RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX BRANCH OF SERVICE: army

CASE NUMBER: PD1100083 SEPARATION DATE: 20060719

BOARD DATE: 20111215

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Army, Specialist / E4 (92F10, Petroleum Supply Specialist), medically separated for diabetes mellitus. He was issued a permanent P3 profile and underwent a Medical Evaluation Board (MEB). The diabetes mellitus were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. The one other condition, as identified in the rating chart below, was forwarded on the MEB submission as medically acceptable conditions. The Informal PEB (IPEB) adjudicated the diabetes mellitus type condition as unfitting, rated 20%, with application of Veterans’ Administration Schedule for Rating Disabilities (VASRD), respectively. The CI made no appeals, and was medically separated with a 20% combined disability rating.

CI CONTENTION: The CI applies for review for increased rating and lists additional conditions including hypertension, post traumatic stress disorder, head injury, headaches, back injury, and eczema. He states, “Also while I was going through the M.E.B. process I felt like I was being rushed and not really explained to me what was going on. I wasn't even talked to about my other conditions I was just told that the Veterans Affairs would handle the rest of what the Army didn't take care of.”

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20060404** | | | **VA (20 Days Pre-Separation) – All Effective 20060720** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Diabetes Mellitus | 7913 | 20% | Diabetes Mellitus | 7913 | 20% | 20060705 |
| Hypertension | Not Unfitting | | Hypertension | 7101 | 0% | 20060705 |
| ↓No Additional MEB Entries↓ | | | Pseudofolliculitis Barbae | 7813 7806 | 10% | 20060705 |
| PTSD | 9411 | 10%\* | 20060705 |
| Lumbar Strain | | | 20060705 |
| **Combined: 20%** | | | **Combined: 40%** | | | |

\*Increased PTSD with TBI to 40% coded 9411-8045 effective 20090819

ANALYSIS SUMMARY: The Military Services, by law, can only rate and compensate for those conditions that were found unfitting for continued military service based on the severity of the condition at the time of separation and not based on possible future changes. The Department of Veterans’ Affairs (VA) however can rate and compensate all service connected conditions without regard to their impact on performance of military duties, including conditions developing after separation that are direct complications of a service connected condition. The VA can also increase or decrease ratings based on the changing severity of each condition over time. 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. It must also judge the fairness of PEB fitness adjudications based on the fitness consequences of conditions as they existed at the time of separation. The Board’s threshold for countering DES fitness determinations is higher than the VASRD §4.3 reasonable doubt standard used for its rating recommendations; but, remains adherent to the DoDI 6040.44 “fair and equitable” standard. Furthermore, a “crystal ball” requirement is not imposed on the service PEB’s by the Board; and, the 12 month window specified in DoDI 6040.44 is appropriate for rating comparisons but not for new developments after separation. 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 DES improprieties in the processing of his case.

Diabetes Mellitus: The CI first symptoms of diabetes occurred during deployment to Iraq in September 2005. Following return (September 2005), dizziness and weakness on 21 November 2005 prompted evaluation in the emergency room. The diagnosis of diabetes mellitus was made an admission to Madigan Army Medical Center and treatment with insulin and diet was initiated. He was issued a permanent profile which prevented performance of duties in his MOS. At the time of his MEB narrative summary (NARSUM) examination, five months before separation, the CI did not have any complication of diabetes. There was no evidence of neuropathy, retinopathy, nephropathy or cardiovascular disease and none would be medically expected until after several years of disease. The CI complained of visual blurring with elevated blood sugar, a common symptom. Ophthalmology examination was normal without evidence of eye disease. At the time of the MEB history and physical examination, blurring was better with treatment of the diabetes. The PEB found the CI’s inadequately controlled diabetic condition unfitting and rated it 20% under code 7913 based on the requirement for insulin and diet restriction. The VA rated also rated the condition 20% based on the VA compensation and pension (C&P) examination two weeks before separation. An evaluation of 20% is assigned if there is a requirement for insulin or oral hypoglycemic agent, and restricted diet. A higher evaluation of 40% is not warranted unless regulation of activities are medically required. Because the CI’s condition required both insulin and oral hypoglycemic medication as well as dietary restrictions, it met the criteria for a 20% rating. The Board noted the profile duty limitations restricting the CI from strenuous military duties in his MOS involving an industrial-type setting using heavy equipment and handling hazardous materials, however it did not conclude this equated to regulation of activities as applied by the VASRD. There was no evidence in the service medical treatment records that indicated medical restriction of normal activities including athletic was required. Following separation, VA records indicate the CI was employed as a security guard, and played basketball and went to the gym on a regular basis. Therefore, the Board has determined that all evidence considered, the condition did not meet the criteria for a higher rating and that there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the diabetes mellitus condition.

Other PEB Conditions: The other condition forwarded by the MEB and adjudicated as not unfitting by the PEB was hypertension. This condition was not profiled, implicated in the commander’s statement or noted as failing retention standards. It was reviewed by the action officer and considered by the Board. There was no indication from the record it interfered with satisfactory performance of MOS duty requirements. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for hypertension.

