RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100644 SEPARATION DATE: 20050717

BOARD DATE: 20120516

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SFC/E-7 (92G, Food Service Specialist) medically separated for severe bilateral sensorineural hearing loss*.* He initially noticed hearing loss in 1991 after firing range exposure. He was evaluated and issued an H2 profile, and in 1995 he underwent a Military Occupational Specialty (MOS)/Medical Retention Board (MMRB) for the hearing condition. The MMRB recommended removal from his original weapons system MOS, and he was reclassified to a 92G with a permanent H3 profile. His hearing issue persisted, and worsened after a 2003 deployment to Iraq; and, he underwent another MMRB in 2005 which recommended a Medical Evaluation Board (MEB). The progressive bilateral hearing loss condition was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB submission. The PEB adjudicated the condition 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 that disability rating.

CI CONTENTION: “1. I have had major Depression since I left the Service and have been on medications for 6 years. 2. Lower back strain has been an issue since I left the Service at my current job. 3. Hearing loss has become worse since I left the Service when I am at work.” He does not elaborate further or note any 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. Although the Board will review the service rating for the unfitting hearing loss condition, the depression and lumbar conditions requested for consideration do not meet the criteria prescribed in DoDI 6040.44 for Board purview. Those, or any other conditions or contention outside the Board’s defined scope of review, remain eligible for future consideration by the Army Board for the Correction of Military Records (ABCMR).

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20050607** | | | **VA (2 & 13 Mo. Post-Separation) – All Effective Date 20050718** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bilateral Sensorineural Hearing Loss | 6100 | 0% | Bilateral Hearing Loss | 6100 | 0% | 20050901 |
| No Additional MEB/PEB Entries | | | Major Depression | 9434 | 10% | 20060802 |
| 0% X 2 / Not Service-Connected x 1 | | | 20050901 |
| **Combined: 0%** | | | **Combined: 10%** | | | |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-connected conditions continue 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 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 utilizes DVA evidence proximate 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 rating determinations for the disability existing at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability at the time of separation.

Bilateral Sensorineural Hearing Loss. The CI developed early symptoms of hearing loss associated with live fire training while in his infantry MOS. In 1992 he was issued an H2 profile and advised in hearing precautions. His hearing continued to deteriorate, however, and in 1994 he was profiled H3; he was referred for an MMRB; and, he was subsequently reclassified to his food services MOS. After an Iraq deployment in 2003 his hearing symptoms escalated, now associated with tinnitus; and, a diagnosis of severe bilateral sensorineural impairment was made by audiology. A second MMRB recommended an MEB rather than another reclassification. The results of his MEB and VA (2 months after separation) audiology evaluations are summarized in the chart below.

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Threshold (Hz) →** | **500** | **1000** | **2000** | **3000** | **4000** | **6000** | **Comments** | **§4.85 Rating** |
| **MEB Audio ~6 Mo Pre-Sep** | | | | | | | Average: R 51 / L 55  Speech Discrimination:  R 96% / L 96% | 0% |
| Right | 25 | 30 | 30 | 65 | 80 | 70 |
| Left | 20 | 25 | 35 | 75 | 85 | 85 |
| **VA Audio ~2 Mo. Post-Sep** | | | | | | | Average: R 40 / L 49  Speech Discrimination:  R 92% / L 88% | 0% |
| Right | 25 | 15 | 15 | 45 | 70 | 70 |
| Left | 25 | 15 | 35 | 65 | 75 | 80 |

The Board directs attention to its rating recommendation based on the above evidence. The VASRD §4.85 rating schedule for hearing impairment is completely objective and derived from audiometric testing. It is based on average puretone threshold across the hearing ranges, and accommodates for measured speech discrimination. The charted results of the audiometric evidence in this case yields unequivocal 0% ratings for both sets of data. 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 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. 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 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 recommends that there be no recharacterization of the CI’s disability and separation determination, as follows:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Severe Bilateral Sensorineural Hearing Loss | 6100 | 0% |
| **COMBINED** | **0%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110811, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

XXXXXXXXXXXX

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 XXXXXXXXXXXXXX, AR20120009499 (PD201100644)

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 XXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA