RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXX BRANCH OF SERVICE: air force

CASE NUMBER: PD1100670 SEPARATION DATE: 20080722

BOARD DATE: 20120229

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SrA/E-4 (3E2X1, Heavy Equipment Operator) medically separated for migraine headaches. The CI had a chronic history of frequent headaches which usually resolved with sleep and over-the-counter (OTC) pain medication, but worsened around 2007. An extensive evaluation revealed a benign pineal cyst and mild sleep apnea, but failed to determine a cause of the persistent headache condition. A wide variety of headache treatment regimens were attempted without success. The CI was issued a 4-T profile with assignment restrictions that rendered him unable to fully perform within his Air Force Specialty (AFS) or deploy; and, he was consequently referred for a Medical Evaluation Board (MEB). Sleep apnea and migraine headache were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable conditions IAW AFI 48-123. No other conditions appeared on the MEB’s submission. Other conditions as contended or included in the Disability Evaluation System (DES) file are addressed below. The PEB adjudicated the migraine condition as unfitting, rated 0%, referencing the Veterans Administration Schedule for Rating Disabilities (VASRD); and, adjudicated the sleep apnea condition as category II, “conditions that can be unfitting, but are not currently compensable or ratable.” The CI made no appeals, and was medically separated with a 0% disability rating.

CI CONTENTION: “I was discharge do [sic] migraines. I has also have PTSD, Pineal cyst, Sleep apnea, and plantar fasciitis which was rated for by the VA.” He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20080411** | | | **VA (9 Mo. After Separation) – All Effective 20080723** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Migraine Headaches | 8100 | 0% | Migraine Headaches | 8100 | 10%\* | 20081017 |
| Pineal Cyst | 8022 | 0%\* | 20081017 |
| Obstructive Sleep Apnea | Category II | | Obstructive Sleep Apnea | 6847 | 50% | 20081017 |
| ↓No Additional MEB/PEB Entries↓ | | | Plantar Fasciitis | 5299-5278 | 10% | 20081017 |
| 0% x 1 / Not Service Connected x 1 | | | 20081017 |
| **Combined: 0%** | | | **Combined: 60%\*** | | | |

\* In a rating decision dated 20110317 the headache and pineal cyst conditions were subsumed under the new code 8003

(brain, new growth) rated 60% (combined 80%), retro-effective to separation.

ANALYSIS SUMMARY: The Board acknowledges the CI’s contention that suggests service ratings should have been conferred for other conditions documented at the time of separation. The Board wishes to clarify that it is subject to the same laws for service disability entitlements as those under which the Disability Evaluation System (DES) operates. 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. However the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions and to periodically reevaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time.

Migraine Headaches Condition: The CI reported a lifelong history of intermittent headaches that became persistent beginning in May 2007. He also reported a number of concussive injuries over his lifetime. Imaging was normal except for a large pineal gland cyst (21 X 9 mm, unchanged from prior study). The radiologist opined that this cyst was benign. Neurology and neurosurgery were consulted, and both specialists opined that the cyst was a benign incidental finding and noncontributory to the CI’s headache condition. Review of the service treatment record (STR) reveals a single episode of confinement to quarters for headache 15 months prior to separation. There is no other objective evidence of prostrating episodes due to headache. The commander’s statement described the CI as a “dependable journeyman” and a “reliable asset to this unit” prior to being issued a profile that restricted deployment. It further stated that the CI would be “a good candidate for retraining to a career field that does not require deployment qualifications.” The MEB examiner recorded a normal physical exam. At the VA Compensation & Pension (C&P) exam (nine months after separation) the CI reported daily headaches, but the examiner elaborated that when “headaches occur, he is able to go to work but requires medication.” The physical exam was normal. The examiner opined, regarding the migraine diagnosis, that there “is no diagnosis because there is no pathology to render a diagnosis. Headaches as likely as not due to cyst.” Both the PEB and VA assigned the standard headache code 8100. The PEB rated the condition 0% in compliance with the VASRD §4.124a requisite for rating based on frequency of prostrating headaches. The VA rating decision explained its assigned 10% rating thus: “Although your migraines are not prostrating, the evidence of almost constant pain that was unfitting for your last occupation and requires constant medication warrants a 10 percent evaluation.” The VA initially assigned an additional 0% rating for the pineal cyst under the anatomically erroneous code 8022 (benign spinal cord growths). Two and a half years after separation the VA determined that an error was made in rating the headache and pineal gland cyst conditions. A new code 8003 (benign brain growths) was substituted for the earlier 8100 and 8022 codes, subsuming both conditions in support of a 60% rating.

The Board directs attention to its rating recommendation based on the above evidence. It is clear that the rating under 8100 hinges on the frequency of “prostrating” attacks; and, it is incumbent on the Board to apply DoDI 6040.44-compliant and uniform criteria which would define a recurrent migraine episode as “prostrating” and ratable. Under DoDI 6040.44, the Board is directed to: “Use the VASRD in arriving at its recommendations, along with all applicable statutes, and any directives in effect at the time of the contested separation (to the extent they do not conflict with the VASRD in effect at the time of the contested separation).” Since the VASRD does not provide a definition of “prostrating,” it can be argued that the Board is directed to apply the DoDI 1332.39 definition which requires evidence that medical treatment is sought for each rated episode. The Board, by precedence, has not required rigid proof of medical attention for each and every episode to characterize it as prostrating; but, does require reasonably convincing evidence that rated attacks force the abandonment of work or current activity to treat the migraine; although, self-management (medication and/or sleep) has been accommodated within this threshold. The Board carefully considered the historical and subjective data presented, but was ultimately confronted by the complete absence of objective evidence or corroborating subjective evidence that this threshold was met for any occurrence of migraine within one year of separation in this case. The VA rater’s rationale for conferring a 10% rating, although constituting a reasonable individual opinion, is not compliant with the rating criteria expressly provided under VASRD §4.124a. The Board is not empowered, IAW specific directives of DoDI 6040.44, to take latitude with the VASRD in effect in its recommendations.

