RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100244 SEPARATION DATE: 20020623

BOARD DATE: 20111223

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty member, PFC/E-3 (19K, M1 Abrams Armor Crewman), medically separated for asthma. The CI’s shortness of breath began in 2000, and increased in severity, along with wheezing and chest pain, over the next year. Methacholine challenge revealed mild bronchial hyperresponsiveness. His treatment included daily inhaled corticosteroids with “as needed” inhaled bronchodilators. He did not respond adequately to treatment and was unable to perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. He was issued a permanent P3 profile and underwent a Medical Evaluation Board (MEB). Bronchial asthma was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) file are discussed below. The Informal PEB (IPEB) adjudicated the asthma condition as unfitting, rated 0%, with application of the Veterans’ Administration Schedule for Rating Disabilities (VASRD). The CI did not appeal for a Formal PEB, and was medically separated with a 0% disability rating.

CI CONTENTION: “I was medically discharged at 0% for my asthma in 2002 and they just noted my back pain, but didn’t eval it. When I went to the VA I was evaluated and put at 30% for my asthma and 10% for my back. I felt I was just rushed through in 2002. I would like to be reevaluated for retirement. I believe my original rating of 0% was inaccurate.”

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB – Dated 20020322** | **VA (39 Mo. After Separation) – All Effective Date 20050222** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Asthma | 6602 | 0% | Asthma | 6602 | 30% | 20050923 |
| ↓No Additional MEB/PEB Entries↓ | Chronic Back Strain | 5237\* | 10% | 20050915 |
| 0% x 0/Not Service Connected x 6 | STR\* |
| **Combined: 0%** | **Combined: 40%** |

\*Chronic back strain 5237 changed to thoracolumbar spine strain with degenerative changes, 5242, continued at 10%, in VARD 20100914; STR = Service Treatment Records; VA rating based on exam most proximate to date of permanent separation.

ANALYSIS SUMMARY:

Asthma Condition. The VASRD provides rating guidance for asthma based on the number and severity of clinical exacerbations; the type and the frequency of medications used to treat the condition; and the results of objective pulmonary function testing (spirometry). For the reader’s convenience the applicable §4.97 rating criteria for 6602 (asthma, bronchial) are excerpted below:

 FEV-1 of 40- to 55-percent predicted, or; FEV-1/FVC of 40 to 55

 percent, or; at least monthly visits to a physician for required

 care of exacerbations, or; intermittent (at least three per year)

 courses of systemic (oral or parenteral) corticosteroids……………….60

 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 were two 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****~10 Mo. Pre-Sep** | **NARSUM****~5 Mo. Pre-Sep** | **VA C&P****~39 Mo. Post-Sep** |
| FEV1 (% Predicted) | 113% |  | (VA 70%) 75% |
| FEV1/FVC | 98.9% |  | 67% |
| Meds | albuterol inhaler (as needed, 2-3 x/day); begin budesonide inhaler;  | budesonide inhaler twice daily, albuterol inhaler (as needed) - 2-3 times per day | fluticasone & salmeterol twice daily, albuterol inhaler … as needed, uses 2x/day if forgets other inhalers |
| Spirometry Notes | Positive methacholine challenge; no significant change after bronchodilator |  | returned to normal after bronchodilator |
| §4.97 Rating | 30% | 30% | 30% |

The service treatment record showed normal spirometry (with no significant change with bronchodilator) at 10 months pre-separation. The CI was treated with bronchodilator as needed and pre-exercise. A methacholine challenge five days later was consistent with mild bronchial hyper-responsiveness (FEV1 reduced to 74%, FEV1/FVC reduced to 71% on 4 mg/ml methacholine). With these results, the pulmonologist prescribed inhaled corticosteroid [budesonide] twice daily, along with the CI’s previous rescue bronchodilator [albuterol]. The NARSUM, five months pre-separation, noted the CI’s treatment regimen continued with twice daily inhaled corticosteroids and rescue bronchodilator. The CI was noted to be on a suboptimal medication regimen as he was taking his steroid inhaler “2 puffs each day” and should have been on two puffs at two times a day for a total of four puffs per day. The bronchodilator was prescribed “as needed” and pre-exercise at the time of the narrative summary (NARSUM), but the CI reported using it two to three times per day, which the examiner attributed to the CI’s taking only half of his inhaled steroid dose. The examiner noted that the CI’s asthma symptoms continued, particularly with aerobic exercise, although he was on a suboptimal medication regimen.

There were no clinical notes or Department of Veterans’ Affairs (DVA) examinations proximate to separation. Although remote from separation, the following VA evidence describes the long term course of the CI’s condition. Outpatient VA treatment records at 30 months post-separation showed the CI was employed at an oil field, a job which the CI later reported he left after two months due to his asthma. He was only using inhaled bronchodilator (no steroid), and he used his bronchodilator several times per day on days he worked in the field. The examiner noted mild wheezes with forced expiration, and he prescribed an inhaled steroid/bronchodilator combination [Advair] in addition to his bronchodilator rescue inhaler. The VA Compensation and Pension (C&P) exam, 39 months post-separation, reported the CI was taking two daily inhaled corticosteroids [fluticasone and salmeterol], in addition to his rescue bronchodilator, which he used “about twice a day if he forgets his other inhalers.” The examiner noted the CI had one emergency room visit in the prior 18 months “because he was out of medications and had an asthma attack.” The CI was employed as a tool consultant and music disc jockey, and was also a part-time student, with no reported lost work time (other than leaving the oil field job due to asthma, as described above). The examiner described forced expiratory wheezes, and spirometry revealed a mild obstructive pattern which reversed with bronchodilator. The VA rated the exam at 30% due to meeting both criteria: (1) spirometric parameters (VA used 70% as FEV1 rather than recorded 75%, or the 70% FEV1/FVC), and (2) use of daily bronchodilators.

