RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100569 SEPARATION DATE: 20060921

BOARD DATE: 20120403

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a National Guard member, SPC/E-4 (31B, Military Police), medically separated for bilateral exophthalmos of unknown etiology*.* His symptoms began shortly after activation in 2003. Over the ensuing 3 years he underwent a thorough evaluation, but a definitive cause of his condition could not be determined. In 2005 the CI was additionally diagnosed with moderate obstructive sleep apnea (OSA), which responded favorably to treatment. These conditions were considered to have received optimum care, but he remained unable to fully perform within his Military Occupational Specialty (MOS). He was issued a permanent P3/U3 profile and referred for a Medical Evaluation Board (MEB). The eye disorder, characterized as “bilateral exophthalmos with bilateral dacroadenitis and granuloma in the left lacrimal gland,” and OSA were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable conditions IAW AR 40-501. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) file will be discussed below. The PEB adjudicated the bilateral exophthalmos condition as unfitting, rated 20% with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). The OSA condition was determined to be not unfitting. The CI made no appeals and was medically separated with a 20% service disability rating.

CI CONTENTION: “Sleep Apnea and Bilateral Exothalmus [sic] received recognition in the PEB process. However, glaucoma was omitted during the rating process. The chief complaints for eyes were excessive tearing and irritation resulting from chronic dry eye, which presently continues resulting in my inability to function i.e. reading and driving during extreme irritation.” He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

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| --- | --- |
| **Service PEB – Dated 20060807** | **VA (8 months After Separation) – All Effective 20060923** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bilateral Exophthalmos … | 6099-6025 | 20% | Bilateral Exophthalmos | 6079 | 0% | 20070525 |
| Obstructive Sleep Apnea | Not Unfitting | Obstructive Sleep Apnea | 6847 | 50% | 20070525 |
| No Additional MEB/PEB Entries | 0% x 1 | 20070525 |
| **Combined: 20%** | **Combined: 50%\*** |

\* Rating increased to 80% effective 20090123 with addition of Bilateral Glaucoma with Exophthalmos 6013-6080 rated 50%.

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 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 (glaucoma). 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.

Bilateral Eye Condition. The CI first noted symptoms of swelling of the eyes with tearing and burning. He underwent an exhaustive evaluation; but, while a number of diagnoses were assigned with respect to symptoms, ultimately no definitive diagnosis was made. Over the course of the evaluation he developed progressive bulging of the eyes (exophthalmos) with inflammation of the tear-producing glands (dacroadenitis), a small granuloma in the left tear gland, and glaucoma. He responded well to treatment for glaucoma; but, saw only intermittent and non-sustained improvement in his other eye symptoms, despite systemic steroids and a course of radiation therapy. Corrected visual acuity remained 20/20 for each eye throughout the MEB course; and, visual field assessments remained normal. The MEB examiner documented significant bilateral exophthalmos, with the left being much more prominent than the right; moderate enlargement of the lacrimal ducts above both eye lids; and, a small movable and slightly tender nodule found in the left lacrimal duct. A VA Compensation & Pension (C&P) exam (8 months after separation) recorded corrected distance vision as 20/25 in each eye, with normal visual fields. The PEB and VA chose different coding options for the condition. The initial VA rating decision identified exophthalmos as a service-connected condition; and, applied code 6079 (rating based on visual acuity) which yielded a noncompensable rating. The PEB’s DA Form 199 recognized exophthalmos (with the associated lacrimal pathology) as the unfitting condition; which was coded analogously to 6025 (disorders of the lacrimal apparatus). The maximum rating under 6025 is the 20% (for bilateral involvement) which was conferred. The PEB’s approach complies with VASRD §4.7 (higher of two evaluations); and, no other applicable code under VASRD §4.79 (eye disorders) would yield a rating higher than 10%. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the bilateral eye condition.

Contended Glaucoma Condition. The CI’s application asserts that service disability rating should be considered for glaucoma. Glaucoma was diagnosed incidentally on an ophthalmology follow-up visit in July, 2005 (14 months prior to separation). Intraocular pressure (IOP) was modestly elevated to 27 in each eye (normal 10 - 20). Eye drops were started, and normal IOP was documented on numerous visits afterwards. The VA C&P examiner likewise measured normal IOP bilaterally. The VA did not initially identify or service-connect the glaucoma condition; but, in 2009 did confer a 50% rating for glaucoma based on associated visual field defects first detected by an exam dated 27 months after separation. With no visual acuity or visual field deficits associated with the well controlled and asymptomatic glaucoma condition during service, there were no functional consequences that could be argued as unfitting. The Board concluded therefore that the glaucoma condition cannot be recommended for additional service disability rating.

Other PEB Conditions. The other condition forwarded by the MEB and adjudicated as not unfitting by the PEB was OSA. This condition was diagnosed by a sleep study in August, 2005 in evaluation of fatigue and daytime somnolence. After continuous positive airway pressure (CPAP) was instituted the CI reported significant improvement in symptoms. Nevertheless, the condition carried a P3 profile with duty restrictions to allow access to electricity for CPAP operation. Routinely OSA is not considered unfitting solely on the basis of field and operational impediments to the use of CPAP. There is no evidence in this case that OSA was associated with any unfitting impairments not corrected by CPAP. The PEB’s fitness adjudication was therefore expected and reasonable. 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 OSA condition.

Remaining Conditions. The only other condition identified in the core DES file was a history of right wrist fracture. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were 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 service disability 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 service disability 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. The Board did not surmise from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised. In the matter of the bilateral exophthalmos/dacroadenitis condition and IAW VASRD §4.79, the Board unanimously recommends no change in the PEB adjudication. In the matter of the OSA condition, the Board unanimously recommends no change from the PEB determination as not unfitting. In the matter of the contended glaucoma condition, the Board unanimously agrees that it cannot recommend a finding of unfit for additional service disability rating. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as unfitting for additional service disability rating.

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** |
| Bilateral Exophthalmos with Dacroadenitis | 6099-6025 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110801, 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 XXXXXXXXXXX, AR20120008234 (PD201100569)

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 XXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA