RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX BRANCH OF SERVICE: AIR FORCE

CASE NUMBER: PD1100113 SEPARATION DATE: 20030430

BOARD DATE: 20120605

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a Reserve MSgt/E-7 (3S2/Education and Training Craftsman), medically separated for deep vein thrombosis right lower extremity. The CI had a venous thrombosis of the right lower extremity in December 2001 with the clot persisting chronically. He developed post-thrombotic syndrome with hyperpigmentation and swelling and remained at risk for another blood clot. He was unable to meet the physical requirements of his Air Force Specialty (AFS) or satisfy physical fitness standards. He was issued an indefinite 4T profile and referred for a Medical Evaluation Board (MEB). Sleep apnea and hypertension conditions, identified in the rating chart below, were also identified and forwarded by the MEB. The PEB adjudicated the deep vein thrombosis right lower extremity conditions as unfitting, rated 10%. The remaining conditions were determined to be not unfitting and existed prior to service (EPTS) and not unfitting. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: “My initial rating from the MEB board of 10% for a blood clot in my right leg which resulted in my discharged from the AF. I traveled to Randolph AFB to meet my disability board before discharged to contest the 10% awarded me at discharged, I was afforded a lawyer to help with any legal questions and preparation to meet the board. I was advised by him to accept the 10% and go to the VA for additional ratings or appeals. He told me I could possible lose the 10% because of my weight being a contributing factor to my disability. After discussing this with my parents I figured it was safer to accept his recommendation and withdrew my request to meet the board. Even though I was sure the rating was incorrect and appealed it several times. After discharge and the first C&P exam it was raised to 20% despite other questions and problems associated with my right leg, I appealed and was awarded a second C&P exam, which was appealed again. After several appeals I traveled to St. Petersburg to meet with my VA examiner. Within the first question and answer about why I was appealing, I show her the main reason for the appeals a scar from a sore on my right leg that my civilian Dr. removed because it had been present for so long and my history of skin cancer, she thought it could be cancerous and cut it out. Leaving 13 stitches which my second C&P exam never made a note of. After observing the scar and my answers to her questions it was raised to 40%. My Air Force career consisted of 4 years active and 19 years 11 months 17 days AF Reserves. Was activated two times 1991 Desert Storm as a gunner on AC-130 Gunship (40+ hours combat time, 11 combat missions) and Sep 30, 2001 for 2 years as First Sgt. for the 711th Special Operations Squadron. I have about 1000 hours flying time and 4066 points when discharged.”

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in DoDI 6040.44, Enclosure 3, paragraph 5.e.(2) is limited to those conditions which were determined by the PEB to be specifically unfitting for continued military service; or, when requested by the CI, those condition(s) “identified but not determined to be unfitting by the PEB.” The ratings for unfitting conditions will be reviewed in all cases. Any conditions or contention not requested in this application, or otherwise outside the Board’s defined scope of review, remain eligible for future consideration by the Air Force Board for the Correction of Military Records (BCMR).

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20030116** | | | **VA (6 Mos. Post-Separation) – All Effective Date 20030501** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Deep Vein Thrombosis Right Lower Extremity | 7121 | 10% | Deep Vein Thrombosis, Right Leg | 7121 | 10%\* | 20031029 |
| Sleep Apnea Controlled | EPTS | | Sleep apnea | 6847 | NSC | |
| Hypertension | Not Unfitting | | Hypertension | 7101 | 0% | 20031029 |
| ↓No Additional MEB/PEB Entries↓ | | | Peripheral Vertigo (claimed as a stroke) | 6299-6204 | 10% | 20031029 |
| Status Post Anterior Cervical Discectomy and Fusion at C5-6 | 5237 | 20%\*\* | 20031029 |
| Tinnitus | 6260 | 10% | 20031101 |
| 0% x 2 others/Not Service-Connected x 7 others | | | 20031029 |
| **Combined: 10%** | | | **Combined: 40%\*\*\*** | | | |

\*Initially 10% effective 20031001 but changed to 20030501; increased to 20% effective 20040831 based on original C&P exam and current treatment records; Increased to 40% effective 20040331 based on treatment records and C&P of 20080514.

