RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100263 SEPARATION DATE: 20020419

BOARD DATE: 20120416

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSG/E-6 (35H/Common Ground Station Analyst), medically separated for hepatitis C, symptomatic with daily fatigue. The CI was diagnosed with hepatitis C in 1995. Between 1998 and 2001, he was placed on two different treatment medications. The first medication was stopped for unclear reasons and the second was stopped due to the failure to decrease the hepatitis C virus RNA titers. Prior to his discharge, the CI was not on any daily medications, but continued with daily fatigue and generalized body aches. 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 P3H3 profile and underwent a Medical Evaluation Board (MEB). Chronic hepatitis C, type 2A, symptomatic 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) packet will be discussed below. The PEB adjudicated the hepatitis C condition as unfitting, rated 20%; with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI appealed to a Formal PEB (FPEB) for extension on duty (for retirement) and a higher rating. The FPEB upheld the 20% rating determination and the USAPDA made a final administrative correction reaffirming the 20% rating. The CI then medically separated with a 20% disability rating.

CI CONTENTION: “With all the other service-connected conditions, I was subsequently rate 80% by the VA. I feel all my conditions should have been evaluated before discharge.” 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:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service DA Form 18 Revised PEB – Dated 20011228** | | | **VA (3 Mo. After Separation) – All Effective Date 20020420** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Hepatitis C | 7354 | 20% | Hepatitis C | 7345\* | 0% | 20020721 |
| ↓No Additional MEB/PEB Entries↓ | | | Migraine Headaches | 8100 | 30% | 20020721 |
| PTSD | 9411 | 10% | 20020727 |
| Right Wrist DJD | 5215 | 10% | 20020727 |
| Tinnitus | 6260 | 10% | *20030510* |
| Skin Rash | 7806 | 0% | 20020727 |
| Left Knee Arthralgia | 5257 | 0% | 20020727 |
| Bilateral Hearing Loss | 6100 | 0% | 20020730 |
| OSA\*, R. elbow & Depression - Not Service-Connected | | | 20020721 |
| **Combined: 20%** | | | **Combined: 50%\*** | | | |

\* Added DM diabetes mellitus, Type II at 20% effective 20021230 (combined 60%); added R. finger/wrist at 10% effective 20050614; added OSA at 50% effective 20050809 (combined 80%); PTSD increased to 50% effective 20100614 (combined 90%) NOTE: (Rating had likely typographical error of “7345” versus 7354 for Hepatitis C)

ANALYSIS SUMMARY: The Board acknowledges the CI’s assertions that “with all the other service-connected conditions, I was subsequently rate 80% by the VA. I feel all my conditions should have been evaluated before discharge.” It is noted for the record that the Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to the CI’s statements in the application and DES rebuttal regarding suspected service improprieties in the processing of his case. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to VASRD standards at the time of separation and based on severity at the time of separation. It must also judge the fairness of PEB fitness adjudications based on the fitness consequences of conditions as they existed at the time of separation. The Board also acknowledges the presence of sleep apnea (OSA) as a currently rated condition by the Department of Veterans’ Affairs (DVA), but notes that the scope of its recommendations does not extend to conditions which were not diagnosed or in evidence at the time of medical separation. This includes conditions which may have had early manifestations during active service, since such sub-clinical conditions cannot be correlated with a fitness determination requisite for a service rating.

Hepatitis C Condition. The CI was diagnosed with hepatitis C in June of 1995 because of mild abnormally elevated liver function tests with complaints of fatigue, nightmares, insomnia and some post-prandial vomiting. He was tried on Interferon for 3 months but there was no resolution of his liver function tests and the medication was stopped. A liver biopsy was done in 1995 which showed mild hepatitis (and re-biopsy in 1998). In 1999 he was placed on a combination of Interferon and ribavirin. His liver function still remained abnormal and his virus titer was elevated and the medicine was discontinued as a treatment failure of combination therapy. Abdominal CT scan and liver ultrasound had been unremarkable. Hepatitis C viral RNA titers were high and liver enzymes were elevated. The narrative summary (NARSUM) exam, performed 9 months prior to separation documented a well-developed, well-nourished, obese male in no acute distress. There was no hepatosplenomegaly or significant abdominal tenderness; bowel sounds were normal and no masses were palpable. The CI was not working within his MOS due to the limitation of his illness and permanent profile. The commander’s statement indicated the CI was “unable to accomplish all tasks required within his MOS. Proficient in his daily duties, he has difficulties in physically performing those duties. At this present time he cannot perform any physical training.” The astroenterology NARSUM addendum, (performed on 7 November 2001) 7 months prior to separation indicated that during therapy the CI suffered from “severe daily fatigue, malaise, nausea, post-prandial vomiting, and severe arthralgias.” He also complained of left upper quadrant pain. Since stopping the medicine, the patient still continues to have chronic fatigue, nausea, vomiting, and arthralgia. I feel that this is a very disabling problem for this patient and it would be advisable to consider this evaluation in the final determination of his MEB. A liver biopsy is being considered in the near future.”

