RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXX BRANCH OF SERVICE: air force

CASE NUMBER: PD1100001 SEPARATION DATE: 20050111

BOARD DATE: 20111013

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SRA/E-4 (3S051, Personnel Technician) medically separated for asthma. The CI began having shortness of breath in 2003, with no prior history of asthma or allergic difficulties. She was evaluated by pulmonary medicine in January of 2004 for respiratory symptoms following a physical fitness test, and diagnosed with moderate persistent asthma. She responded well to treatment and was able to meet physical fitness standards, but was not world-wide qualified within her career field. The CI was issued a P4 profile and underwent a Medical Evaluation Board (MEB) which recommended return to duty. The Informal PEB (IPEB), however, adjudicated the asthma condition as unfitting, rated 10%, with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI appealed to a Formal PEB (FPEB), which upheld the IPEB decision. The decision was subsequently reaffirmed by the Air Force Board for Correction of Military Record in September 2004. The CI was medically separated with a 10% disability rating.

CI CONTENTION: “I believe that I should have been medically retired from the Air Force due to the medications that I was placed on for my asthma condition. The medication was a corticosteroid called Advair along with Cingulair [sic] and a rescue inhaler. I was given 10%, but should have been retired per chart that I have included in this package (VASRD 6602 [asthma] rating criteria).” She further notes major depressive disorder (MDD) on the application, without elaboration; although, a contention for service rating is presumed.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service FPEB – Dated 20040826** | | | **VA (3 Mo. Post-Separation) – All Effective 20050112** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Asthma | 6602 | 10% | Asthma | 6602 | 60% | 20050328 |
| No Additional MEB/PEB Entries | | | Major Depressive Disorder | 9434 | 30% | 20050302 |
| Not Service Connected x 8 | | | 20050328 |
| **Combined: 10%** | | | **Combined: 70%** | | | |

ANALYSIS SUMMARY:

Asthma Condition. The CI presented to the pulmonary clinic with her first episode of asthma in January 2004. Symptoms of increasing shortness of breath especially on exertion, and night-time cough had been present for approximately one month prior. The CI had no past history of asthma or allergic reactions. At the time of her examination in pulmonary clinic, her symptoms had resolved and her lungs were clear. A preceding pulmonary function test (PFT), however, was interpreted as moderate asthma. This is assumed to have been obtained while residual bronchospasm was present. The CI was prescribed daily inhaled Advair, daily oral Singulair maintenance, an albuterol rescue inhaler as needed, and a five-day “burst” course of oral steroids (Prednisone). A follow-up PFT after this course of treatment yielded normal results. The PFT results referenced above, with §4.97-ratable treatment criteria, are summarized in the chart below.

|  |  |  |
| --- | --- | --- |
| **Exam** | **9 Mo. prior to FPEB** | **17 Days prior to FPEB** |
| FEV1 (% Predicted) | 77% | 97% |
| FEV1/FVC | 84% | 101% |
| Meds | No meds. | Advair, Singulair, Albuterol |
| §4.97 Rating | 10% | 30% |

Historically, this CI had one major episode of asthma. She never required parenteral steroids, emergent treatment or hospital admission, and received oral steroids only for the initial attack. The MEB evaluation (five months prior to separation) reported no difficulties with work, documenting that she had passed a physical training test without inhaler support, that she had not used her rescue inhaler since January 2004, had missed no work, and had no currently active pulmonary symptoms. The VA rating examiner (three months after separation) reported a history of weekly break-through asthma attacks and exertional dyspnea, which were well-controlled with the rescue albuterol inhaler. A PFT was obtained by the VA and referenced in the initial VA rating decision as meeting 60% criteria under 6602 (not quoting results) but the source report was not available in records before the Board. VASRD §4.97 criteria for the 30% rating by PFT parameters were not met by the MEB evidence, but the 30% rating is also merited by “daily inhalational or oral bronchodilator therapy or inhalational anti-inflammatory medication.” Although the documented medication history has minor inconsistencies, the preponderance of evidence prior to separation suggests that the CI was continuously treated with daily medications. This is further supported by her ongoing stable asthma status. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a separation rating of 30% for the asthma condition.

Remaining Conditions. The CI was diagnosed with adjustment disorder, with mixed anxiety and depressed mood, during the MEB period, which was managed with counseling. An Axis I diagnosis of MDD, as noted on the application, was not made until after separation. In order to be recommended for service rating, it must be established that a condition was separately unfitting at the time of separation. Depression was not identified as a significant issue by the MEB and was not profiled. The commander’s statement identified only the asthma condition as relating to duty performance. Several additional non-acute conditions or medical complaints were also documented by the MEB, but likewise not forwarded to the PEB or linked to profile limitations. All of these conditions were reviewed by the action officer and considered by the Board. There was no evidence for concluding that any them interfered with duty performance to a degree that could be argued as unfitting. No other conditions were service connected with a compensable rating by the VA within twelve months of separation. 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. 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 asthma condition, the Board unanimously recommends a rating of 30% coded 6602 IAW VASRD §4.97. In the matter of the depression 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 her prior medical separation:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Asthma | 6602 | 30% |
| **COMBINED** | **30%** |

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20101116, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

XXXXXXXXXX

President Physical Disability Board of Review

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

XXXXX

Dear XXXX:

Reference your application submitted under the provisions of DoDI 6040.44 (Section 1554, 10 USC), PDBR Case Number PD-2011-00001.

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,

XXXX

Director

Air Force Review Boards Agency

Attachment:

Record of Proceedings

cc:

SAF/MRBR

DFAS-IN

PDBR PD-2011-00001

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 XXXXXXX, are corrected to show that:

a.  The diagnosis in her finding of unfitness was Asthma, VASRD code 6602, rated at 30% rather than 10%.

b.  On 10 January 2005, she elected not to participate in the Survivor Benefit Plan and on this same date, her spouse, XXXXXXX concurred with her election.

c.   She was not discharged on 11 January 2005; rather on that date she was released from active duty and on 12 January 2005 her name was placed on the Permanent Disability Retired List.

XXXXXXXXXXXXXXXXX

Director

Air Force Review Boards Agency