% with application of DOD and Veterans Administration Schedule for Rating Disabilities (VASRD), respectively. The CI made no appeals and was medically separated with a 10% disability rating.

CI CONTENTION: “1) Code 8108 is for Narcolepsy - because it states you have to use the 8911 Epilepsy, petit mal for rating, the lowest rating is 10 which would not apply to my unfit condition. 2) Unfitting condition is "IDIOPATHIC HYPERSOMNOLENCE ASSOCIATED WITH OBSTRUCTIVE SLEEP APNEA" - Not narcolepsy! While I was rated by V.A. after discharge for narcolepsy (20%) rating the following would be the correct code for condition. CODE 6847 Sleep Apnea Syndromes – records clearly show before and after medical discharge the extent of using a continuous airway pressure (CPAP) machine. My VA rating for this condition is 50%. 3) 6 conditions are noted on my first VA rating decision on January 31, 2005. Only one is used for my medical discharge. The VA was able to see these conditions in my records, but no findings on my medical discharge besides one. I would ask the board to please review all unfitting conditions that would have applied.” He additionally mentions his VA conditions and ratings per the rating chart below.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20040315** | | | **VA (2 Mos. After Separation) – All Effective 20040630** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Idiopathic Hypersomnolence Associated w/OSA | 8108 | 10% | Idiopathic Hypersomnolence Associated w/OSA | 6847 | 50% | 20040804 |
| Narcolepsy w/Cataplexy and Sleep Paralysis | 8099-8108 | 20% | 20040804 |
| ↓No Additional MEB/PEB Entries↓ | | | Major Depressive Disorder | 9434 | 100% | 20040804 |
| L Shoulder Strain | 5201 | 10% | 20040804 |
| R Shoulder Strain | 5201 | 10% | 20040804 |
| R Knee Chondromalacia Patella | 5260 | 10% | 20040804 |
| L Knee Chondromalacia Patella | 5260 | 10% | 20040804 |
| Tinnitus | 6260 | 10% | 20040804 |
| 0% x 2 / Not Service Connected x 4 | | | 20040804 |
| **Combined: 10%** | | | **Combined: 100% from 20040630** | | | |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application, i.e., that there should be additional disability assigned for his other conditions and for the gravity of his condition and predictable consequences which merit consideration for a higher separation rating. While the Disability Evaluation System (DES) 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 Veterans’ Affairs, operating under a different set of laws (Title 38, United States Code), is empowered to periodically re-evaluate veterans for the purpose of adjusting the disability rating should the degree of impairment vary over time, and to compensate for all service connected conditions without tie to fitness.

Idiopathic Hypersomnolence associated w/OSA. The CI reported excessive daytime somnolence in 1999 and was referred for a sleep study that revealed obstructive hypopneas. He was evaluated by Neurology and Ear/Nose/Throat, had a trial of CPAP and underwent a septoplasty in 2003 for deviated septum. Despite surgery and treatment with Lexapro and CPAP, he did not respond adequately to perform within his AFS or meet physical fitness standards. The narrative summary (NARSUM) on 13 February 2004 (four months pre-separation) noted that he was on Lexapro 20mg. daily, with ongoing hypersomnolence and at least one episode of cataplexy. The initial neurology consultant had diagnosed narcolepsy. The NARSUM noted a diagnosis of OSA requiring CPAP and sleep disorder diagnosed as idiopathic hypersomnolence treated with oral Lexapro. The VA compensation and pension (C&P) examination on 4 August 2004 (one month post-separation) noted a diagnosis of idiopathic hypersomnolence associated with OSA. The VA C&P neurology examination on the same day diagnosed narcolepsy with cataplexy, sleep paralysis and hallucinations associated with the sleep paralysis. The episodes of cataplexy did occur on a daily basis but after treatment with Lexapro were occurring once per week. The VA neurologist clearly noted that the narcolepsy was a separate diagnosis from the OSA with daytime hypersomnolence.

The treatment records clearly show two separate conditions. Idiopathic hypersomnolence associated with OSA was diagnosed by sleep study, with daytime sleepiness continuing to impact his ability to perform his duties as a firefighter. He also has narcolepsy with episodes of cataplexy and sleep paralysis. The Board finds evidence for both conditions as unfitting, noting that either condition alone would prevent him from performing his military duties. The Board also grants higher probative value to the VA examinations one month post-separation since these are comprehensive evaluations and are most proximal to separation. The narcolepsy (code 8108) is rated by the VA at 20% and analogously by the PEB at 10%; however, the frequency of his episodes of cataplexy noted in the VA neurology examination, occurring once per week, would support a rating of 20%. VASRD §4.100 mandates a minimum rating of 50% under 6847 for OSA requiring CPAP. Therefore, the idiopathic hypersomnolence associated with OSA condition should be rated under code 6847 (sleep apnea syndromes) with 50% assigned for continuous use of a CPAP machine and persistent daytime hypersomnolence. After due deliberation, considering the totality of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board, unanimously recommends a rating of 20%, coded 8108, for the narcolepsy condition IAW VASRD §4.124, and a rating of 50%, coded 6847, for idiopathic hypersomnolence associated with OSA IAW §4.100.

Other Contended Conditions. The CI’s application asserts that compensable ratings should also be considered for major depressive disorder, left shoulder strain, right knee chondromalacia patella, left knee chondromalacia patella and tinnitus. All of these conditions were reviewed by the action officer and considered by the Board. There was no evidence for concluding that any of the conditions interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore that none of the stated conditions were subject to service disability rating.

Remaining Conditions. Other conditions identified in the DES file were status post septoplasty for deviated nasal septum, plantar fasciitis and excision cyst left third toenail. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were clinically active 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, epididymitis, right shoulder strain, chronic shortness of breath and bilateral hearing loss were not service connected in the VA rating decision proximal to separation and 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. 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 idiopathic hypersomnolence associated with OSA condition the Board unanimously recommends a rating of 50%, coded 6847 IAW §4.100. In the matter of the narcolepsy condition, the Board unanimously recommends a rating of 20%, coded 8108 IAW §4.124. In the matter of the major depressive disorder, left shoulder strain, right knee chondromalacia patella, left knee chondromalacia patella, tinnitus, status post septoplasty for deviated nasal septum, plantar fasciitis and excision cyst left third toenail 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** |
| Idiopathic Hypersomnolence Associated with Obstructive Sleep Apnea | 6847 | 50% |
| Narcolepsy | 8108 | 20% |
| **COMBINED** | **60%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 200100414, 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-2010-00606.

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-2010-00606

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 xxxxxxxxxx, be corrected to show that:

a.  The diagnosis in his finding of unfitness was Idiopathic Hypersomnolence Associated with Obstructive Sleep Apnea, VASRD code 6847, rated at 50%; and Narcolepsy, VASRD 8108, rated at 20% with a combined rating of 60%

b. On 28 June 2004, he elected not to participate in the Survivor Benefit Plan and on that same date, his spouse xxxxxxxx concurred with his election.

c.  He was not discharged on 29 June 2004; rather, on that date he was released from active duty and on 30 June 2004 his name was placed on the Permanent Disability Retired List.

Director

Air Force Review Boards Agency