RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXX BRANCH OF SERVICE: air force

CASE NUMBER: PD1100147 SEPARATION DATE: 20050620

BOARD DATE: 20111025

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an Active Duty Staff Sergeant / E-5 (3E571 / Engineering Craftsman), medically separated for asthma*.* He did not respond adequately to treatment and was unable to perform within his Air Force Specialty (AFS) or to meet physical fitness standards. He was issued a permanent P4 profile and underwent a Medical Evaluation Board (MEB). Moderate persistent asthma was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AFI 48-123. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) packet will be discussed below. The Informal PEB (IPEB) adjudicated the asthma as unfitting, rated 10%, with application of the Department of Defense Instruction (DoDI) 1332.39 and Veterans’ Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals and was medically separated with a 10% combined disability rating.

CI CONTENTION: “Issues with the ratings are the following: rating given by the Air Force was 10%, which based on the regulations at the time equated to a person with light to mild asthma and resulted in separation with severance pay; however, when tested by the VA and rated my asthma was deemed to be in the mild to moderate which equates to a 30% rating. - If given the rating of 30% by the Air Force at the time of being rendering unfit by the PEB, I would have been rightfully medically retired rather than separate with severance pay. In addition, based on my VA Determination Letter, my numbers were close to within the numbers required for the next higher rating of 60%. My pulmonary function testing findings were: FEV-1 = 51% and FEV1/FVC = 56%. A rating of 30% is based on FEV-1 of 56 – 70% predicated value; or FEV-1/FVC of 56 -70%. A rating of 60% is based on FEV-1 of 40 - 55% predicted; or FEV-1/FVC of 40 - 55% - In addition, in my final processing I noted other existing conditions with my lower back, hypertension, Chronic Allergic Rhinitis, and Pseudo folliculitis Barbae that I received treatment for during my active military time. The aforementioned conditions were included in my VA Disability claim and the VA determined and awarded the following within 12 months of separation: - Asthma was Service Connected Disability with 30% Rating; - Lower Back was Service Connected Disability with 10% Rating; - Hypertension was Service Connected Disability with 0% Rating; & - Pseudofolliculitis barbae was Service Connected Disability with 0% Rating. The VA failed to capture the allergies so I submitted a claim again for it that was initially denied because they thought I was claiming shellfish allergies, when in fact I was claiming Chronic Allergic Rhinitis, my appeal was awarded with a Service Connected Disability w/10% Rating”.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20050419** | | | **VA (5 Mo. After Separation) – All Effective Date 20050621\*** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Asthma | 6602 | 10% | Asthma | 6602 | 30% | 20051117 |
| ↓No Additional MEB/PEB Entries↓ | | | Lumbar Strain | 5237 | 10% | 20051117 |
| 0% x 2/Not Service Connected x 0 | | | 20051117 |
| **Combined: 10%** | | | **Combined: 40%** | | | |

\*Chronic allergic rhinitis at 10% added effective 20070629

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application, i.e., that there should be additional disability assigned for his other conditions and for the gravity of his condition and predictable consequences which merit consideration for a higher separation rating. While the Medical Disability Evaluation System 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, operating under a different set of laws (Title 38, United States Code), is empowered to periodically re-evaluate Veterans for the purpose of adjusting the disability rating should his degree of impairment vary over time, and to compensate for all service connected conditions without tie to fitness.

Unfitting Condition; Asthma: The CI was first seen for breathing problems on 10 January 2005 when he complained of shortness of breath (SOB) and dyspnea on exertion (DOE) during morning exercise, especially when it was cold. He was self medicating with Primatene mist, was also noted to have eczema and seasonal allergies, as well as a family history of asthma. Neither the eczema nor allergies impaired duty performance. Pulmonary function studies (PFTs) showed a reversible obstructive defect. He was initially treated with Albuterol three times per day, but his symptoms persisted. He was started on daily Advair and Singulair and referred to the MEB. Three sets of PFTs proximate to separation are charted below:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Spirometry | | 5 mo pre -Sep | 3.5 mo pre-Sep | C&P 5 mo post-Sep |
| Pre-Bronchodilator | FVC | 5.57 (96%) | 5.67 (98%) | 4.24 (73%) |
| FEV1 | 3.37 (74%) | 3.57 (78%) | 2.15 (45%) |
| FEV1/FVC | 60% | 63% | 51% |
| Post-Bronchodilator | FVC | 5.77 (100%) | - | 4.35 (75%) |
| FEV1 | 3.93 (86%) | - | 2.43 (51%) |
| FEV1/FVC | 68% | - | 56% |
| Comments | | Albuterol prn | Daily therapy | Had not used med for 24hr pre exam |
| §4.97 Rating | | 30% | 30% | 60% \* |

