RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXX BRANCH OF SERVICE: Air force

CASE NUMBER: PD1100122 SEPARATION DATE: 20071203

BOARD DATE: 20110816

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSgt/E-5 (2T271, Air Trans Craftsman) medically separated for anaphylactic reaction to fire ant bite (life-threatening allergic reaction) and low back pain. Although he responded well to treatment, the condition was considered high-risk and incompatible with further military service. The low back pain condition began in 2001 as a consequence of strenuous activity and was not associated with a surgical indication. He did not respond adequately to treatment and was unable to perform within his career field or meet physical fitness standards. He was issued a permanent P4/L4 profile and underwent a Medical Evaluation Board (MEB). Life-threatening allergic reaction, low back pain and obstructive sleep apnea (OSA) were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AFI 48-123. The PEB adjudicated the anaphylaxis and low back pain conditions as unfitting, rated 10% each IAW with the Veterans Administration Schedule for Rating Disabilities (VASRD), and mild OSA as category II (conditions that can be unfitting but are not currently compensable or ratable). This finding was upheld by a Formal PEB and the Air Force Personnel Council. The CI was medically separated with a 20% combined disability rating.

CI CONTENTION: “VA rated my case as followed: Sleep Apnea 50%; Right knee patellofemoral syndrome 10%.” He additionally lists all of his VA conditions and ratings as per the rating chart below. A contention for their inclusion in the separation rating is therefore implied.

RATING COMPARISON:

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| **Service FPEB – Dated 20070815** | **VA (4 Mo. after Separation) – All Effective 20071204** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Anaphylactic Reaction | 7199-7118 | 10% | No VA rating or compensation | 20080327 |
| Low Back Pain | 5237 | 10% | Low Back Strain | 5237 | 10% | 20080327 |
| Obstructive Sleep Apnea | 6847 | Cat II | Sleep Apnea | 6847 | 50% | 20080327 |
| ↓No Additional MEB Entries↓ | Right Patellofemoral Pain | 5024 | 10% | 20080327 |
| Right Shoulder Tendonitis | 5024 | 10% | 20080327 |
| Right Ankle Sprain | 5271 | 10% | 20080327 |
| Cluster Headaches | 8199-8045 | 10% | 20080327 |
| 2 x 0% / 5 x Not Service Connected | 20080327 |
| **Combined: 20%** | **Combined: 70%** |

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. 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 Veteran Affairs, operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service connected conditions, and to periodically re-evaluate said conditions for the purpose of adjusting the veteran’s disability rating should the degree of impairment vary over time.

Anaphylactic Reaction to Fire Ants Condition. The CI suffered two severe allergic reactions to fire ant venom in 2005, and was subsequently placed on immunotherapy (long term treatment usually advised; typically weekly, then monthly injections). The first reaction included hives, lip swelling, wheezing, cough and shortness of breath; his symptoms completely resolved with emergency treatment. The second episode was brief and resolved spontaneously with over-the-counter medication. The PEB rated the condition 10% using the analogous code for angioneurotic edema (7199-7118); the VA did not rate the condition. VASRD §4.104 stipulates a rating based on frequency and duration of attacks, and presence or absence of laryngeal involvement. The 10% level is described by “attacks without laryngeal involvement lasting one to seven days and occurring two to four times a year,” while the next higher (20%) level requires “attacks without laryngeal involvement lasting one to seven days and occurring five to eight times a year, or; attacks with laryngeal involvement of any duration occurring once or twice a year.” Although laryngeal involvement was not distinctly described in the CI’s two anaphylactic episodes, its presence is reasonably conceded given the severity of the clinical picture and the clear presence of respiratory tract symptoms. However, it should be noted that avoidance of the offending allergen (i.e., fire ant venom) virtually guarantees no further anaphylactic episodes. Furthermore, even if complete avoidance is not possible, immunotherapy is generally a highly effective preventive measure. Indeed, the service treatment record reports no further anaphylactic episodes after immunotherapy was begun. Since there had been no episodes in the two years preceding the PEB, the threshold for the minimum rating was not met, and therefore there is no support for assigning the next higher (20%) rating. The Board considered an alternate path to a higher rating under the 7825 code (urticaria). However, symptom frequency did not support the 30% level under this code, which requires episodes “at least 4 times during the past 12-month period.” After due deliberation in consideration of the totality of the evidence, the Board concluded that there was insufficient cause to recommend a change from the PEB fitness adjudication for the anaphylactic reaction condition.

