RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX BRANCH OF SERVICE: air force

CASE NUMBER: PD1100406 SEPARATION DATE: 20080112

BOARD DATE: 20120314

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an Air Force, Staff Sergeant/E5 (3E171, Heating, Venting, Air Conditioning & Refrigeration Craftsman), medically separated for asthma. Asthma was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AFI 48-123. No other conditions appeared on the MEB submission. Other conditions included in the Disability Evaluation System (DES) packet will be discussed below. The PEB adjudicated the asthma condition as unfitting, rated 10% with application of Veterans’ Administration Schedule for Rating Disabilities (VASRD). The OSA was not re-adjudicated. The CI made no appeals and was medically separated with a 10% combined disability rating.

CI CONTENTION: The CI states: “I would like for all my disabilities be reviewed for fairness and accuracy. I wasn’t able to meet personal, social, or occupational requirements and demands because of a severe case of sleep apnea, asthma and a broken ankle. The sleep apnea caused other problems that made it hard for me to perform. Insomnia, constant fatigue, and severe headaches just to name a few. Therefore I feel I should have been awarded at least a 30% rating and a medical retirement instead of a discharge.”

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20071207** | | | **VA (5 Mo. After Separation) – All Effective 20080113** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Asthma | 6602 | 10% | Exercise Induced Asthma | 6602 | 0% | 20080611 |
| ↓No Additional MEB Entries↓ | | | Obstructive Sleep Apnea | 6847 | 50% | 20080611 |
| Fracture Right Ankle | 5271 | 10% | 20080611 |
| 0% x1 / NSC x 0 | | | 20080611 |
| **Combined: 10%** | | | **Combined: 60%** | | | |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-incurred condition continues to burden him. 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 evaluates DVA evidence proximal to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness decisions and rating determinations for disability at the time of separation. The Board also acknowledges the CI’s contention suggesting that service ratings should have been conferred for other conditions documented 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 the degree of impairment vary over time.

Asthma: There were two spirometry 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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| --- | --- | --- | --- |
| Spirometry | | MEB~4 Mos Pre-Sep | C&P ~4.5 Mos Post Sep |
| Pre-Bronchodilator | FVC | 3.48 (72%) | 4.17 (108%) |
| FEV1 | 3.08 (76%) | 3.64 (116%) |
| FEV1/FVC | 89% | 87% |
| Comments | | Prior to treatment | Intermittent therapy |
| §4.97 Rating | | 10% | 10% |

During a medical examination in August 2007, the CI reported that he felt short of breath, chest tightness, and felt “wheezy” with exercise. He denied a personal history of asthma, but noted that his mother and a cousin both had it. His pulmonary examination was normal, but office screening spirometry was abnormal. He was therefore referred for a formal pulmonary function test (PFT) and a bronchoprovocation challenge test. These were done 27 August 2007, four months prior to separation. His baseline FVC was 72% and FEV1 76%, both mildly reduced. The bronchoprovocation test was positive and reversed by an Albuterol inhaler. He was prescribed the inhaler to use prior to exercise which worked well for him. However, as a result of the diagnosis of the asthma condition, he was determined to be non-deployable and referred to the MEB. The VA Compensation and Pension exam was on 11 June 2008, four months after separation. He was asymptomatic and had a normal pulmonary exam. He stated that he used the Albuterol inhaler prior to exercise three to four times a week. Pulmonary function tests were normal. The PEB and VA both coded the asthma condition as 6602, but awarded 10% and 0% disability, respectively. The VA determined it to be non-compensable and noted that the exam and PFTs were normal. The Board noted that the MEB PFTs were slightly more proximate to separation but were before treatment. These values as well as the intermittent use of an inhaler both rate 10%. 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 asthma condition.

Other Contended Conditions. The CI also contends for the obstructive sleep apnea (OSA) and a history of right ankle fracture. The CI contends that OSA caused problems with insomnia, constant fatigue, and severe headaches that made it hard for him to perform his duty. Routinely, OSA is not considered unfitting solely on the basis of field and operational impediments to the use of continuous positive airway pressure (CPAP). The CI previously underwent MEB for OSA and was found fit and returned to duty by the PEB in December 2006. There is no evidence in this case that OSA was associated with any unfitting impairments not corrected by CPAP. Although there is evidence in the record that the CI had daytime drowsiness several years prior to separation, this had resolved well before separation even though he was not compliant with treatment. Occasional headaches were noted by the narrative summary (NARSUM) examiner, and some problems with insomnia were noted in the service treatment record (STR). The NARSUM examiner stated, “however, he says he feels fine and does not really have trouble with feeling sleepy during the day.” All performance reports up to July 2007 and the commander’s letter 26 November 2006 documented excellent duty performance. The PEB adjudication of not unfitting was therefore expected and reasonable. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for the OSA condition. The CI was noted to have had a non-displaced fracture of the right lateral malleous in 2002, almost eight years prior to separation. There is no record of care after the initial injury nor was it noted as limiting duty by either the commander or in the MEB narrative. It was not profiled after the initial injury. There was no evidence for concluding that either of the conditions interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore that neither of the stated conditions was subject to service disability rating.

Remaining Conditions: The other condition identified in the DES file was acne. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were occupationally or clinically significant during the MEB period, none carried attached profiles and none were implicated in the commander’s statement. The CI did have a shaving waiver, but this did not impact duty performance. 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. In the matter of the asthma condition, the Board unanimously recommends no change from the PEB adjudication. In the matter of the OSA, history of right ankle fracture, acne 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** |
| Asthma | 6602 | 10% |
| **COMBINED** | **10%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294 dated 20110510, 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 XXXXXXXXXXXX:

Reference your application submitted under the provisions of DoDI 6040.44 (Title 10 U.S.C. §  1554a), PDBR Case Number PD-2011-00406

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

Attachment:

Record of Proceedings