The Board next considered the VA’s amended approach of deeming the headache condition to be a residual of the pineal cyst condition, and rated under the 8003 neoplastic code. This was rationalized by the VA examiner’s opinion that the CI’s headaches were “as likely as not” attributable to the pineal cyst; although, none of the other military and civilian consulted specialists involved in this case shared that opinion. The action officer researched the medical likelihood of this link. Although there are some studies establishing a statistical relationship between migraine and pineal cyst (without regard to size of the latter), the majority of investigations (and the larger cohorts) do not suggest a causal relationship of pineal cysts with headaches. The action officer opines therefore that, more likely than not, the pineal cyst was incidental to the headache evaluation and not a directly related condition. In light of this considerable contradictory evidence, the members agreed that there is inadequate support for either the addition of pineal cyst as an unfitting condition for separation rating; or, for subsuming the unfitting headache condition under a neoplastic code to achieve a higher rating.

After due deliberation in consideration of the totality of the evidence, the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication of the migraine headache condition; or, to recommend a service rating linked to the pineal cyst condition.

Other PEB Conditions. The other condition forwarded by the MEB and adjudicated as not unfitting by the PEB was obstructive sleep apnea (OSA). Sleep disturbance was evaluated as a possible cause of, or contributing factor to, the CI’s headache condition. A sleep study revealed mild OSA with excellent sleep efficiency and duration. A nasal continuous positive airway pressure (CPAP) device was recommended. A relevant passage from the narrative summary (NARSUM) is excerpted below.

[CI] reports not using his CPAP because it irritates him and he has not noticed any benefits while using it. [The consulted sleep specialist] recommended a dental device. [CI] refuses this treatment. He states, "It aint killed me yet. It aint going to.”

There is thus no evidence in support of a compensable rating for OSA at separation, even if it is conceded as unfitting. This condition was not profiled or implicated in the commander’s statement. OSA was reviewed by the action officer and considered by the Board. There was no indication from the record that this condition significantly interfered with satisfactory duty performance. All evidence considered there is not reasonable doubt in the CI’s favor supporting a change in the PEB fitness adjudication for the OSA condition.

Other Contended Conditions. The CI’s application implies that compensable ratings should be considered for plantar fasciitis and posttraumatic stress disorder (PTSD). The plantar fasciitis condition was not profiled, implicated in the commander’s statement or noted as failing retention standards. This condition was reviewed by the action officer and considered by the Board. There was no evidence for concluding that plantar fasciitis interfered with duty performance to a degree that could be argued as unfitting. Regarding PTSD, there is no evidence of any psychiatric diagnosis prior to separation; and thus no psychiatric condition was addressed by the PEB. PTSD was diagnosed and rated by the VA two years after separation. By policy and precedent the Board has limited its jurisdiction for recommending unadjudicated conditions as unfitting and subject to additional separation rating to those conditions which are evidenced in the core DES file. The core DES file consists of the MEB referral document, the PEB adjudication document, the NARSUM (including any addendums or referenced examinations), the MEB physical exam, the Commander’s statement, the physical profile(s), and any written appeals or internal DES correspondence. Contended conditions which are not eligible for Board recommendations on this basis remain eligible for submission to the Air Force Board for Corrections of Military Records (AFBCMR).

Remaining Conditions. No other conditions were noted in the NARSUM, identified by the CI on the MEB physical or found elsewhere in the DES file. 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 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 migraine headache condition and IAW VASRD §4.124a, 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 adjudication as not unfitting. In the matter of the contended pineal cyst and plantar fasciitis conditions, the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation. In the matter of the contended PTSD, the Board unanimously agrees that it is ineligible for a recommendation regarding service disability rating. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as additionally unfitting for rating at separation.

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** |
| Migraine Headaches | 8100 | 0% |
| **COMBINED** | **0%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110624, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs Treatment Record

XXXXXXXXX

President

Physical Disability Board of Review

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

Dear XXXXXXXXXXX

Reference your application submitted under the provisions of DoDI 6040.44 (Title 10 U.S.C. §  1554a), PDBR Case Number PD-2011-00670

After careful consideration of your application and treatment records, the Physical Disability Board of Review determined that the rating assigned at the time of final disposition of your disability evaluation system processing was appropriate. Accordingly, the Board recommended no re-characterization or modification of your separation with severance pay.

I have carefully reviewed the evidence of record and the recommendation of the Board. I concur with that finding and their conclusion that re-characterization of your separation is not warranted. Accordingly, I accept their recommendation that your application be denied.

Sincerely,

XXXXXXXXXX

Director

Air Force Review Boards Agency

Attachment:

Record of Proceedings