\*\*Initially 10% but increased to 20% effective 20030501 based on treatment records and C&P of 20080514.

\*\*\*Increased to 60% from 20040331 and 70% from 20081003 when depression was added.

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application, i.e., that the gravity of his condition and predictable consequences merit consideration for a higher separation rating. The Board wishes to clarify that it is subject to the same laws for service disability entitlements as those under which the Disability Evaluation System (DES) operates. While the 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 (DVA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions and to periodically reevaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time. The Board utilizes VA evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12-month interval for special consideration to post-separation evidence. The Board’s authority as defined in DoDI 6040.44, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Deep Vein Thrombosis Right Lower Extremity. The CI presented on 5 December 2001 with a swollen red right leg. A Doppler ultrasound revealed a deep venous thrombosis (DVT) in the superficial femoral and popliteal veins. No shortness of breath or chest pain was present. Over the previous several days he had experienced marked swelling and mild erythema in the evenings after he had been on his feet for a while. Physical examination noted marked swelling of the right thigh, one inch larger than the left. There was no tenderness to palpation, Homan’s sign was negative in the calf and he had positive pulses. There was some mild erythema. He was admitted for anticoagulation. The plan was to be on Coumadin for a year. A follow-up visit on 11 December 2001 noted some mild pitting edema at the ankles. Ultrasound on 6 March 2002 noted a persistent DVT in right popliteal vein and superficial femoral vein. Compression stockings were recommended as was frequent elevation and the Coumadin was continued. Ultrasound on 25 June 2002 documented the same clot in the popliteal and superficial femoral veins. In June 2002 the CI was evaluated by vascular surgery who recommended stopping the Coumadin and labs to check for hypercoagulable state were ordered. A later visit showed these labs were normal. An umbilical hernia was noted and surgical repair was scheduled for 30 July 2002. He continued to have occasional pain in his right leg and had been taking Lortab for this pain. An internal medical consultation was completed in October 2002. He was referred for MEB and an MEB Narrative Summary (NARSUM) was completed 17 December 2002. No new examination was done but the NARSUM referred to the internal medicine examination from October 2002. The CI reported daily swelling and some achiness of the right leg. He denied any shortness of breath, chest pain, or lightheadedness. Pain was reported at 0/10 and the right calf was slightly larger than the left (40cm vs. 37cm). There was no tenderness and no palpable cords present. In a follow-up visit for hypertension in November 2002 the physician noted positive slight pitting edema of bilateral lower extremities extending to about 2/3 of the way up the shins. No calf tenderness was present. However, an admission history and physical exam completed in December 2002 when the CI was admitted for a possible stroke, documented no extremity edema. On 23 October 2003, the CI was still having significant swelling in his lower extremities and wore his support hose “when he can.” He also had a sore on his right leg that had been present for several months, was nontender but irritated and seemed to get better and then get worse cyclically. The doctor excised the sore and the pathology report noted some features of psoriasis-form dermatitis as well as early lichen simplex planus. There was no evidence of fungus. Physical examination noted pigmented and varicose veins but there was no comment on swelling.

The clot persisted and no change was noted in April 2003 after the CI had been off Coumadin for almost a year. At the VA Compensation and Pension (C&P) exam on 29 October 2003, 6 months after separation, the CI reported he had swelling in the afternoon and had pain associated with the swelling. He was limited in the distance he could walk due to increased discomfort and swelling. The physical examination noted no abnormal skin lesions and dorsalis pedis and posterior tibial pulses were 3+ as were the radial pulses. No swelling was noted in any extremity but mild stasis changes were noted on the right lower extremity. Right vs. left thigh and calf circumferences in inches were: thigh-15.5 vs. 14.5 and calf-11.5 vs. 10.5.

In May 2006, the CI had acute symptoms and was found to have a thrombus in his right calf in addition to the persisting clot in the right superficial femoral vein and anticoagulant therapy was started. Physical examination the next day noted a tender knot in the right medial calf with mild erythema and warmth and a positive Homan’s sign on the right. In follow-up five days later he was doing better. The tender knot was still present but the Homan’s sign was now negative. The physician explained the need for lifetime Coumadin and compression stockings.

