RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100146 SEPARATION DATE: 20060326

BOARD DATE: 20120314

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (91J, Medical Supply) medically separated for dyspnea on exertion (DOE)*.*  He was treated, but did not respond adequately to fully perform his military duties or meet physical fitness standards. He underwent a Medical Evaluation Board (MEB). Persistent asthma was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Two other conditions (seasonal allergic rhinitis and status post fasciotomy) were listed on the DA Form 3947 as medically acceptable. The PEB found the respiratory condition (DOE) unfitting, and rated it 10%. The CI made no appeals, and was thus separated with a 10% disability rating.

CI CONTENTION: The CI states, “Currently, my breathing continues to be a challenge on a daily basis. I currently work and live in the Los Angeles County area where pollution is constantly high which inflicts discomfort on my lungs and limits my breathing ability.”

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Army PEB – dated 20060118** | | | **VA (4 mo. After Separation) – All Effective 20060327** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Dyspnea On Exertion | 6602 | 10% | Reactive Airway Disease | 6699-6602 | 30% | 20060724 |
| Seasonal Allergic Rhinitis | Not Unfitting | | Seasonal Allergic Rhinitis | 6522 | 0% | 20060724 |
| Status Post Fasciotomy | Not Unfitting | | Status Post Fasciotomy | 7804 | 0% | 20060724 |
| ↓No Additional MEB/PEB Entries↓ | | | Degenerative Joint Disease | 5242 | 10% | 20060724 |
| **Combined: 10%** | | | **Combined: 40%** | | | |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed by the CI regarding the significant impairment with which his condition continues to burden him. The Board is subject to the same laws for disability entitlements as those under which the Disability Evaluation System (DES) operates. The DES has neither the role nor the authority to compensate service members for 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 (DVA). The Board’s authority resides in evaluating the fairness of DES fitness decisions and rating determinations at the time of separation.

Respiratory Condition. The CI developed shortness of breath (SOB) and wheezing while he was at Hill AFB, Utah. Pulmonary function tests (PFTs) revealed a mild restrictive pattern. He was started on anti-asthma medications (Advair & Albuterol) and he was told to quit smoking. In February 2004, a methacholine challenge test (MCT) was positive for mild bronchial hyper-reactivity. Due to his persistent symptoms an MEB was initiated. In November 2005, an allergy evaluation showed decreased PFTs with significant improvement post-bronchodilator (see chart below). At his December 2005 MEB exam, 3 months prior to separation, the CI reported that as long as he was not very active, his breathing was fine. He had reduced the Advair to once a day and was using an Albuterol inhaler as needed. He said that he needed to use the Albuterol inhaler about once a month. His last episode of SOB and wheezing was 1 month prior while playing basketball. He denied any hospitalizations or emergency room visits due to his asthma. His symptoms were aggravated by running, climbing stairs and with strenuous work or exercise. He was still smoking cigarettes. On exam, his lungs were clear to auscultation with no wheezes or rales. His chest x-ray was normal. As noted above, the Army PEB found him unfit, and he was medically separated with a 10% disability rating.

At his July 2006 VA Compensation and Pension (C&P) exam, 4 months after separation, the CI complained of intermittent SOB and wheezing, with seasonal pollen exposure and after running. He said that he was using Albuterol as needed. His lung exam was normal, with no wheezes noted. His chest x-ray was normal. Two sets of PFTs were used by the Board in arriving at its rating recommendation. These exams are summarized in the chart below.

|  |  |  |  |
| --- | --- | --- | --- |
| Pulmonary Function Tests | | MEB – 3 mo. Pre-Sep  (20051128) | C&P – 4 mo. Post-Sep  (20060724) |
| Pre-Bronchodilator | FVC | 72% | 65% |
| FEV-1 | 70% | 64% |
| FEV-1/FVC | 82% | 81% |
| Post- Bronchodilator | FVC | 83% | 61% |
| FEV-1 | 87% | 61% |
| FEV-1/FVC | 86% | 83% |
| Comments | | Significant improvement with bronchodilator | No significant improvement post- bronchodilator |

