RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXXX BRANCH OF SERVICE: air force

CASE NUMBER: PD1100474 SEPARATION DATE: 20030725

BOARD DATE: 20120430

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SRA/E-4 (3A051/Information Management Journeyman), medically separated for diabetes mellitus type I requiring insulin. She was issued a temporary P4 profile and underwent a Medical Evaluation Board (MEB). Diabetes mellitus type 1 was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AFI 48-123. 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 diabetes condition as unfitting, rated 20% with application of the DoDI 1332.39 and Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 20% combined disability rating.

CI CONTENTION: “Disability was rated based on being Type II Diabetic. I was diagnosed with type I. I have been insulin dependent since the diagnosis. My records should be reviewed due to VA rating me as 40% based on being a Type II Diabetic. I was diagnosed as being Type I (insulin dependent) while on active duty. Please review all of my medical records for evidence of being Type I Diabetic, Hypertension and having a DVT while on active duty.” She additionally lists all of her 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 PEB – Dated 20030305** | **VA (3 Mo. After Separation) – All Effective Date 20030726** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Diabetes Mellitus Type I | 7913 | 20% | Diabetes Mellitus Type I | 7913 | 20% | 20031029 |
| ↓No Additional MEB/PEB Entries↓ | Hypertension | 7101 | 10% | 20031029 |
|  |  | Rt Calf Deep Vein Thrombosis | 7121 | 10% | 20031029 |
|  | 0% x 1/Not Service-Connected x 0 | 20031029 |
| **Combined: 20%** | **Combined: 40%** |

ANALYSIS SUMMARY: The DES is responsible for maintaining a fit and vital fighting force. 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 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 nor for conditions determined to be service-connected by the Department of Veterans’ Affairs (DVA) but not determined to be unfitting by the PEB. However the DVA, operating under a different set of laws (Title 38, United States Code), is empowered to compensate all 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. 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, 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’s threshold for countering DES fitness determinations is higher than the VASRD §4.3 reasonable doubt standard used for its rating recommendations; but, remains adherent to the DoDI 6040.44 “fair and equitable” standard. Furthermore, a “crystal ball” requirement is not imposed on the service PEB’s by the Board; and, the 12-month window specified in DoDI 6040.44 is appropriate for rating comparisons but not for new developments after separation.

Diabetes Mellitus Type I Condition. The CI was hospitalized in December 2002 for new onset type I diabetes mellitus and begun on insulin and diet therapy. After beginning treatment, she had no further symptoms due to diabetes, and no episodes of ketoacidosis or hypoglycemia (low blood sugar) requiring hospitalization. At the time of the MEB narrative summary (NARSUM), dated 12 February 2002, she was doing well and the examination was normal. The examiner reported that there was no evidence of end organ damage and the diabetes was under good control with diet and insulin. Laboratory testing on 26 February 2003 confirmed good control. The CI experienced an episode of hypoglycemia in May 2003 when she missed a meal while traveling. The VA Compensation and Pension examination on 29 October 2003, 3 months after separation reported similar findings and conclusions. Both the PEB and VA assigned a 20% rating based on the respective examinations. An evaluation of 20% is assigned if there is a requirement for insulin or oral hypoglycemic agent, and restricted diet. A higher evaluation of 40% is not warranted unless regulation of activities are medically required. Because the CI’s condition required insulin as well as dietary restrictions, it met the criteria for a 20% rating. The evidence at the time of separation justified the 20% rating determined by the PEB and IAW VASRD §4.119. The CI did not require medically prescribed regulation of activities necessary to justify the higher 40% rating, she did not require frequent visits to a diabetic care provider, nor were there episodes of ketoacidosis, hypoglycemic reactions, hospitalizations or diabetic complications that could support higher ratings. The CI contends her rating was based on type II diabetes rather than type I diabetes. The MEB/PEB records show diagnosis and rating for type I diabetes. Regardless, the same rating criteria are applied to diabetes whether it is type I or type II. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the diabetic condition.

Other Contended Conditions. The CI’s application asserts that compensable ratings should be considered for deep vein thrombosis and hypertension. Following the PEB, the CI developed a deep vein thrombosis of the right calf in March 2003 treated with Coumadin. She reported persistent pain in the leg diagnosed as post-phlebitic syndrome. Examinations by her physicians in April and May 2003 documented absence of swelling or redness, with full range-of-motion (ROM), normal strength, and intact sensation of both lower extremities. During this time she also complained of symptoms of painful feet, ankles and shins, without trauma or apparent cause, and with similar examinations. Various diagnoses were noted including shin splints, plantar fasciitis, and tendonitis. At the time of the C&P examination, on 29 October 2003, 3 months after separation, the CI continued to experience pain that was improved. Over-the-counter medication controlled the pain such that she was able to tolerate it. On examination there was no edema, strength was normal, and sensation intact. Service treatment records indicated that her blood pressure was controlled with medication. All of these 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.

Remaining Conditions. No other conditions were noted in the NARSUM, identified by the CI on the MEB physical, or found elsewhere 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. No other conditions were service-connected with a compensable rating by the VA within 12 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 diabetes mellitus, type I condition and IAW VASRD §4.119, the Board unanimously recommends no change in the PEB adjudication. In the matter of contended deep vein thrombosis, hypertension, or any other 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. 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.

SDi

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** |
| Diabetes Mellitus Type I | 7913 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110625, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

X

 Physical Disability Board of Review

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

X

Dear X

 Reference your application submitted under the provisions of DoDI 6040.44 (Title 10 U.S.C. §  1554a), PDBR Case Number PD-2011-00474

 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,

X

Director

Air Force Review Boards Agency

Attachment:

Record of Proceedings