The PEB performed on 16 January 2003 determined the deep venous thrombosis of the right lower extremity was unfitting and applied a 10% disability rating. The VA initially also rated this condition at 10% based on the VA C&P exam in October 2003 and the service treatment record (STR) which showed the CI experienced pain, aching, and fatigue after prolonged standing or walking due to his thrombosis. In 2005, the VA determined the rating should be increased to 20% assigned from 31 August 2004, the date of receipt of reopened claim. The decision was based on the original VA C&P examination from October 2003 and a treatment report from a civilian doctor who had been seeing the CI since 2001. This doctor reported the CI had persistent edema, stasis pigmentation, and persistent ulceration. This report stated the CI “has swelling every day and the hyperpigmentation has extended from the ankle all the way up the calf. Although the swelling and pain may diminish with rest and elevation of the right leg, it is never entirely relieved.” However, the VA C&P examination, 6 months after separation, had noted only mild stasis changes in the right lower extremity and no edema. In 2008, the VA further increased this rating to 40% effective on 31 March 2004 based on evidence from continuing treatment records and a later VA C&P examination in May 2008. This evidence documented a worsening of the condition over time. An outpatient treatment note on 31 March 2004 revealed the right lower extremity was pigmented and had 1+ pitting edema. This was 11 months after separation. All of the other evidence was dated 8 May 2006 or later, more than 3 years after the CI separated from service.

The treatment note from 31 March 2004 is available in the record for Board review and it documents pigment and 1+ pitting edema of the right lower extremity. The left lower extremity is not mentioned. The clinical history noted the CI was having swelling “almost every day” and that the hyperpigmentation has extended from the ankle all the way up the calf. The presence of edema “almost every day” implies at least partial relief. Other evidence available for review includes examinations both before and after separation from service that document the absence of swelling in the right lower extremity and therefore at least partial relief with elevation and/or compression can be assumed. Additionally many examinations note equal edema bilaterally and as there is no evidence of a left lower extremity thrombosis, the edema of either lower extremity could be related to a condition other than the right lower extremity DVT. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 20% for the deep vein thrombosis right lower extremity condition based on the presence of persistent edema, incompletely relieved by elevation of extremity, and with beginning stasis pigmentation.

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 deep vein thrombosis right lower extremity condition, the Board unanimously recommends a disability rating of 20%, coded 7121 IAW VASRD §4.104. There were no other conditions within the Board’s scope of review for consideration.

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows, effective as of the date of his prior medical separation:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Deep Vein Thrombosis Right Lower Extremity | 7121 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110301, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

XXXXXXXXXX

Director of Operations

Physical Disability Board of Review

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

XXXXXXXXXX

Dear XXXXXXXXXX:

Reference your application submitted under the provisions of DoDI 6040.44 (Title 10 U.S.C. § 1554a), PDBR Case Number PD-2011-00113.

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 modification of your assigned disability rating without re-characterization 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, accept their recommendation and direct that your records be corrected as set forth in the attached copy of a Memorandum for the Chief of Staff, United States Air Force. The office responsible for making the correction will inform you when your records have been changed.

Sincerely,

XXXXXXXXXX

Director

Air Force Review Boards Agency

Attachments:

1. Directive

2. Record of Proceedings

cc:

SAF/MRBR

DFAS-IN

PDBR PD-2011-00113

MEMORANDUM FOR THE CHIEF OF STAFF

Having received and considered the recommendation of the Physical Disability Board of Review and under the authority of Title 10, United States Code, Section 1554a (122 Stat. 466) and Title 10, United States Code, Section 1552 (70A Stat. 116) it is directed that:

The pertinent military records of the Department of the Air Force relating xxxxxxxxxx, be corrected to show that the diagnosis in his finding of unfitness for Deep Vein Thrombosis Right Lower Extremity, VASRD Code 7121, was rated at 20% rather than 10%.

Director

Air Force Review Boards Agency