The VA Compensation and Pension (C&P) exam, performed 3 months after separation indicated the CI had complaints of joint pains (arthralgia migratory) with no nausea, vomiting, or diarrhea or blood in bowel movements. He was alert and oriented x 3. Mental status exam was normal with intact cranial and peripheral nerves. Sensory, motor, vascular and reflex exams were normal (no weakness or numbness). Gait and coordination were normal. The abdomen was soft with normal bowel sounds with no hepatosplenomegaly, pain or ascities. The examiner stated the CI had “no systemic signs of hepatitis C at this time.” The VA rated this exam at 0%.

The Board directs attention to its rating recommendation based on the above evidence. Hepatitis C disability coding from the PEB and VA was 7354, hepatitis C, and there was no alternative code. The CI had chronic (daily) fatigue, without anorexia documented and had no weight loss (or other indication of malnutrition) or hepatomegaly, no dietary restrictions, and was not on continuous medications. The Board adjudged that the CI did not have “near-constant debilitating symptoms.” The deliberations therefore focused on the assessment of “incapacitating episodes” and the total duration over the year prior to separation. The criteria states “or: incapacitating episodes (with symptoms such as fatigue, malaise, nausea, vomiting, anorexia, arthralgia, and right upper quadrant pain)” and the total duration is tied to the level of rating. The CI had “chronic fatigue, nausea, vomiting, and arthralgia” which the gastroenterologist considered “a very disabling problem for this patient.” The CI had subjective complaint of right upper quadrant pain with a normal abdominal (non-tender) exam. For the year prior to and after separation there was no evidence of emergency room visits, hospitalizations, or other indicators of flares with incapacitating episodes. The December 2001 memorandum to the USAPDA indicated monthly permission to remain at home in-lieu of sick call due to the CI’s TDY for treatment and prior sick calls of 48-hours bed-rest (quarters) prior to the blanket permission.

The VA exam after separation indicated resolution of all systemic hepatitis symptoms aside from arthralgia migratory (no nausea or vomiting). Independent rating of the totality of evidence would be between the 10% and 20% criteria. With consideration of the sick call Attendance memorandum and the tenants of VASRD §4.3 (reasonable doubt) and §4.7 (higher of two evaluations), the 20% rating under 7354 was supported with being closer to episodes “duration of at least 2 weeks, but less than 4 weeks, during the past 12-month period.”

After due deliberation in consideration of the all of the evidence, the Board concluded that there was insufficient cause to recommend a change in the service PEB 20% adjudication for the hepatitis C condition.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for his VA rated conditions including tinnitus, diabetes mellitus Type II, migraine headaches, posttraumatic stress disorder (PTSD), right wrist surgery, left knee surgery and OSA. Tinnitus, diabetes mellitus, PTSD and OSA 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. Migraine headaches, right wrist surgery and left knee surgery 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. The Board therefore has no reasonable basis for recommending any additional unfitting conditions for separation rating.

Remaining Conditions. Other conditions identified in the DES file were skin lesions (face, chest and left leg), recurrent hematomas, bilateral hearing loss and an appendectomy. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were significantly clinically or occupationally active during the MEB period, only the hearing carried an attached profile, and none were implicated in the commander’s statement. There was no difficulty in understanding speech and hearing was stable. 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.

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 hepatitis C condition and IAW VASRD §4.114, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended migraine headaches, wrist and knee conditions the Board unanimously agrees that it cannot recommend a finding of unfit for additional service disability rating. In the matter of any other medical conditions eligible for Board consideration, the Board unanimously agrees that it cannot recommend any findings of unfit for additional service disability rating.

RECOMMENDATION: The Board, therefore, recommends that there be no recharacterization of the CI’s disability and separation determination, as follows:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Hepatitis C | 7354 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110323, 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

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

(TAPD-ZB /), 2900 Crystal Drive, Suite 300, Arlington, VA 22202

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXX, AR20120007692 (PD201100263)

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’s estate, 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:

Encl XXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA