RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100556 SEPARATION DATE: 20080430

BOARD DATE: 20120726

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSG/E6 (11B, Infantry) medically separated for bilateral sensorineural hearing loss (SNHL). Bilateral SNHL (mild to moderate in the right ear and severe in the left ear) with an H3 profile was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Six other conditions, as identified in the rating chart below, were forwarded on the Medical Evaluation Board (MEB) submission as medically acceptable conditions. The PEB adjudicated the bilateral SNHL as unfitting, rated 0% with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 0% combined disability rating.

CI CONTENTION: “I served over 20 years in the military. I was found to have high frequency hearing loss and was notified that I was being reviewed for a medical board. As part of the process, I was to pick three jobs that I would prefer, hoping the board recommend that I stay in Army and continue my service until retirement in 2013 (five years from when I was discharged). Believing that the board would just move me to a new job, I would be able to finish my career honorably, retire with all benefits, yet this did not happen. The results left my family and I disappointed and devastated which caused undue stress. I loved the Army and wanted to complete my 20 years of service so I could walk the stage and be recognized for my service just as so many dedicated soldiers before me (some with disabilities worse than mine). Unfortunately, I was never afforded the opportunity. I would like to have the opportunity for myself and family to have full retirement benefits. Under these circumstances, I believe I was not properly boarded and request to have my case re-examined.” He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in DoDI 6040.44, Enclosure 3, paragraph 5.e.(2) is limited to those conditions which were determined by the PEB to be specifically unfitting for continued military service; or, when requested by the CI, those condition(s) “identified but not determined to be unfitting by the PEB”. The service ratings for unfitting conditions will be reviewed in all cases. Any conditions or contention not requested in this application, or otherwise outside the Board’s defined scope of review, remain eligible for future consideration by the Army Board for the Correction of Military Records (BCMR).

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service IPEB – Dated 20080227** | **VA (1 Mo. After Separation) – All Effective Date 20080501** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bilateral Sensorineural Hearing loss | 6100 | 0% | Bilateral sensorineural hearing loss | 6100 | 0% | 20080610 |
| Deviated nasal septum | Not Unfitting | Residuals of broken septum | 6502 | NSC | 20080610 |
| Hyperlipidemia | Not Unfitting | Not VA Rated  |
| Shoulder pain | Not Unfitting | DJD Left Shoulder | 5003-5203 | 10% | 20080610 |
| Heel spurs | Not Unfitting | Heels Spurs | 5299-5284 | NSC | 20080610 |
| Occasional low back pain | Not Unfitting | Low back pain | 5237 | NSC | 20080610 |
| Lipomas  | Not Unfitting | Not VA Rated  |
| ↓No Additional MEB/PEB Entries↓ | Tinnitus | 6260 | 10% | 20080610 |
| Residuals s/p resection of the right distal clavicle | 5299-5203 | 10% | 20080610 |
| Not Service Connected x 1 | 20080610 |
| **Combined: 0%** | **Combined: 30%** |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed by the CI regarding his desire to continue his service until retirement and the stress of his military separation. The Disability Evaluation System (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. The Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to the CI’s statements in the application regarding suspected DES improprieties in the processing of his case.

Sensorineural hearing loss: A July 2007 audiometric examination demonstrated significant hearing loss: mild to moderate sensorineural hearing loss above 1,000Hz in his right ear and a severe sensorineural hearing loss above 1,000Hz in the left ear. The CI was issued a permanent H3 profile and underwent an MEB in accordance with Army regulations (AR 40-501) leading to disability discharge. Results of audiometric evaluations are displayed in the chart below:

|  |  |  |  |
| --- | --- | --- | --- |
| HEARING | EXAM | MEB ~5 Mo. Pre Sep | VA C&P ~2 Mo. After Sep |
| LEFT EAR | Average Hearing Loss | 53 dB | 48 dB |
| Speech Discrimination | 88% | 92% |
| Table VI / VIa | II / III | I / II |
|  RIGHT EAR | Average Hearing Loss | 53 dB | 45 dB |
| Speech Discrimination  | 88% | 94% |
| Table VI / VIa | I / III | I / II |
| §4.85 RATING  | Table VII | 0% | 0% |

(Average hearing loss is the sum of pure tone thresholds at 1000, 2000, 3000, and 4000 Hz divided by four)

Application of VASRD §4.85 for both the MEB and VA Compensation and Pension (C&P) examinations yields a 0% rating. Although the alternate rating approach in §4.86a does not apply, rating using the alternate Table VIa does not result in a higher rating. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the hearing loss condition.

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 sensorineural hearing loss condition and IAW VASRD §4.85, the Board unanimously recommends no change in the PEB adjudication. There were no other conditions within the Board’s scope of review for consideration.

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** |
| Bilateral Sensorineural Hearing Loss | 6100 | 0% |
| **COMBINED** | **0%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110725, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

 XXXXXXXXXXXXXXXXXXXXXX

 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 XXXXXXXXXXXXXXXXXXXXXXXXXXXX, AR20120015490 (PD201100556)

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 concerned, 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 XXXXXXXXXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA