RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: Army

CASE NUMBER: PD1100616 SEPARATION DATE: 20011217

BOARD DATE: 20110322

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty, SSG/E6 (11B, Infantryman), medically separated for bilateral sensorineural hearing loss with tinnitus. He was a boxer training for the U.S. olympic team and had exposure to loud noise prior to sudden onset of auditory symptoms. He did not respond adequately to treatment and hearing aids and was unable to perform within his Military Occupational Specialty (MOS). He was issued a permanent H4 profile and underwent a Medical Evaluation Board (MEB). Flat bilateral sensorineural hearing loss, moderately severe with tinnitus was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. 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 combined bilateral sensorineural hearing loss with tinnitus as unfitting, rated 10%, with application the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI appealed to the Formal PEB (FPEB), but then withdrew his demand, accepting the PEB findings and recommendations. He was then medically separated with a 10% disability rating.

CI CONTENTION: “Bi-lateral hearing loss and tinnitus.” He elaborates no specific contentions regarding rating or coding aside from his VA ratings (10% + 10%), and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20010910** | | | **VA (4 days Pre Separation) – All Effective Date 20011218** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Sensorineural Hearing Loss with Tinnitus | 6100-6260 | 10% | Bilateral Hearing Loss | 6100 | 10%\* | 20011214 |
| Tinnitus | 6260 | 10% | 20011214 |
| ↓No Additional MEB/PEB Entries↓ | | | 0% x 2/Not Service Connected x 3 | | | 20011214 |
| **Combined: 10%** | | | **Combined: 20%\*** | | | |

\* This rating was decreased to 0% effective June 1, 2005 (combined 10%) due to a clear and unmistakable error in the initial rating.

ANALYSIS SUMMARY:

Sensorineural Hearing Loss with Tinnitus Condition. The Board considered the PEB determination for bilateral senisorineural hearing loss and tinnitus as administratively final. The narrative summary (NARSUM) indicated the CI’s sudden hearing loss correlated with poor speech discrimination. Brain imaging was normal. The CI’s initial severe speech discrimination was slightly improved with treatment. The PEB specified hearing decibel average and speech discrimination values as: “Hearing, average pure tone loss and percent discrimination, right ear - 42.5 db/84%, left ear - 45 db/80%.” The source audiologic evaluation for the quoted speech discrimination values was not found in the record, although the puretone values for the PEB averages were noted on the MEB DD Form 2808 as from an evaluation of March 2001 (“03/01”). There were two audiologic evaluations including pure tone audiograms and speech discrimination, proximate to separation, which the Board weighed in arriving at its rating recommendation. These exams are summarized in the chart below including a more distant Department of Veterans’ Affairs (DVA) evaluation.

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Separation Date: December 17, 2001 | | | | | | | | |
| Audiometric Threshold (Hz) → | 500 | 1000 | 2000 | 3000 | 4000 | 6000 | Comments | § 4.85/6 Rating |
| MEB/DD 2808 April 11, 2001 (~8mos Pre-Sep) | | | | | | | Tinnitus bilaterally | 10% |
| Right | 45 | 55 | 50 | 40 | 25 | 15 | Average R=42.5, L=45;  Speech Descrim R=84%, L=80% | 0% |
| Left | 50 | 45 | 45 | 45 | 40 | 70 |
| VA Audiological Evaluation December 14, 2001 (<1 mos Pre-Sep) | | | | | | | Tinnitus bilaterally | 10% |
| Right | 55 | 55 | 60 | 60 | 45 | 50 | Average Avg R=55, L=60\*;  Speech Descrim R=96%, L=96% | 0%  (VA 10%) |
| Left | 60 | 60 | 60 | 65 | 55 | 60 |
| C&P Audiology August 19, 2004 (~4 years Post-Sep) | | | | | | | Tinnitus bilaterally | 10% |
| Right | -- | 60 | 55 | 55 | 45 | -- | Average R=51, L=67.5\*;  Speech Descrim R=96%, L=92% | 0% |
| Left | -- | 70 | 65 | 70 | 65 | -- |

\* Table VIa applied IAW §4.86, Exceptional patterns of hearing impairment, note (a)

The Board noted that earlier audiologic evaluation from 8 January 2001, 11 months prior to separation, indicated speech discrimination of 72% for both ears, as was noted in the NARSUM, with average decibel loss less than 50 average which met the 10% rating criteria. There was a history of a perforated ear drum that had resolved as documented by impedence tympanogram exams.

The PEB-referenced audiologic data and both the VA Compensation and Pension (C&P) exam, one month prior to separation and remote from separation, all demonstrated pure tone and speech discrimination loss that did not rise to the 10% rating criteria under VASRD §4.85 or §4.86. All exams indicated tinnitus which meets the 10% rating criteria under code 6260 (tinnitus, recurrent). The Board adjudged that the VA exam prior to separation supported the PEB-stated values, was closest to separation, and had the highest probative value for rating.

All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s 10% rating and coding decision for the bilateral sensorineural hearing loss with tinnitus condition.

Remaining Conditions. Another condition identified in the DES file was a right hand (index finger) condition and 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 a subject to separation rating. Additionally other non-acute conditions were noted in the VA exams proximal to separation, but were not documented 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.

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 sensorineural hearing Loss with tinnitus condition and IAW VASRD §4.85 and §4.86, the Board unanimously recommends no change in the PEB adjudication at separation. In the matter of the left hand (index finger) 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, therefore, recommends that there be no recharacterization of the CI’s disability and separation determination, as follows:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Sensorineural Hearing Loss with Tinnitus | 6100-6260 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110808, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs Treatment Record

President

Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation

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

Deputy Assistant Secretary

(Army Review Boards)