RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: 201100491 SEPARATION DATE: 20041211

BOARD DATE: 20120308

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a mobilized National Guard member, SPC/E-4, (62E, Heavy Construction Equipment Operator), medically separated for chronic obstructive pulmonary disease (COPD). The CI developed symptoms of shortness of breath associated with an acute upper respiratory illness (URI) in March 2004. The URI symptoms eventually resolved, however, the CI continued to complain of shortness of breath with exertion. Pulmonary function studies (PFTs) documented mild obstructive lung disease. Treatment with inhaled bronchodilators and inhaled steroids produced some temporary relief; however, the CI’s symptoms persisted. He did not respond adequately to perform within his Military Occupational Specialty (MOS). He was issued a permanent P3 profile and underwent a Medical Evaluation Board (MEB). COPD was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB’s submission. The PEB adjudicated the COPD as existed prior to service (EPTS) and was not permanently aggravated by service. No rating was assigned IAW Department of Defense Instruction (DoDI) 1332.39. The CI appealed to the Formal PEB (FPEB) which adjudicated the condition as EPTS with subsequent service aggravation which rendered the soldier unfit. The FPEB rated the condition at 0%, with likely application of DoDI 1332.39. The CI made no further appeals and was medically separated with a 0% disability rating.

CI CONTENTION: “I was forced out of the military for a service-connected disability.” He provided an additional memo and elaborated no specific contentions regarding rating or coding.

RATING COMPARISON:

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| --- | --- |
| **Service FPEB – Dated 20041130** | **VA (2 Mo. After Separation) – All Effective Date 20041212** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| COPD | 6604 | 0% | COPD | 6604\* | 10% | 20050204 |
| ↓No Additional MEB/PEB Entries↓ | 0% x 2/Not Service Connected x 0 | 20050204 |
| **Combined: 0%** | **Combined: 10%** |

\*COPD, 6604, increased to 30% effective 20090304 (combined 40%)

ANALYSIS SUMMARY:

Chronic Obstructive Pulmonary Disease. The CI developed symptoms of head congestion, productive cough and chills in March 2004 (approximately two weeks after being activated and 11 days after receiving a series of pre-deployment inoculations). The URI symptoms resolved, however, the CI continued to have residual shortness of breath, wheezing and chest tightness. Pulmonary function tests were consistent with mild chronic obstructive pulmonary disease and the CI was treated with inhaled beta agonist (bronchodilator) therapy and inhaled steroid (anti-inflammatory) therapy with some improvement in his symptoms. The treating provider noted the CI’s past history of smoking (quit 2002) as well as his history of childhood asthma (denied by CI’s mother in written statement in November 2004), but could not definitively exclude the vaccinations as a cause of the CI’s illness. There were three pulmonary evaluations in evidence which the Board weighed in arriving at its rating recommendation. The examination findings are summarized in the chart below:

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| --- | --- | --- | --- |
| Spirometry | PFT ~8 Mos. Pre Sep(20040426) | MEB ~2 Mos. Pre-Sep(20041006) | C&P ~2 Mos. Post Sep(20050204) |
| Pre-Bronchodilator | FVC | 4.16 (97%) | 4.03 (94%) | 3.80 (97%) |
| FEV1 | 2.78 (87%) | 3.0 (94%) | 2.60 (76%) |
| FEV1/FVC | 67% | 74% | 63% |
| Post-Inhaled steroid | FVC | 3.98 (93%) | 4.16 (97%) | 4.03 (103%) |
| FEV1 | 2.91 (91%) | 3.05 (95%) | 3.06 (97%) |
| FEV1/FVC | 73% | 73% | 76% |
| Comments | Mild obstructive disease | Normal lung exam; mild obstructive disease; no change post-bronchodilator; meds -Advair diskus and Combivent | Normal lung exam; mild obstructive ventilatory impairment; significantly improved post-bronchodilator; DLCO – 85% Predicted (“normal”) |
| §4.97 Rating | 10% | 10% (PEB 0%) | 10% |

