RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXX BRANCH OF SERVICE: air force

CASE NUMBER: PD1100301 SEPARATION DATE: 20070924

BOARD DATE: 20111222

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty member, 1LT/02 (92TO, Pilot Trainee), medically separated for Type I diabetes mellitus (DM). The diagnosis of DM is disqualifying for pilot training regardless of response to or type of therapy. He was removed from training, placed on a profile, and underwent a Medical Evaluation Board (MEB). DM was forwarded to the Physical Evaluation Board (PEB) as medicallyunacceptable. The Informal PEB adjudicated the DM condition as a single unfitting condition and rated it 20% with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI appealed to the Formal PEB (FPEB) stating his condition required regulation of activities. The FPEB upheld the IPEB adjudication. The CI appealed this decision, again stating his condition required regulation of activities. The Secretary of the Air Force Personnel Council (SAFPC) found that no change to the original findings was warranted. He made no further appeals and was medically separated with a 20% disability rating.

CI CONTENTION: The CI states: “After 6.5 years dedicated to the Service of the Air Force (4 at USAFA and 2.5 full-time active), I was determined unfit physically due to the onset of Type 1 Diabetes Mellitus. Type I insulin dependent diabetes is a disease without a cure and has been linked to various serious medical conditions which can result in premature death. For the rest of my life, my treatment will require a minimum of 4 sub-cutaneous insulin injections per day, quarterly hemoglobin A1C lab work, annual eye exams, and diligent medical care for the rest of my life. Medical retirement would give me the necessary medical treatment needed to fight this disease and live a long and healthy life. According to the VA schedule of disability ratings section 7913, a 20% rating requires ‘insulin and a restricted diet, or; oral hypoglycemic agent and restricted diet.’ I will never be able to control my diabetes with an oral agent and restricted diet. My diagnosis better fits the 60% or 40% rating, ‘requiring insulin, restricted diet, and regulation of activities.’ While it is yet to be seen how many hospitalizations per year I will experience over my lifetime, I am certain this number will have a direct correlation with the level of health care am able to afford. Since diagnosis, I have been diagnosed with Hypothyroidism, a complication of the endocrine system directly related to my diabetes. Lastly, if a type-I diabetic with no hospitalizations is rated at 20% disabled, and a type-I diabetic with, ‘one or two hospitalizations per year…’ is rated at 60%, who makes up a 40% disabled diabetic according to the ratings scale?

1. ‘Requiring Insulin;’ I take 30-40 units of insulin per day through multiple sub-cutaneous injections

2. ‘restricted diet;’ I follow a carbohydrate counting diet to maintain blood sugar levels and prevent serious complications and hospitalizations.

3. ‘regulation of activities,’ I have been disqualified from many career fields (aviation, fire-fighting, etc.). Activities regulated by blood sugar level.” He also lists benign positional vertigo under item 14. A contention for its inclusion in the separation rating is therefore implied.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB – Dated 20070619** | **VA (2 Mos. After Separation) – All Effective 20070925** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Diabetes Mellitus Type I | 7913 | 20% | Type I Diabetes Mellitus | 7913 | 40% | 20071112 |
| ↓No Additional MEB/PEB Entries↓ | Benign Positional Vertigo | 6204 | 10% | 20071126 |
|  | 0% x 0 / Not Service Connected x 3 | 20071112 |
| **Final Combined: 20%** | **Total Combined: 50%** |

\* VA rating based on exam most proximate to date of permanent separation.

ANALYSIS SUMMARY: The Board wishes to clarify that it is subject to the same laws for Service 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 anticipated 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), operating under a different set of laws (Title 38, United States Code). The Board’s authority as defined in DoDI 6044.40, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. While the DES 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. The DVA, however, is empowered to compensate Service connected conditions and to periodically re-evaluate said conditions for the purpose of adjusting the veteran’s disability rating should his degree of impairment vary over time. Post-separation evidence, therefore, is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation. The Board also noted the CI’s contention that at least a 40% disability rating is justified based on regulation of activities. In insulin dependent diabetes (Type I), the difference between a 20% and 40% rating is “regulation of activities.” This clearly implies that restrictions in activity have been placed in addition to those placed on any diabetic requiring insulin.