Back Condition. There were two goniometric range of motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation. Both of these exams are summarized in the chart below.

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| Goniometric ROM - Thoracolumbar | PT ~ 8 Mo. Pre-Sep | VA C&P ~ Mo. After-Sep |
| Flexion 0-90⁰ normal | 84⁰ | 80⁰ |
| Combined 240⁰ normal | 214⁰ | 360⁰ |
| §4.71a Rating | 10% | 10% |

The narrative summary (NARSUM) examiner noted normal gait and spinal contour and intact lower extremity neurologic findings. Straight leg raise testing was normal. The physical therapist also reported normal gait. X-rays and magnetic resonance imaging of the lumbar spine were normal. The VA compensation and pension (C&P) examiner noted normal spinal contour, without spasm or tenderness. Based on the documented limitation of motion and IAW VASRD §4.71a criteria, the 10% ratings by the PEB and the VA were appropriate. The Board deliberated whether a higher rating could be achieved by an alternate pathway under §4.71a, specifically the formula for “incapacitating episodes.” However, use of this formula is inappropriate because it applies only to intervertebral disc syndrome, which the CI did not have. Furthermore, even if the presence of the syndrome is conceded, the minimum rating under that formula was not met. The Board also considered whether or not additional disability was justified for peripheral nerve impairment. While the CI complained of intermittent numbness and pain in his right lower extremity, radiographic and electrophysiologic studies failed to show nerve impingement or dysfunction. Physical examination findings were also normal. The presence of functional impairment with a direct impact on fitness is the key determinant in the Board’s decision to recommend any condition for rating as additionally unfitting. While the CI may have suffered additional lower extremity pain related to his back condition, this is subsumed under the general spine rating criteria, which specifically states “with or without symptoms such as pain (whether or not it radiates).” There is no evidence in this case of functional impairment attributable to peripheral neuropathy. The Board therefore concludes that additional disability rating was not justified on this basis. After due deliberation in consideration of the totality of the evidence, the Board concluded that there was insufficient cause to recommend a change from the PEB fitness adjudication for the low back pain condition.

Other PEB Conditions. The other condition forwarded by the MEB and adjudicated as “can be unfitting but not currently compensable or ratable” by the PEB was mild OSA. Prior to separation, this condition was diagnosed by a sleep study and was found to be well controlled with continuous positive airway pressure (CPAP) therapy. After separation, the C&P examiner confirmed “marked improvement” of the OSA condition. The VA assigned a 50% rating due to the need for CPAP therapy. The services do not routinely find OSA, with or without CPAP requirement, unfitting if symptoms are controlled and functioning is unimpaired. The burden of providing CPAP in field and deployment environments is not considered to be a critical factor with the common availability of portable generators and sanitary facilities. 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 that it significantly interfered with satisfactory job performance. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for the OSA condition.

Other Contended Conditions. The CI’s application asserts that a compensable rating should be considered for right knee patellofemoral syndrome. This condition was reviewed by the action officer and considered by the Board. There was no evidence for concluding that it interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore that the stated condition was not subject to service disability rating.

Remaining Conditions. Other conditions identified in the DES file were high cholesterol, headaches, allergic rhinitis, hypertension and right shoulder rotator cuff tear. 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 right ankle sprain 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. 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 anaphylactic reaction condition and IAW VASRD §4.104, the Board unanimously recommends no change in the PEB adjudication. In the matter of the low back pain condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the OSA condition, the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation. In the matter of the right knee patellofemoral pain syndrome condition 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 therefore recommends that there be no recharacterization of the CI’s disability and separation determination.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Anaphylactic Reaction | 7199-7118 | 10% |
| Low Back Pain | 5237 | 10% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110322, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

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 President, Physical Disability Board of Review

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews, NAF-Washington, MD 20762

Dear XXXXXXXXXXXXX

 Reference your application submitted under the provisions of DoDI 6040.44 (Section 1554, 10 USC), PDBR Case Number PD-2011-00122.

 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,

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Director

Air Force Review Boards Agency