RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100561 SEPARATION DATE: 20061115

BOARD DATE: 20120815

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a Reserve member SGT/E-5 (76V, Materiel Storage and Handling Specialist and 88M/Motor Vehicle Operator), medically separated for chronic anti-coagulation secondary to recurrent pulmonary embolism. The CI related a history of deep vein thrombosis (DVT) in his left calf in 1994 with blood thinners (Coumadin) for one-year with resolution of symptoms. In 2004, the CI developed dyspnea on exertion (DOE) and chest pain with decreased exercise ability. Increased symptoms in 2005 led to medical evacuation from Iraq. The CI had an abnormal ventilation perfusion (VQ) scan and diagnosis of pulmonary embolism. He was place on Coumadin and had initial decrease in symptoms. While on Coumadin, he had increased chest pain symptoms and was found to have multiple pulmonary emboli on VQ scan. His chronic pulmonary embolism required life-long anticoagulation therapy. He could not meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent P3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded recurrent pulmonary emboli causing shortness of breath (SOB) and requiring lifelong anticoagulation as medically unacceptable and also identified and forwarded five conditions as charted below as medically acceptable. The Physical Evaluation Board (PEB) (PEB) adjudicated chronic anti-coagulation secondary to recurrent pulmonary embolism as unfitting (service incurred and/or aggravated), rated 0%, with application of the Department of Defense Instruction (DoDI) 1332.39 and guidance from the US Army Physical Disability Agency (USAPDA). The remaining conditions were determined to be not unfitting. The CI non-concurred with the PEB, and following multiple adjudications, the PEB with administrative correction found the CI unfit indicating an existed-prior-to-service (EPTS) condition which was not permanently service aggravated, but which was a compensable disability IAW 10 USC 1207a. The CI concurred with the PEB administrative change, waived a formal hearing and was medically separated with a 0% combined disability rating.

CI CONTENTION: “SM (service member) separated with joint pain, Graves disease, difficulty breathing, erectile disorder, hypothyroidism, pulmonary embolism, difficulty sleeping. SM still exhibits service connected disabilities currently on medication for E.D. and blood clotting. SM released from WRAMC w/o proper Med Board results or VA compensation. Irregular heart beat, bilateral hearing loss, SOB, DVT. VA compensation 20% only should be increased.”

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. The conditions, Graves disease and hypothyroidism, as requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview and will be addressed together. The conditions of difficulty breathing, SOB, DVT and blood clotting also meet the criteria prescribed in DoDI 6040.44 for Board purview and will be addressed as part of the primary unfitting condition. These are accordingly addressed below in addition to a review of the service rating for the unfitting chronic anti-coagulation secondary to recurrent pulmonary embolism condition. However, DVT as a separately rated condition is outside of the scope of the Board. The other requested conditions, joint pain, erectile disorder, irregular heartbeat, bilateral hearing loss and difficulty sleeping are not within the Board’s purview. 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:

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| **Service PEB – Dated 20060920** | **VA (No VA Exam) – Effective N/A** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic anti-coagulation secondary to recurrent pulmonary embolism | 7199-7121 | 0% | Pulmonary Embolism | 7199-7121 | NSC, NABS\* | STR |
| Latent Tb Infection | Not Unfitting | NO VA ENTRY |
| Prostate Cancer | Not Unfitting | Prostate Cancer | 7528 | NSC, NI/CBS\* | STR |
| Essential Hematuria | Not Unfitting | NO VA ENTRY |
| Graves Disease | Not Unfitting | NO VA ENTRY |
| Hammer Tow, s/p repair | Not Unfitting | S/P 5th L. Toe Surgery | 5282 | NI/CBS\*, | STR |
| ↓No Additional MEB/PEB Entries↓ | N/A |
| Combined: 0% | Combined: N/A\* |

\* These ratings were made by the 20070622 VARD. All claims were denied based on a) pre-existing conditions; b) a lack of evidence of a worsening condition, of permanent residuals or of chronic disability; and c) failures to report for scheduled examinations. (NSC – Not service connected; NABS – Not Aggravated by Service; NI/CBS – Not Incurred/Caused by Service; STR – Service Treatment Records)

ANALYSIS SUMMARY: With regard to the CI’s assertion that he was separated without understanding his medical board results, the Board must note for the record that it has neither the jurisdiction nor authority to scrutinize or render opinions in reference to suspected service improprieties in the disposition of a case. The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-aggravated condition continues to burden him. It is a fact, however, that the Disability Evaluation System (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. This role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA). The DVA, operating under a different set of laws (Title 38, United States Code), 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. The Board utilizes DVA evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12-month interval for special consideration to post-separation evidence. The Board’s authority as defined in DoDI 6044.40, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. 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 PEB’s ruling that the unfitting chronic anti-coagulation secondary to recurrent pulmonary embolism condition was compensable is considered administratively final. The Board’s main charge regarding this condition is determination of the VASRD-only rating of the condition.

