RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100224 DATE OF PLACEMENT ON TDRL: 20040422

BOARD DATE: 20120402 SEPARATION DATE: 20050413

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSG/E-6 (74B, Training Instructor) medically separated for asthma*.* He began developing wheezing with exertion in 1997, initially responsive to occasional use of a rescue inhaler. His asthma progressed to the point of requiring maintenance medications; and, he was no longer able to meet the soldiering requirements of his Military Occupational Specialty (MOS) or pass the Army Physical Fitness Test (APFT). He was issued a permanent P3 profile and referred for a Medical Evaluation Board (MEB). Exercise induced asthma was forwarded to the Physical Evaluation Board (PEB) as a medically unacceptable condition IAW AR 40-501. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) file are addressed below. The PEB adjudicated the asthma condition as unfitting, rated 30%, citing “daily oral or inhalational therapy” IAW the Veterans Administration Schedule for Rating Disabilities (VASRD); and, placed the CI on the Temporary Disability Retired List (TDRL). After 12 months of TDRL the asthma condition was considered to be stable, but still unfitting. The PEB assigned a permanent separation rating of 10%, citing “intermittent bronchodilator requirement” IAW the VASRD. The CI made no appeals, and was medically separated with that service disability rating.

CI CONTENTION: The CI states: “due to the required daily use of inhalation bronchodilator asthma therapy”. He does not elaborate further or note any additionally contended conditions.

RATING COMPARISON:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Final Service PEB – Dated 20050331** | | | | **VA (18 Mo. Post-Permanent Separation) – Effective 20051102** | | | |
| **Condition** | **Code** | **Rating** | | **Condition** | **Code** | **Rating** | **Exam** |
| **On TDRL – 20040302** |  | **TDRL** | **Sep.** |
| Moderate Persistent Asthma | 6602 | 30% | 10% | Asthma | 6602 | 10% | 20061010 |
| ↓No Additional MEB/PEB Entries↓ | | | | Cervical Spine | 5242 | 10% | 20061010 |
| Gastroesophageal Reflux Disease | 7346 | 10% | 20061010 |
| Not Service Connected x 1 | | | 20061010 |
| **Combined: 10%** | | | | **Combined: 30%** | | | |

ANALYSIS SUMMARY:

Asthma Condition. The CI first manifested exertional bronchospasm during a tour in Korea in 1997, and for some time required only occasional use of a rescue inhaler. He was able to pass the APFT up until 2002. He began experiencing frequent bouts of wheezing with poor exercise tolerance, also accompanied by symptoms of chest pain and pre-syncope. He underwent an extensive cardiology evaluation in 2003 which was normal, and the associated symptoms were attributed to asthma. The asthma exacerbations were brought under reasonable control with daily maintenance doses of Advair (an inhalational steroid/long-acting bronchodilator combination) and Singulair (oral indirect-acting bronchodilator); but, the lability of the disease and associated poor exercise tolerance remained incompatible with continued service. There were three pulmonary evaluations in evidence documenting the ratable parameters which the Board weighed in arriving at its rating recommendation. These exams are summarized in the chart below:

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| --- | --- | --- | --- |
| **Exam** | **Service**  **~8 Mo. Pre-TDRL** | **NARSUM**  **~2 Mo. Pre-TDRL** | **VA C&P**  **~18 Mo. Post-Sep** |
| FEV1 (% Predicted) | 98% | 98% | 86% |
| FEV1/FVC | 111% | 97% | 74% |
| Meds | Albuterol (as needed); Singulair, Advair (daily), Cromolyn. | Albuterol (as needed); Cromolyn. | Albuterol Inhaler  (8-10 Puffs/Month). |
| §4.97 Rating | 30% | 10% | 10% |