Other Contended Conditions: The CI’s application asserts that compensable ratings should be considered for posttraumatic stress disorder (PTSD) (with dreams and sleep disturbance), head injury, headaches, back pain, and eczema. At the time of the MEB history and physical examination, November 2005, the CI reported frequent trouble sleeping since returning from deployment (22 September 2005), however he checked “no” to questions regarding nervous trouble, memory problems, depression or excessive worry, or counseling (DD Form 2807-1). The MEB NARSUM, February 2006 makes no record of psychological complaints. The CI signed DA Form 3947 agreeing with the MEB’s findings for referral to the PEB. There are no service treatment record entries for complaint of, or treatment for symptoms of PTSD. A VA PTSD compensation and pension examination, two weeks before separation recorded symptoms of sleep disturbance, startle response, intrusive thoughts, avoidance of reminders of Iraq experiences, daytime napping, and mild isolation. The mental status examination was normal. The VA examiner concluded, “The best description of the claimant's current psychiatric impairment is psychiatric symptoms are not enough to interfere with social and occupational functioning or to require continuous medication. Impairment, if any, is estimated as minimal,” and assigned a global assessment of functioning (GAF) of 85 (minimal symptoms). A contention for head injury is implied by the CI’s statement in his application, “I was in the DFAC bombing that occurred in December of 2004 on F.O.B Marez and I had to get checked up on at the TMC by the medics because I was light headed and we also received a shot too.” VA records reflect CI claim for traumatic brain injury secondary to two head injuries with loss of consciousness during the Mosul dining hall bombing; however there is no service medical record documentation of a head injury. The CI checked “no” in response to questions regarding head injury, period of unconsciousness or concussion on DD form 2807-1, 30 November 2005. The MEB NARSUM documents that the CI experienced headaches associated with poorly controlled blood glucoses due to his diabetes that were improved with treatment of his diabetes. The CI checked “no” to the question regarding frequent or severe headaches on DD form 2807-1, 30 November 2005. At the time of a follow up clinic appointment 1 March 2006, “denies headaches”, and “no neurological symptoms” is recorded. In his application, the CI states “Also while I was there a convoy I was in was hit by an IED which threw me and my driver around in a HEMTT. I landed on a fire extinguisher injuring my back and it became hard for me to move the next day and had to go receive a shot for that as well.” A Service treatment record entry dated 25 April 2005 records complaint of low back pain without injury since the evening before, and a history of back injury incurred while playing basketball three months previously. The MEB history and physical examination 30 November 2005 also records CI statement “I hurt my back playing basketball in Iraq.” The MEB NARSUM, February 2006, notes the history of back injury in Iraq, characterized as soft tissue with no sequelae. Three years after separation the CI reinjured his back while playing basketball (VA treatment record 24 September 2009). The CI also contends eczema. At the time of the 30 November 2005 examination, the CI checked “no” in response to the question regarding skin disease on DD Form 2807-1. 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 seasonal allergies (lifelong) and hypercholesterolemia. None of these conditions were clinically or occupationally significant 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 pseudofolliculitis barbae was noted in the VA rating decision proximal to separation, but 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. Even if it’s presence in the DES file is conceded, there was no evidence for concluding it interfered with duty performance to a degree that could be argued as unfitting.

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 diabetes mellitus, type I condition and IAW VASRD §4.119, the Board unanimously recommends no change in the PEB adjudication. In the matter of hypertension, hypercholesterolemia, PTSD, headaches, back pain, 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 therefore recommends that there be no recharacterization of the CI’s disability and separation determination.

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Diabetes Mellitus | 7913 | 20% |

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

The following documentary evidence was considered:

Exhibit A. DD Form 294 dated 20110211 w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXX

President

Physical Disability Board of Review

SFMR-RB

DEPARTMENT OF THE ARMY

ARMY REVIEW BOARDS AGENCY

1901 SOUTH BELL STREET 2ND FLOOR

ARLINGTON, VA 22202-4508

05 JAN 2012

MEMORANDUM FOR Commander, US Army Physical Disability Agency

(TAPD-ZB / 2900 Crystal Drive, Suite 300, Arlington, VA 22202

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

for AR20110024605 (PD201100083)

I have reviewed the enclosed Department of Defense Physical Disability Board of

Review (000 PDBR) recommendation and record of proceedings pertaining to the

subject individual. Under the authority ofTitle 10, United States Code, section 1554a,

I accept the Board's recommendation and hereby deny the individual's application.

This decision is final. The individual concerned, counsel (if any), and any Members of

Congress who have shown interest in this application have been notified of this decision

by mail.

BY ORDER OF THE SECRETARY OF THE ARMY:

Encl

CF:

( ) DoD PDBR

( ) OVA

Deputy Assistant Secretary

(Army Review Boards)