RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXX BRANCH OF SERVICE: Air force

CASE NUMBER: PD1100079 SEPARATION DATE: 20040910

BOARD DATE: 20111123

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an activated Reserve Maj/O-4 (R16R4, Planning and Programming Officer) medically separated for psoriatic arthritis and major depression. The arthritis condition began in approximately 1999 and required intensive ongoing management by a rheumatologist. The depression condition began in 2001. Neither condition responded adequately to treatment and he was unable to perform within his Air Force specialty (AFS) or meet physical fitness standards. He was issued a P3 S3 profile and underwent a Medical Evaluation Board (MEB). Psoriatic arthritis and major depression were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AFI 48-123. Additional conditions supported in the Disability Evaluation System (DES) file are discussed below, but were not forwarded for PEB adjudication on the AF Form 618. The Informal PEB (IPEB) adjudicated the psoriatic arthritis and depression conditions as unfitting, rated 10% each. The arthritis condition was rated with application of DoDI 1332.39 (E2.A1.5) and the depression condition IAW with the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals and was medically separated with a 20% combined disability rating. The CI elected disability severance pay instead of placement in the retired reserve awaiting retired pay.

CI CONTENTION: The CI states: “As rated by the Department of Veterans Affairs upon separation, both conditions were given a higher rating: Major Depression initially rated at 10% was changed to Bipolar Disorder currently rated at 50% disabling; Psoriatic Arthritis initially rated at 10% is currently rated at 20% with knees rated in addition at 40% - reduced to 20% due to (an appealed) pre-existing condition.”

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB – Dated 20040630** | **VA (5 Mo. After Separation) – All Effective 20040911** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Psoriatic Arthritis | 5009 | 10% | Psoriatic Arthritis | 7816-5002 | 20% | 20050215 |
| Major Depression | 9434 | 10% | Major Depressive Disorder | 9434 | 10%\* | 20050215 |
| ↓No Additional MEB Entries↓ | Migraine Headaches | 8100 | 30%\*\* | 20050215 |
| Cervical Spine Strain | 5243 | 20%\*\*\* | 20050215 |
| Tinnitus | 6260 | 10% | 20050212 |
| Colonic Adenomas | 7399-7329 | 10% | 20050215 |
| Psoriasis | 7816 | 10%\*\*\* | 20050215 |
| 0% x 1 / Not Service Connected x 4 | 20050215 |
| **Combined: 20%** | **Combined: 70%** |

\*Changed to Bipolar Disorder, increased to 30% effective 1 September 2006

\*\* Increased to 50% effective 31 January 2008

\*\*\*Increased to 30% effective 31 January 2008

ANALYSIS SUMMARY: The Board notes the current VA ratings listed by the CI for all of his service connected conditions, but must emphasize that its recommendations are premised on severity at the time of separation. The VA ratings which it considers in that regard are those rendered most proximate to separation. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions resulting in medical separation. That role and authority is granted by Congress to the Department of Veterans’ Affairs (VA).

Psoriatic Arthritis Condition. The narrative summary (NARSUM) examiner (10 May 2004, four months prior to separation) recorded a history of pain in the neck, shoulders, wrists, feet and knees. Symptoms, which limited his ability to run and wear weight bearing equipment, were only moderately controlled by medication prescribed by a rheumatologist. His medical condition prevented him from traveling to temporary duty assignments required in his military position. The neck pain reportedly accounted for the majority of his pain, but it is not clear how much of this pain was due to degenerative arthritis versus psoriatic arthritis. Civilian rheumatology notes documented approximately monthly visits for the condition in the year prior to separation during which examinations noted tenderness of multiple joints (particularly neck, wrist, knee and fingers) and evidence of joint inflammation (synovitis of wrist, finger and knee). The CI was prescribed low dose steroid in January 2004 which he used for flares of his joint pain. One week after the NARSUM exam, the CI took extra Prednisone (oral steroid medication) for a joint pain flare. The NARSUM physical exam documented tenderness of the cervical spine and knees in addition to evidence of joint inflammation in the fingers, wrists and ankles. The erythrocyte sedimentation rate (ESR – a measure of systemic inflammation) was 35 (normal below 15). X-rays of multiple joints were normal except some degenerative changes in the cervical spine and hips.