Unfitting Condition: DM Type I Condition. The CI presented to the flight surgeons’ office (FSO) on 23 January 2007 with the complaint of urinary frequency for the past year. He was found to have a blood glucose of 452 and urine glucose of >1,000 and diabetes was diagnosed. Diabetic teaching was given and oral hypoglycemic agents were started but were ineffective. Type I DM was then diagnosed and the CI started on insulin. The MEB exam was accomplished 22 February 2007, seven months prior to separation. At that time, his DM was improving on insulin and no complications were noted. The physical exam was unremarkable; specifically, his eye and neurological exams were normal. His renal functions were normal. There was no evidence of microvascular or macrovascular disease. He had no hospitalizations and there had been no episodes of diabetic ketoacidosis (DKA). His weight had decreased prior to treatment, which is not uncommon; it is noted that he had been training for a marathon as well. Regardless, after treatment, he regained his weight. Early in the course of the disease, he was seen frequently. Again, this is normal in the initial diagnostic and management period and did not continue after he stabilized on insulin. He was issued a temporary profile that restricted his duty assignments pending MEB/PEB action. Notably, the profile provided for no other activity restriction. The VA compensation and pension (C&P) examination was on 11 November 2007, six weeks after separation. Again, no hospitalizations or DKA were noted. The physical exam was normal with specific attention to the ophthalmological and neurological exams. His blood glucose was 120 and urinalysis normal. The VA examiner specifically noted “The diabetes does not cause any secondary complications in regards to the eyes, heart, skin, kidneys, arteries or nervous system. The diabetes does not cause any restriction of activities. The claimant does not have a non-diabetic condition that is aggravated by the diabetes.” The FPEB rated the diabetes condition at 20% and coded it 7913. The DVA also coded it 7913, but awarded a 40% disability rating citing a letter from the CI’s private doctor which stated “Due to the insulin usage, his activities are somewhat restricted due to the possibility of hypoglycemic episodes, etc.” The Board considered this statement, but noted that this is true of any diabetic on insulin and, therefore, does not rise to the additional “regulation of activities” level that separates a 20% and 40% disability rating. The CI’s activities were not altered in any way other than the activities of routine care required for diabetes mellitus. It also stands in contrast to the DVA examiner’s comments that the “diabetes does not cause any restriction of activities.” The CI’s physical profile dated 23 February 2007 was a temporary P4 for Type I Diabetes and it stated an MEB was required. No physical limitations or restrictions were listed; it is implied that the CI remained subject to all his usual Air Force physical training and testing programs. Also, as reported by Dr. Margaret Lee in a letter dated 05 February 2007, the CI completed the Walt Disney Half Marathon in January 2007, apparently prior to starting insulin treatment on 31 January 2007. In summary, the Board opines that the DVA erred in its adjudication. After due deliberation and in consideration of the totality of the evidence, the Board concluded that there was insufficient cause to recommend a change from the PEB fitness adjudication for the Type I diabetes mellitus condition.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for hypothyroidism and benign positional vertigo (BPV). These conditions were reviewed by the action officer and considered by the Board. While there was a record of BPV as a cadet, it had resolved and the CI was subsequently cleared for initial flight training, a much higher standard than simply “not unfitting.” Thyroid studies, done while on active duty during the initial evaluation for his DM condition, were normal. Hypothyroidism was diagnosed two years after separation. No commander’s letter was available in the record for review. There was no evidence for concluding that either condition interfered with duty performance to a degree that could be argued as unfitting at the time of separation from Service and neither condition required a profile. Therefore, the Board determined that neither condition could be argued as unfitting at the time of separation from Service and subject to separation rating.

Remaining Conditions. There were no other conditions identified in the DES file. Additionally stress, middle back condition, and prostatitis were noted in the DVA rating decision proximal to separation, but were not documented in the DES file. The Board notes that the DVA denied Service connection for all these conditions. Regardless, 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. In the matter of the diabetes mellitus condition, the Board unanimously recommends no change from the PEB adjudication. In the matter of the BPV and hypothyroidism 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, 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** |
| Diabetes mellitus | 7913 | 20% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110410, 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

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

Dear XXXXXXXXXX

 Reference your application submitted under the provisions of DoDI 6040.44 (Section 1554, 10 USC), PDBR Case Number PD-2011-00301

 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 appropriate. Accordingly, the Board recommended no re-characterization or modification of your separation with severance pay.

 I have carefully reviewed the evidence of record and the recommendation of the Board. I concur with that finding and their conclusion that re-characterization of your separation is not warranted. Accordingly, I accept their recommendation that your application be denied.

 Sincerely,

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Director

Air Force Review Boards Agency