RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: AIR FORCE

CASE NUMBER: PD1000997 SEPARATION DATE: 20061208

BOARD DATE: 20111207

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty TSgt/E-6 (T4N071, Instructor; Aerospace Medical Service Craftsman), medically separated for recurrent furunculosis. The CI did not respond adequately to perform within her Air Force specialty (AFS) or meet physical fitness standards. She was issued a temporary P4 profile and underwent a Medical Evaluation Board (MEB). Recurrent furnuculosis was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AFI 48-123. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) packet will be discussed below. The Informal PEB (IPEB) adjudicated the furunculosis condition as unfitting, code 7820, with a rating of 10% with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). Seasonal allergic rhinitis, back pain, and right elbow lateral epicondylitis were category II conditions and overweight was a category III condition. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: The CI states: “I was unfit due to a claimed condition at the time I was separated. I met the criteria for a higher rating at the time I was separated. The PEB made errors in adjudication. I was medically discharged at 10% disability. My combined VA disability rating is 60%.” She additionally lists all of her VA conditions and ratings as per the rating chart below. A contention for their inclusion in the separation rating is therefore implied.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB – Dated 20061018** | **VA (22 Mos. Post-Separation) – All Effective 20080319** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Recurrent furunculosis | 7820 | 10% | Recurrent furuncle w/residual scarring | 7899-7806 | 10% | 20081008 |
| Seasonal allergic rhinitis | 6522 | Cat II | No VA Entry  |
| Back pain | 5437 | Cat II | Lumbosacral spine DDD | 5242 | 10% | 20081008 |
| Right elbow lateral epicondylitis | 5024 | Cat II | Right elbow tendonitis | 5206-5024 | 0% | 20081008 |
| Overweight, BMI 29.95 | Cat III | No VA Entry |
| ↓No Additional MEB/PEB Entries↓ | Major depressive disorder | 9434 | 30% | 20081104 |
|  | Hypertension | 7101 | 10% | 20081008 |
| Migraine headaches | 8100 | 0% | 20081008 |
| **Combined: 10%** | **Combined: 50%\*** |

\* Increased to 60% effective 20080520 based on extraschedular entitlement to nonservice connected pension granted for Permanent and Total Disability (Grant P&T under 38 CFR 3.321(b) (2).

ANALYSIS SUMMARY: The Board acknowledges the CI’s assertions that there were errors in the PEB's adjudication of her case. It is noted for the record that the Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to the CI’s statements in the application regarding suspected Service improprieties in the processing of her case. 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, based on severity at the time of separation. The Board also acknowledges the sentiment expressed in the CI’s application, i.e., that there should be additional disability assigned for her other conditions and for the gravity of her 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 (VA), 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 his degree of impairment vary over time, and to compensate for all service connected conditions without tie to fitness.

Recurrent furunculosis. The CI has a history of methicillin sensitive staphylococcus aureus (MSSA) and methicillin resistant staphylococcus aureus (MRSA) furunculosis since 2004. She had numerous recurrent boils and carbuncles to the back, shoulder, buttocks, scalp, legs and arms causing significant pain with scars. She was treated with numerous courses of antibiotics with modest efficacy and recurrent flares. The commander’s statement noted that she was unable to fulfill the requirements of a critical position due to her dermatologic condition. The narrative summary (NARSUM) on 16 August 2006, four months pre-separation, noted that the lesions continued to cause pain and inability to engage in unit physical conditioning activities, frequent work absences, infection risk, and inability to work in environments which increase perspiration. The NARSUM examination noted no skin lesions at the time of examination. This likely refers to actively infected lesions; however, there is no description of scars related to the chronic furunculosis. The IPEB found the recurrent furunculosis condition unfitting, coded 7820 (infections of the skin not listed elsewhere, including bacterial, fungal, viral, treponemal and parasitic diseases), with a 10% rating.

The VA Compensation and Pension (C&P) examination on 10 October 2008, 22 months post-separation, noted hypopigmented scars, some up to 5cm in length, covering 40% of her back and 15% total body surface area. No other description of the scars is given. The VA rating decision on 20 November 2008, 23 months post-separation, service connected the recurrent furuncle with residual scarring condition, coded 7899-7806 (dermatitis or eczema), with a 10% rating. Under code 7806 a 10% rating was appropriately given for lesions involving at least 5 percent, but less than 20 percent, of the entire body. A higher rating of 30% would require 20 to 40 percent of the entire body or 20 to 40 percent of exposed areas affected, or; systemictherapy such as corticosteroids or other immunosuppressive drugs required for a total duration of six weeks or more, but not constantly, during the past 12-month period.

The PEB and VA chose different coding options for the condition, but this did not bear on rating. The Board considered the VA’s choice to rate the recurrent furunculosis condition, code 7899-7806, used analogously with 10% assigned according to the affected body surface area. The IPEB code (7820) allows rating for scars (DC’s 7801, 7802, 7803, 7804, or 7805), or dermatitis (DC 7806), depending upon the predominant disability. The NARSUM does not provide specific characteristics of disfigurement or measurement of scars or surface area affected to rate under codes 7800, 7801 or 7802. Neither the NARSUM nor the VA examination describes scars as unstable or painful. Regardless of the criteria used, the IPEB rating is consistent with the VA rating at 10% nearly two years after separation, and code 7820 does allow rating under code 7806, used by the VA and supporting a 10% rating. After careful consideration of all available evidence the Board finds no reasonable doubt in the CI’s favor, therefore, to justify a Board recommendation for other than the 10% rating assigned by the PEB, coded 7820, for the recurrent furunculosis condition.

Other PEB Conditions. The other conditions adjudicated as not unfitting by the PEB were seasonal allergic rhinitis; back pain; and right elbow lateral epicondylitis; however, these conditions were not submitted to the PEB by the MEB. These were category II conditions that can be unfitting but not currently compensable or ratable. Overweight (BMI 29.95), also not submitted by the MEB, was found to be a category III condition. Category II conditions are not considered disabilities and are not rated. None of these conditions were profiled, implicated in the commander’s statement/non-medical assessment (NMA), 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 AFS duty 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.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for major depressive disorder and hypertension. Service treatment records do document treatment for adjustment disorder and depression on several occasions with no duty limitations placed. However, neither of these conditions is documented in the DES file and therefore the Board does not have the authority under DoDI 6040.44 to render fitness or rating recommendations.

Remaining Conditions. The other condition identified in the DES file was intermittent headaches. This condition was not clinically active during the MEB period, was not profiled, and was not implicated in the commander’s statement. 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. Additionally 12 other non-service connected 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. 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 recurrent furunculosis condition the Board unanimously recommends no change in the PEB adjudication. In the matter of the seasonal allergic rhinitis, low back pain, right elbow lateral epicondylitis, obesity, hypertension, headaches or any other medical condition eligible for Board consideration; the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation.

RECOMMENDATION: The Board, therefore, recommends that there be no recharacterization of the CI’s disability and separation determination, as follows:

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
|  Recurrent Furunculosis | 7820 | 10% |
| **COMBINED** | **10%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100810, 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-2010-00997.

 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