The VA compensation and pension (C&P) examiner (15 February 2005, five months after separation) reported that the CI continued to experience morning stiffness and intermittent joint swelling, in a pattern that appeared to be similar to that while in service. The joints most frequently affected were his neck (daily), hands and right wrist (pain, stiffness and swelling every day to every other day), right knee and both shoulders (“distracting” discomfort). His left wrist infrequently bothered him and his left knee was never symptomatic. Depending on the particular joints affected during flare-ups of his arthritis, he could experience difficulty driving, playing with his children, performing housework, standing or walking for prolonged periods, opening jars or doors and typing. However there was no incapacitation or inability to perform routine tasks, just difficulty due to pain during flares. Flares occurred approximately once per month and lasted approximately a day (as low as a few hours with additional medication). In between flares he performed normal activities including walking up to two miles or 45 minutes. There were no constitutional symptoms. Physical examination revealed a normal gait and no difficulty getting on or off the examination table or removing shoes and socks. Mild swelling of the left fourth and fifth fingers and right wrist was present. No joint ankylosis was present. Painful motion was present in the cervical spine, right wrist, and left more than right shoulder. Pain after repetitive motion was noted in the cervical spine, left hand, right wrist, right shoulder, left shoulder and right knee. Limitation of motion was not noted in any joint except minimal reduction in dorsiflexion of both wrists (right 66⁰; left 68⁰; normal is 70⁰). The CI could squat and perform the duck waddle. X-rays of all described joints were normal except for mild degenerative changes of the cervical spine. The ESR was six and a complete blood count revealed no anemia.

The PEB and VA chose different coding options for the condition. The PEB’s 10% rating using the 5009 code (arthritis, other types) reflected presumptive application of DoDI 1332.39 (E2.A1.1.4), which directs that the 5009 code is to be rated according to code 5003 (degenerative arthritis). While the 5009 coding choice is appropriate in this case, §4.71a standards require that it be rated according to the 5002 code (rheumatoid arthritis). The VA used the 5002 code and arrived at a 20% rating by assigning 40%, then deducting 20% for the existing prior to service component. The Board agreed that the 60% descriptors under this code were not present, and that the criteria for the 20% rating were met. The Board debated whether the clinical picture supported the 40% rating. While there were clearly episodes of arthritis flare-ups, the detailed C&P examination did not report “incapacitating exacerbations.” The C&P examiner specifically stated that functional ability was not significantly limited and that activities, while impaired, were not prohibited during a flare-up. While “definite impairment of health” is indicated during the episodic flares with limitations in certain activities, objective examination findings supportive of these limitations were mild. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a separation rating of 20% for the psoriatic arthritis condition.

Depression Condition. The CI’s symptoms at the time of the MEB could best be described as mild. The NARSUM psychiatrist (2 April 2004) reported a history of sadness, irritability, fatigue, impaired sleep and difficulty concentrating. Antidepressant medication was helpful, but the CI felt like he still had word-finding difficulty and diminished concentration at times. Since initiation of the MEB process the CI reported some worsening of his mood. There were no significant anxiety, panic or PTSD symptoms. Collateral history provided to the NARSUM psychiatrist by a co-worker confirmed that the CI was “slowed down” for a while after a motor vehicle crash in November 2000, and that additional stressors of adopting twins and undergoing major surgery in 2003 significantly impacted his ability to function. Since returning to full duty (January 2004) however, the CI was noted to be “extremely focused” and appeared to be “back to normal.” A neuropsychological evaluation (15 March 2004) indicated relatively normal findings. Because of superior performance on certain aspects of the evaluation, any cognitive complaints were considered likely to be related to depression and not as a consequence of head injury from the motor vehicle crash. The NARSUM mental status examination (MSE) noted a depressed mood and broad, appropriate affect. Concentration and thought processes were normal. There was no suicidal or homicidal ideation. The global assessment of functioning (GAF) score was 62 (connoting some mild symptoms or some difficulty in social, occupational, or school functioning, but generally functioning pretty well). The assessment was recurrent, mild, major depressive disorder in partial remission. Impairment for military service was deemed minimal, while social and industrial impairment was mild. The officer performance report for the period 16 May 2003 to 15 March 2004 documented excellent duty performance in assigned duties. At the time of the VA psychiatric C&P examination (15 February 2005), five months after separation, the CI’s symptoms were somewhat better than those reported in the MEB exam. The antidepressant medications were very helpful. He still had three to four days per month when he felt depressed, hopeless and helpless, but in general described his mood as fairly good. He had a job similar to his service occupation, but quit after approximately three months because he didn’t want to travel. His days were busy caring for his school-aged children, running errands, cooking and trying to find a job. The MSE showed no impairment of thought processes, and no hallucinations, delusions, or suicidal or homicidal ideation. Short-term and long-term memory was intact. Mood was good and affect was bright. The GAF score was 75 (transient symptoms, no more than slight occupational or social impairment). The assessment was major depressive disorder in remission. The Board considered if the evidence just described justified a rating higher than the 10% adjudicated by the PEB. The next higher 30% rating specifies “occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks”; and, the 10% rating specifies “occupational and social impairment due to mild or transient symptoms which decrease work efficiency… only during periods of significant stress, or symptoms controlled by continuous medication.” In this case, at the time of separation, there is no evidence of the “intermittent periods of inability to perform occupational tasks” stipulation for the 30% rating. This observation was reflected in the in the C&P examiner’s assessment of no more than slight impairment, and the initial VARD after separation which conferred a §4.130 rating of 10% based on the evidence at hand. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the depression condition.