There was no evidence in the record to indicate the CI met the 60% disability level, requiring “at least monthly visits to a physician for required care of exacerbations, or; intermittent (at least three per year) courses of systemic (oral or parenteral) corticosteroids.” The ratable pulmonary function parameters (FEV-1 and FEV-1/FVC) pre-separation were normal, and as the PEB noted, they did not meet the 10% rating criteria. The treatment regimens documented in the NARSUM, outpatient notes, and the remote VA notes and C&P exam all included either daily inhaled steroid (prescribed) or inhaled rescue bronchodilator (with daily use). The daily medication use meets the criteria for the 30% rating.

It is acknowledged that the VASRD is somewhat outdated for asthma since modern treatment has expanded to include many treatment agents not available at the time the standards were written. Contemporary treatment regimens commonly employ daily maintenance use of a variety of inhaled steroids (anti-inflammatory) and/or long-acting inhaled bronchodilators. The VA routinely concedes the 30% rating if there is a prescription for any of these agents. The Board’s precedent has been to follow suit, although it is clear that this encompasses many cases of relatively mild disease associated with minimal limitations and disability. The Board does take the reasonable position that the evidence in such cases should foster the assumption that the treatment regimen supporting the higher rating is necessary to maintain good control of the condition. That question is only raised in cases where there is evidence that the condition is well controlled in spite of documented non-compliance or only sporadic use of the medications in question.

The PEB disability description stated “is not taking medication” which may have been from a projection of the pharmacy medication profile which could have been interpreted as having insufficient doses of medication issued for correct daily use (six months period from issue with two months dispensed if used as prescribed, with no refill pick-up indicated). With the CI’s described medication usage, inhalers would have been sufficient for four of the six months if the medication profile captured all medications provided to the CI. There are multiple avenues for the CI having had additional inhalers/doses of medications from prior medication issue or sources not otherwise captured in the electronic medication profile (e.g., emergency rooms, sick call medications cabinets, remote clinics, non-military pharmacies). An outpatient record entry dated 24 August 2001 noted the CI had been given an inhaled bronchodilator three weeks prior, but that prescription was not captured on the medication profile.

The asthma action plan indicated daily inhaler use at two puffs twice a day in the “green zone” of doing well with no symptoms and a rescue inhaler as needed. The NARSUM clearly indicated daily use of medications (half of prescribed steroid dose and daily rescue inhaler), even though at a suboptimum dosing for maintenance medication. There were no medical treatment notes indicating failure to take daily inhaled medication prior to separation. There is a preponderance of evidence in this case that the CI required daily inhalational anti-inflammatory or bronchodilator medication for his asthma. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board majority recommends 30% as the fair and equitable rating for asthma in this case, coded 6602.

Other Contended Conditions. The CI’s application asserts that a compensable rating should be considered for back pain (VA 10%). Back pain was not profiled, mentioned in the commander’s statement, or noted as failing retention standards. The MEB physical exam recorded a normal spine evaluation. One of three pre-separation outpatient notes documented reduced thoracolumbar range-of-motion (ROM; no measurements given) and spasm; the other two notes documented full ROM. The remote VA exam showed mild ROM decrements meeting the 10% level for combined thoracolumbar ROM. This condition was reviewed by the action officer and considered by the Board. There was no evidence for concluding that the back condition interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore that the stated condition was subject to Service disability rating.

Remaining Conditions. Other conditions identified in the DES file were chronic sore throat with throat swelling, insomnia, and motion sickness. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were significantly 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. 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.

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, the Board by a vote of 2:1 recommends a rating of 30% coded 6602 IAW VASRD §4.97. The single voter for dissent (who recommended a rating of 10% coded 6602) submitted the addended minority opinion. In the matter of the back pain conditions 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 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** |
| Asthma | 6602 | 30% |
| **COMBINED** | **30%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110324, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

 President

 Physical Disability Board of Review

MINORITY OPINION:

The CI’s asthma condition is clearly mild as evidenced by the history of FEV-1 data. Even with his respiratory condition, the CI was able to perform all his required military duties despite his history of smoking, both before and after separation. The crux of this case and the main criteria for rating is whether daily medications were prescribed *and required* in order to control symptoms. The Medication Profile in evidence clearly shows daily medications were prescribed, but that only one quantity of Albuterol and one quantity of Budesonide were dispensed on September 4, 2001. Based on these quantities, it would not be possible to have adequate medication to cover daily use (2-4 puffs per day) between the period of issue and the PEB (over 6.5 months) without additional medication. Furthermore, there is no evidence of subsequent medications in the record. The PEB determined that the soldier was not taking any medication, and therefore rated 0% for not meeting minimal rating criteria. In the minority voter’s opinion, the PEB’s determination (that he was not required to take daily medication) was correct, but that a rating of 10% for intermittent inhalational or oral bronchodilator use is more fair and accurate.

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

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

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

Crystal Drive, Suite 300, Arlington, VA 22202

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

for (PD201100244)

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

CF:

( ) DoD PDBR

( ) DVA