The pre-TDRL narrative summary (NARSUM) noted that the CI had a “benign” evaluation and that his condition was stable. He was able to function well in a garrison environment without exertional demands. Sequential pulmonary function test (PFT) results during the MEB period, as noted above, documented good control; although, the CI was maintained on a daily treatment regimen as detailed above. The frequency of Albuterol use was not specified. There are no progress notes during the TDRL period; and, there is no repeat PFT evidence until the VA Compensation & Pension (C&P) evaluation well after permanent separation, as charted above. The 12 month TDRL reevaluation noted that the CI lived an area without access to reimbursed meds, and that he had consequently discontinued Singulair and Advair after his supply was exhausted. The TDRL exam stated “He has been using Albuterol and Cromolyn.” No details of dosing frequency were specified, and no pharmacy records are in evidence. The TDRL exam documented that the CI had suffered no acute attacks or required emergency room visits; that he was still unable to tolerate exertional demands (citing the two-mile run requirement of the APFT); that he was completing college degree work; and, that he continued to smoke. The 18 month VA C&P evaluation specifically elaborated ratable details for medication use. The VA exam stated that the CI had “not been short of breath for a long time,” and was not prescribed any daily medications. He was using his Albuterol rescue inhaler one to two times per week to successfully abort attacks. He was “able to perform his duties as a carpenter without limitation”; but, had “missed 3 to 4 days work in the past 12 months due to asthma.” Physical exam and chest x-ray remained normal. The PFT parameters had deteriorated somewhat, as charted above, but remained satisfactory.

The Board directs attention to its rating recommendations based on the above evidence. The unequivocal VASRD code for rating asthma is 6602. VASRD §4.97 defines both PFT-derived criteria and clinical treatment criteria for rating under 6602. The specified PFT parameters (as charted above) do not in themselves support a compensable rating at either temporary retirement or permanent separation. The non-PFT derived criteria under 6602 are: “intermittent inhalational or oral bronchodilator therapy” for 10%; and, “daily inhalational or oral bronchodilator therapy; or, inhalational anti-inflammatory medication” for 30%. The criteria for any higher ratings were not met at any interval for this case. The 30% criterion for daily use of ratable medications at the time of TDRL placement was documented in the NARSUM and corroborated in the treatment record. The PEB’s rationale for its 10% decision at separation was stated on the DA Form 199 as, “Since being placed on TDRL 1 year ago has let asthma prescriptions lapse, has been attending school full time using only occasional Albuterol, exam shows clear lungs and normal pulmonary function tests, rated for intermittent bronchodilator requirement, and no deduction for non-compliance of medication lapse or tobacco use at this time.” The TDRL exam makes it clear that daily Singulair and Advair had been discontinued; although, the PEB’s conclusion that the use of Albuterol was “occasional” was not explicitly stated (or refuted) by the examiner. The TDRL summary does not exclude the possibility of daily use of Albuterol, and no supplementary source of information is in evidence. If such were the case, this would satisfy the 30% language and align with the CI’s brief contention. Likewise, Cromolyn (which could be characterized as an anti-inflammatory) may have been used in inhaled form on a daily basis; although therapeutic dosing would require its use via a nebulizer four times daily. However, a regimen of this nature for either of these agents, without adjunctive medications or evidence of more severe disease, would be quite atypical and not clinically appropriate. The action officer opined that, at least more likely than not, a daily treatment regimen with Albuterol and/or Cromolyn was neither clinically indicated nor in effect. It would thus be quite speculative to concede the daily treatment criteria based on the lack of documentation that this was *not* the case: and, the only non-speculative source of evidence which goes to the ratable use of medications is the VA’s C&P evaluation which clearly supports 10% criteria. Although the VA evidence falls outside a distinctly probative interval, it reflected a period when the CI was employed as a carpenter compared to the rating interval when he was a student; and, the PFT results suggest that, if anything, the severity of asthma was more acute at the time of the VA confirmed treatment regimen. The post-separation VA evidence thus further undermines support for a 30% permanent rating recommendation. After due deliberation in consideration of the preponderance of the evidence, the Board concluded that there was insufficient cause to recommend a change in the PEB’s final rating adjudication for the asthma condition.

Remaining Conditions. Other conditions identified in the core DES file were recurrent neck pain and right hand pain. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were clinically active 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, gastroesophageal reflux disease was noted in the VA rating decision proximal to separation, but was 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.

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 asthma condition and IAW VASRD §4.97, the Board unanimously recommends no change in the PEB adjudications at TDRL or at permanent 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, as follows:

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| --- | --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** | |
| **TDRL** | **PERMANENT** |
| Asthma | 6602 | 30% | 10% |
| **COMBINED** | **30%** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110401, 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

I have reviewed the enclosed Department of Defense Physical Disability Board of Review (DoD PDBR) recommendation and record of proceedings pertaining to the subject individual. Under the authority of Title 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:

Deputy Assistant Secretary

(Army Review Boards)