Chronic anti-coagulation secondary to recurrent pulmonary embolism condition. The contended conditions of difficulty breathing SOB, DVT and blood clotting will be addressed as they relate to the rating of the condition of pulmonary embolism. During evaluation of his pulmonary embolus condition, the CI related a history of left calf DVT in 1994 with prolonged anticoagulation therapy and resolution of symptoms. There were no medical records detailing the 1994 incident in the case file. At the MEB exam, five months prior to separation, the CI reported continued DOE with running 50 yards without chest pain or edema. He was taking chronic Coumadin. The MEB physical exam noted clear lungs with good inspiratory effort. VQ scan from 10 months prior to separation indicated changes consistent with chronic pulmonary embolus without new defects from prior study. Echocardiogram was read as “normal study without evidence of pulmonary hypertension.” Pulmonary function testing (PFTs) indicated a mild obstructive lung defect with FEV-1 of 78% predicted, and FEV-1/FVC of 73% predicted, with a volume adjusted DLCO in the normal range. The examiner’s diagnosis was “chronic pulmonary embolism requiring life-long anticoagulation.”

There was no VA Compensation and Pension (C&P) exam proximate to separation. This was confirmed by the VA rating determination that indicated no C&P exams were in evidence as the CI failed to show for multiple scheduled exams.

The Board directs attention to its rating recommendation based on the above evidence. The PEB coding of 7199-7121 is analogous to post-phlebitic syndrome of any etiology (DVT) and IAW DODI 1332.39 guidance. The PEB disability description and record clearly supported the principle disability as chronic anti-coagulation secondary to recurrent pulmonary embolism and chronic pulmonary embolus. The appropriate VASRD coding for chronic pulmonary embolus is 6817 (pulmonary vascular disease) and this condition is specified in the 60% rating criteria of 6817. There was no evidence of pulmonary hypertension, right ventricular hypertrophy, or cor pulmonale to support coding at 100%. The Board discussed the PEB’s finding of EPTS without permanent service aggravation and compensable, but determined that IAW Board precedence, the PEB compensable determination was administratively final. The Board considered that there was no mechanism to determine the CI’s pre-service rating level for any EPTS deduction, as the CI was not on chronic anticoagulation therapy, was fully deployable prior to symptom exacerbation while deployed, and the PEB did not indicate a deduction.

After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 60%, coded 6817, for the chronic anti-coagulation secondary to recurrent pulmonary embolism condition.

Contended PEB Conditions. The contended condition adjudicated as not unfitting by the PEB was Graves disease which includes the associated contended condition of hypothyroidism. The Board’s first charge with respect to this condition is an assessment of the appropriateness of the PEB’s fitness adjudication. The Board’s threshold for countering 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. None of these conditions were profiled; none were implicated in the commander’s statement; and, none were judged to fail retention standards. All were reviewed by the action officer and considered by the Board. There was no indication from the record that any of these conditions significantly interfered with satisfactory duty performance. After due deliberation in consideration of the preponderance of the evidence, the Board concluded that there was insufficient cause to recommend a change in the PEB fitness determination for the Graves disease or hypothyroid condition; and, therefore, no additional disability ratings can be recommended.

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 anti-coagulation secondary to recurrent pulmonary embolism was operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the chronic anti-coagulation secondary to recurrent pulmonary embolism condition, the Board unanimously recommends a disability rating of 60%, coded 6817 IAW VASRD §4.97. In the matter of the contended Graves disease (and contended hypothyroidism) condition, the Board unanimously recommends no change from the PEB determination as not unfitting. There were no other conditions within the Board’s scope of review for consideration.

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows; and the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of his prior medical separation:

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Anti-Coagulation Secondary to Recurrent Pulmonary Embolism (Chronic PE)  | 6817 | 60% |
| **COMBINED** | **60%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110729, 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, AR20120015363 (PD201100561)

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 reject the Board’s recommendation and hereby deny the individual’s application. The record does not support a change in the rated disability from *recurrent pulmonary embolism* to *chronic pulmonary embolism*. It is clear that the applicant did not have pulmonary hypertension or right ventricular dysfunction and did not meet the accepted medical criteria for chronic pulmonary embolism. The PEB’s use of DoDI 6040.44 for rating anticoagulant prophylaxis was appropriate and the VA’s use of the same VASRD code for post-phlebitic syndrome supports the PEB analogous rating.

2. 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 XXXXXXXXXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA