RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXX BRANCH OF SERVICE: air force

CASE NUMBER: PD1100711 SEPARATION DATE: 20070817

BOARD DATE: 20120222

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty TSgt/E-6 (2A671B, Aerospace Propulsion Craftsman, Turboprop and Turboshaft), medically separated for right ear sensorineural hearing loss. The CI complained of sudden onset of hearing loss and ringing in his right ear while deployed in 2006. Despite treatment of an acute ear infection and mastoiditis, he had a permanent sensorineural hearing loss which is not amenable to hearing aids (augmentation devices). He was restricted from flightline duties and noise exposure and moved into a supervisory position. He was profiled H3 and underwent a Medical Evaluation Board (MEB). Right ear sensorineural hearing loss was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AFI 48-123. 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 right ear sensorineural hearing loss condition as unfitting, rated 0%; with application of Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 0% disability rating.

CI CONTENTION: The CI states: “Due to the fact that I was involuntarily separated, yet received a 0% service rating, I would just like to have this MEB/PEB disability rating reviewed for fairness, consistency, and accuracy.” He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20070507** | | | **VA (2 Mo. After Separation) – All Effective Date 20070818** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Sensorineural Hearing Loss | 6100 | 0% | Bilateral Hearing Loss | 6100 | 10%\* | 20071024 |
| Tinnitus | 6260 | 10% | 20071024 |
| ↓No Additional MEB/PEB Entries↓ | | | 0% x 1 | | | 20071026 |
| **Combined: 0%** | | | **Combined: 20%** | | | |

\* VA rating based on exam most proximate to date of permanent separation.

ANALYSIS SUMMARY: The Board considered the PEB determination for sensorineural hearing loss right ear as administratively final and noted the PEB rationale of “you are unable to work on the flightline, which prevents you from performing the full scope of duties of your AFSC.”

Hearing Loss (Including Tinnitus). The narrative summary indicated the CI’s sudden hearing loss and onset of tinnitus were at the same time. There were two very comprehensive 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.

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Audiometric Threshold (Hz) → | 500 | 1000 | 2000 | 3000 | 4000 | 6000 | Comments | §4.85/6 Rating |
| MEB Audio ~9 mos Pre-Sep | | | | | | | Ipsilateral acoustic reflexes primarily absent with probe right | 10%  (PEB 0%) |
| Right | 55 | 70 | 80 | 75 | 80 | 95 | Average R=76, L=5;  Speech Descrim R=4%, L=100% |
| Left | 5 | 5 | 5 | 5 | 5 | 15 |
| ~2 mos Post-Sep | | | | | | | Tinnitus bilaterally | 10% |
| Right | 20 | 20 | 65 | 85 | 80 | 80 | Average Avg R=63, L=18;  Speech Descrim R=12%, L=92% |
| Left | 15 | 20 | 10 | 10 | 30 | 15 |

The audiologic exam, nine months pre-separation, indicated a moderate to profound primarily sensorineural hearing loss in the right ear with normal hearing on the left. Word recognition scores were poor in his right ear (4%) and excellent in his left ear; and Ipsilateral acoustic reflexes were absent with probe right.

The VA Compensation and Pension (C&P) exam, two months post-separation, demonstrated slightly less pure tone and speech loss of the right ear and minimally worse left ear values as charted above. The VA examiners indicated tinnitus present bilaterally and indicated that tinnitus was a partial causative factor of hearing loss; speech recognition was 14% in the right ear and 92% in the left.

Application of §4.86 [exceptional patterns of hearing impairment (a)] was applicable to the service exam only. IAW Tables VI, VIa and VII, both exams would rate at 10% for hearing loss. In addition to the pure tone audiogram deficit, the CI had bilateral tinnitus associated with his hearing loss that more likely than not significantly effected his hearing and speech recognition. The VA examiners made a specific link as having the same etiology and being part of the cause of the hearing loss. The Board considered if the unfit hearing condition included, excluded, or overlooked the CI’s tinnitus. Tinnitus by itself is not considered unfitting, unless there is a clear tie to performance. Additionally, the significant speech discrimination deficit very likely had contribution from the CI’s tinnitus. The Board considered if the tinnitus were bundled with the sensorineural hearing loss and was therefore able to be unbundled (reasonable doubt), or must meet the threshold (preponderance of the evidence) for an additionally unfitting condition. There was no evidence of dizziness, vertigo, or surgery near the endolymph system to consider alternate coding under 6205, Meniere’s syndrome (endolymphatic hydrops).

The Board adjudged that the tinnitus condition was materially connected and worsened the CI right ear hearing condition and should be separately rated. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends separation ratings of 10% coded 6100 and 10% coded 6260 (Tinnitus) for the hearing loss condition.

Remaining Conditions. Other conditions identified in the DES file were ingrown toenail and migraine headaches. 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 separation 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 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. In the matter of the hearing loss condition, the Board unanimously recommends a service disability rating of 10%, coded 6100 IAW VASRD §4.85. In the matter of the tinnitus condition, the Board unanimously recommends that it be added as an additionally unfitting condition for separation rating, coded 6260 and rated 10% IAW VASRD §4.87. 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 recommends that the CI’s prior determination be modified as follows, effective as of the date of his prior medical separation:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Sensorineural Hearing Loss | 6100 | 10% |
| Tinnitus Connected to Hearing Loss | 6260 | 10% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110821, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs Treatment Record

XXXXXXXXXXX

President

Physical Disability Board of Review

SAF/MRB

1500 West Perimeter Road, Suite 3700

Joint Base Andrews MD 20762

Dear XXXXXXXXXX

Reference your application submitted under the provisions of DoDI 6040.44 (Title 10 U.S.C. §1554a), PDBR Case Number PD-2011-00711.

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 not appropriate under the guidelines of the Veterans Administration Schedule for Rating Disabilities. Accordingly, the Board recommended modification of your assigned disability rating without re-characterization 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, accept their recommendation and direct that your records be corrected as set forth in the attached copy of a Memorandum for the Chief of Staff, United States Air Force. The office responsible for making the correction will inform you when your records have been changed.

Sincerely,

XXXXXXXXXXXXXX

Director

Air Force Review Boards Agency

Attachments:

1. Directive

2. Record of Proceedings

cc:

SAF/MRBR

DFAS-IN

PDBR PD-2011-00711

MEMORANDUM FOR THE CHIEF OF STAFF

Having received and considered the recommendation of the Physical Disability Board of Review and under the authority of Title 10, United States Code, Section 1554a (122 Stat. 466) and Title 10, United States Code, Section 1552 (70A Stat. 116) it is directed that:

The pertinent military records of the Department of the Air Force relating XXXXXXXXXX, be corrected to show that the diagnosis in his finding of unfitness was Sensorineural Hearing Loss, VASRD Code 6100, rated at 10%; and Tinnitus Connected to Hearing Loss, VASRD Code 6260, rated at 10%; with a combined disability rating of 20%.

XXXXXXXXXX

Director

Air Force Review Boards Agency