\*VA rated 30%, but FEV1 rates 60%

The MEB exam was 10 March 2005, three months prior to separation. The CI was on daily medications which had improved his symptoms, and he no longer had a nighttime cough, SOB, or DOE. He had not required the use of the Albuterol rescue inhaler since starting daily meds. His lungs were clear and respiratory rate was 16. The VA C&P exam was on 17 November 2005, five months after separation. The CI noted that he occasionally used the Albuterol, particularly prior to running. He did not use the accessory muscles of respiration, and he had not been hospitalized or presented to the emergency room for care of his asthma. The PFTs were done one week later, 25 November 2005, and document that he used Advair and Albuterol, but had not used either for 24 hours prior to the test. No comment was made on the use or disuse of Singulair. The cessation of medication just prior to the PFT evaluation for VA rating and the fact that there was an examination closer to separation indicated to the Board that the VA examination has a lower probative value in the determination of a permanent rating decision. The VA also coded the asthma 6602, but awarded 30% disability for reduced FEV1 and FEV1/FVC values even though the FEV1/FVC ratio is indicative of a 60% rating; however, the examination is of low probative value as previously discussed. Of the two remaining PFTs, the earlier exam is off medication and has both pre- and post-bronchodilator values. The latter shows some improvement in baseline on medications. It is more proximate to separation, but does not include post-bronchodilator values. The Board considered that both examinations rate as 30% disability. The exam 5 months pre-separation rates 30% based upon the FEV1/FVC ratio and the exam 3 months pre-separation for the use of daily medications. The Board, therefore, unanimously recommends 30% as the fair rating for asthma in this case, coded 6602.

Other Contended Conditions: The CI’s application also asserts that compensable ratings should be considered for the following conditions: hypertension, low back pain, chronic allergic rhinitis and pseudofolliculitis barbae (PFB). IAW DODI 1332.38, E5.1.2.12., PFB is not ratable in the absence of an underlying ratable causative disorder. 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: Eczema was in the DES file, but did not impair duty performance as noted above. No other conditions were service connected with a compensable rating by the VA within twelve months of separation or contended by the CI. The Board, therefore, has no reasonable basis for recommending any additional unfitting conditions for separation rating.

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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 asthma condition, the Board unanimously recommends that the PEB adjudication be increased to 30%, coded 6602. In the matter of the hypertension, low back pain, chronic allergic rhinitis PFB, and eczema conditions or any other condition eligible for Board 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:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Asthma | 6602 | 30% |
| **COMBINED** | **30%** |

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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

XXXXXXXXXXXXX

President Physical Disability Board of Review

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

Dear XXXXXXXXXXXXX :

Reference your application submitted under the provisions of DoDI 6040.44 (Section 1554, 10 USC), PDBR Case Number PD-2011-00147.

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,

XXXXXXXXXXXXX

Director

Air Force Review Boards Agency

PDBR PD-2010-00353

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 XXXXXXXXXXXXX , are corrected to show that:

a.  The diagnosis in his finding of unfitness was Asthma, VASRD code 6602, rated at 30% rather than 10%.

b.  On June 20, 2005, he elected not to participate in the Survivor Benefit Plan (SBP).

c.   He was not discharged on June 20, 2005; rather, on that date he was relieved from active duty and on 21 June 2005 his name was placed on the Permanent Disability Retired List.

Director

Air Force Review Boards Agency