The PEB rated the CI’s asthma at 10% for requiring “intermittent medication.” For the reader’s convenience, the Veterans’ Administration Schedule for Rating Disabilities (VASRD) §4.97 language for the 10% and 30% ratings (diagnostic code 6602) is excerpted below:

FEV-1 of 56 to 70-percent predicted, or; FEV-1/FVC of 56 to 70

percent, or; daily inhalational or oral bronchodilator therapy,

or; inhalational anti-inflammatory medication .....................................................30

FEV-1 of 71 to 80-percent predicted, or; FEV-1/FVC of 71 to 80

percent, or; intermittent inhalational or oral bronchodilator therapy .................10

There was no evidence for frequent exacerbations requiring physician intervention, or intermittent courses of systemic corticosteroids. Therefore the criteria for the higher 60% rating are not supported. At the time of the MEB/PEB period, the CI was being treated with daily inhalational Advair. This would justify a 30% rating. Advair is a dual agent consisting of Fluticasone (a corticosteroid anti-inflammatory), and Salmeterol (a beta adrenergic bronchodilator). Furthermore, at the time of his C&P exam, his PFTs clearly met the 30% criteria. The Board’s discussion centered on whether or not the CI’s respiratory condition met the 30% criteria at the time of separation. After due deliberation and careful review of all available evidence, the Board decided that there was sufficient reasonable doubt (VASRD §4.3) in the CI’s favor. The Board unanimously recommends 30% as the equitable and appropriate rating for the CI’s asthma condition, IAW VASRD §4.97.

Other PEB Conditions. Seasonal allergic rhinitis (SAR) and status post fasciotomy were both adjudicated by the PEB as not unfitting, and therefore not ratable. These conditions were not profiled, and were not implicated in the commander’s statement. They were both reviewed by the action officer and considered by the Board. There was no indication from the record that either of these conditions significantly interfered with satisfactory performance of military duty requirements. All evidence considered, there is not reasonable doubt in the CI’s favor supporting reversal of the PEB fitness adjudication for either of the stated conditions.

Remaining Conditions. Stress fracture, shin splints, and several other conditions were also noted in the DES file. None of these other conditions were clinically significant during the MEB/PEB period, none carried 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, degenerative joint disease (DJD) and other 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 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.

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 respiratory condition, the Board unanimously recommends a rating of 30% IAW VASRD §4.97. In the matter of the SAR, status post fasciotomy, stress fracture, shin splints, or any other conditions eligible for 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 his prior medical separation:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Respiratory Condition (Asthma) | 6602 | 30% |
| **COMBINED** | **30%** |

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

President

Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

1. Under the authority of Title 10, United States Code, section 1554(a), I approve the enclosed recommendation of the Department of Defense Physical Disability Board of Review (DoD PDBR) pertaining to the individual named in the subject line above to recharacterize the individual’s separation as a permanent disability retirement with the combined disability rating of 30% effective the date of the individual’s original medical separation for disability with severance pay.

2. I direct that all the Department of the Army records of the individual concerned be corrected accordingly no later than 120 days from the date of this memorandum:

a. Providing a correction to the individual’s separation document showing that the individual was separated by reason of permanent disability retirement effective the date of the original medical separation for disability with severance pay.

b. Providing orders showing that the individual was retired with permanent disability effective the date of the original medical separation for disability with severance pay.

c. Adjusting pay and allowances accordingly. Pay and allowance adjustment will account for recoupment of severance pay, and payment of permanent retired pay at 30% effective the date of the original medical separation for disability with severance pay.

d. Affording the individual the opportunity to elect Survivor Benefit Plan (SBP) and medical TRICARE retiree options.

3. I request that a copy of the corrections and any related correspondence be provided to the individual concerned, counsel (if any), any Members of Congress who have shown interest, and to the Army Review Boards Agency with a copy of this memorandum without enclosures.

BY ORDER OF THE SECRETARY OF THE ARMY:

Encl

Deputy Assistant Secretary

(Army Review Boards)