Remaining Conditions. Other conditions identified in the DES file were psoriasis, cervical spine degenerative joint disease, recurrent cephalgia, tinnitus and colonic polyps. Several additional non-acute conditions or medical complaints were also documented. Cervical spine degenerative joint disease was discovered on X-ray after the MVA in 2000, when the CI complained of ongoing neck discomfort. The treating rheumatologist diagnosed both psoriatic arthritis and degenerative joint disease as causes of the neck pain. While the VA based its 20% rating for cervical spine strain on “functional impairment due to pain”, the C&P examiner noted full range of motion. Furthermore, it is overly speculative to assign additional disability beyond that of the psoriatic arthritis condition. In this case any neck pain is properly subsumed under the psoriatic arthritis condition. The condition did not carry an attached profile and was not mentioned in the commander’s statement. Recurrent cephalgia (referred to as migraines in clinical notes and by the VA) began after the motor vehicle crash and required both prophylactic and abortive medication treatments. A neurology note one week prior to separation (2 September 2004) reported the headaches to be less frequent and that he was “doing reasonably well”… “working full time and work is going well.” A primary care note two weeks after separation noted “occasional migraine.” The condition did not carry an attached profile and was not mentioned in the commander’s statement. None of the other conditions noted above were clinically or occupationally significant during the MEB period, none carried attached profiles and none were implicated in the commander’s statement. All of 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 right ear hearing loss, sinusitis and several other non-acute 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.

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. As discussed above, PEB reliance on DoDI 1332.39 for rating psoriatic arthritis was operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the psoriatic arthritis condition, the Board unanimously recommends a rating of 20% coded 5009 IAW VASRD §4.71a. In the matter of the depression condition and IAW VASRD §4.130, the Board unanimously recommends no change in the PEB adjudication. In the matter of the psoriasis, cervical spine degenerative joint disease, recurrent headaches, tinnitus and colonic polyp conditions 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. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as additionally unfitting for 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** |
| Psoriatic Arthritis | 5009 | 20% |
| Major Depression | 9434 | 10% |
| **COMBINED** | **30%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110203, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

 MICHAEL F. LoGRANDE, DAF

 President

 Physical Disability Board of Review

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

Dear XXXXX:

 Reference your application submitted under the provisions of DoDI 6040.44 (Section 1554, 10 USC), PDBR Case Number PD-2011-00079

 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,

XXXXXX

Director

Air Force Review Boards Agency

PDBR PD-2011-00079

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 Psoriatic Arthritis, VASRD code 5009, rated at 20% and Major Depression, VASRD 9434, rated at 10%; rather than 10%; with a final combined disability rating of 30%.

 b. On 9 September 2004, elected not to participate in the Survivor Benefit Plan and on that same date, his spouse, XXXXXX concurred with his election.

 c. He was not discharged on 10 September 2004; rather, on that date, he was released from active duty and on 11 September 2004, his name was placed on the Permanent Disability Retired List.

 XXXXXX

 Director

 Air Force Review Boards Agency