All of the lung exams documented normal breath sounds with normal chest expansion. The forced vital capacity (FVC) and the forced expiratory volume (FEV1) documented on all three pulmonary function tests (PFTs) exceeded 80% of the predicted value. The calculated FEV1/FVC ratios on all exams ranged from 73% to 76%, consistent with mild obstructive disease. Neither of the service exams documented significant response to bronchodilator therapy; however the Department of Veterans’ Affairs (DVA) Compensation and Pension (C&P) exam did find significant improvement post-bronchodilator. The MEB examiner noted that the CI was only able to ambulate for 30 minutes before becoming short of breath. The permanent profile stated that the CI was unable to perform the two-mile run, move with a fighting load, wear a protective mask or chemical defense equipment, construct an individual fighting position, or perform three to five second rushes. The commander’s statement noted the CI’s “breathing problems” and commented that he was performing at the level expected while assigned to the medical hold unit. The DVA exam, two months after separation, is charted above and demonstrated significant response to bronchodilators and normal lung diffusion capacity (DLCO). The DVA assigned a rating of 10% for COPD based on the FEV1/FVC ratio of 76%. DVA exam remote from separation in 2009 documented decreased PFTs and the DVA increased the CI’ rating effective March 2009. This was adjudged after separation worsening and not indicative of the CI’s condition at separation.

The PEB and the VA used the same coding, but arrived at different ratings for the condition. The FPEB noted the FEV-1 of 94% and rated at 0%. The FPEB did not comment on the FEV1/FVC ratio. There was no specific deduction applied due to EPTS in the FPEB’s rating discussion. The FPEB conceded that the CI’s condition was service-aggravated (potentially by his inoculations) and stated, “there is sufficient evidence to support a finding that the current impairment EPTS, was subsequently aggravated by such service, and rendered the Soldier unfit.”

Service notes proximate to separation, the DES file, and the VA exam proximate to separation all indicate a diagnosis of COPD. There was not sufficient evidence of record to consider coding under 6602 (Asthma). The pulmonary function studies documented in the service exams and at the VA C&P exam were all consistent with the 10% rating’s “FEV-1/FVC of 71 to 80 percent.” There was no finding of impaired diffusion capacity and there was no evidence of more severe impairment in the FEV1 or the FEV1/FVC ratio to justify a higher rating. Additionally, the CI did not have a requirement for oxygen, no episodes of acute respiratory failure, and there was no right ventricular hypertrophy (an electrocardiogram with voltage criteria for left ventricular hypertrophy was noted) or pulmonary hypertension to meet criteria for rating greater than 10%. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a separation rating of 10% for the COPD condition.

Remaining Conditions. No other compensable conditions were identified in the VARD within 12 months of separation. The condition of bilateral plantar fibromatosis was identified in the DES, but did not receive a compensable rating from the VA within 12 months of separation. This condition was clinically active during the MEB period and did result in temporary profiles for wear of soft shoes and avoidance of running, jumping and prolonged standing. The CI’s last temporary profile for bilateral plantar fibromatosis expired in October 2004, two months prior to separation. The available evidence suggests that this condition was well-controlled with steroid injections and physical therapy modalities at time of separation. At the time of the VA C&P exam, two months post-separation, the CI noted that the foot pain was not affecting his activities of daily living or his job as a mail carrier. The limitations on running and walking documented in the permanent profile were clearly attributed to the CI’s unfitting COPD condition and were based on his inability to ambulate for longer than 30 minutes without becoming short of breath. The condition of bilateral plantar fibromatosis was not implicated in the commander’s statement and there was insufficient evidence to argue that this condition was separately unfitting.

Several additional non-acute conditions or medical complaints were documented in the MEB history and physical. These conditions were not significantly clinically or occupationally active 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. 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. As discussed above, PEB reliance on DoDI 1332.39 for rating chronic obstructive pulmonary disease was likely operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the chronic obstructive pulmonary disease condition, the Board unanimously recommends a permanent service disability rating of 10%, coded 6604 IAW VASRD§4.97. In the matter of the bilateral plantar fibromatosis condition 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, effective as of the date of his prior medical separation:

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Obstructive Pulmonary Disease (COPD) | 6604 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110629, 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 XXXXXXXXXXXXXXXXXXXXX, AR20120004766 (PD201100491)

1. 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 to modify the individual’s disability rating to 10% without recharacterization of the individual’s separation. This decision is final.

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.

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 XXXXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA