RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: xxxxxxxxxxxxxx BRANCH OF SERVICE: Army

CASE NUMBER: PD1100783 SEPARATION DATE: 20040915

BOARD DATE: 20121009

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty CPL/E-4 (11B/Infantryman), medically separated for diabetes mellitus requiring insulin and restricted diet, without documented hypoglycemia after exercising and chronic right mastoiditis status post revision tympanomastoidectomy, without polyps or documented suppuration. The CI developed diabetes mellitus and underwent unrelated surgery for increasing chronic mastoid symptoms in 2003. These conditions did not improve adequately with treatment to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent P3H3 profile and referred for a Medical Evaluation Board (MEB). Type 1 diabetes mellitus, and chronic right mastoiditis, as medically unacceptable, and right sided hearing loss as a medically acceptable condition, identified in the chart below, were forwarded by the MEB. The Informal Physical Evaluation Board (IPEB) adjudicated the diabetes mellitus, and chronic right mastoiditis conditions as unfitting, rated 20% and 0% respectively, with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The hearing loss condition was adjudicated as not unfitting. The CI appealed to the Formal PEB (FPEB), which affirmed the IPEB findings; and was then medically separated with a 20% combined disability rating.

CI CONTENTION: The CI stated “I have Type 1 diabetes that was given 20% and I also have miners [*sic*] syndrome that was documented but I was not given anything for it. Also since I was discharged there have [*sic*] been other things that the VA has found to be wrong with me. I am filing this to see if I qualify for a higher rating.”

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in the Department of Defense Instruction (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 ratings for unfitting conditions will be reviewed in all cases. The Board determined the not unfitting right hearing loss condition, to be within the purview of the Board and it will be discussed below. The remaining conditions rated by the VA at separation and listed on the DA Form 294 application are not within the Board’s purview. Any conditions or contention not requested in this application, or otherwise outside the Board’s defined scope of review, remain eligible for future consideration by the Army Board for Correction of Military Records.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **FPEB – Dated 20040809** | | | **VA (4 ½ Mos. Post-Separation) – All Effective Date 20040916** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Type 1 diabetes mellitus… | 7913 | 20% | Diabetes mellitus, Type 1 | 7913 | 40% | 20050201 |
| Chronic right mastoiditis | 6200 | 0% | Chronic right mastoiditis… | 6200 | 0% | 20050201 |
| Right sided hearing loss | Not Unfitting | | Right sided hearing loss | Subsumed w/6205 | | 20050201 |
| ↓No Additional MEB/PEB Entries↓ | | | Meniere’s Syndrome | 6205 | 30% | 20050201 |
| 0% X 0 / Not Service-Connected x 0 | | | |
| **Combined: 20%** | | | **Combined: 60%** | | | |

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. While the DES considers all of the member's medical conditions, compensation can only be offered for those medical conditions that cut short a member’s career, and then only to the degree of severity present at the time of final disposition. The DES has neither the role nor the authority to compensate members for anticipated future severity or potential complications of conditions resulting in medical separation or for conditions determined to be service-connected by the Department of Veterans’ Affairs (DVA) but not determined to be unfitting by the PEB. However 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’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to VASRD standards, based on severity at the time of separation.

Diabetes mellitus condition. The CI developed new onset diabetes with very elevated blood sugars without ketoacidosis in August 2003. The CI was initially treated with oral hypoglycemic medication, but required insulin by January 2004 when blood sugars remained elevated. At the time of an endocrine evaluation performed on 1 April 2004, 5 months prior to separation, treatment regimen consisted of frequent self-blood sugar testing and daily injections of long acting and short acting insulin. Military activity was restricted on profile, 3 June 2004, 3 months prior to separation, to include no formal physical training (PT) if blood glucose levels were high or low when measured and no two mile run. Sit-ups, pushups, unlimited walking, biking, swimming, upper and lower body weight training, and running at one’s pace and distance were permitted. Diet instructions included: “have three meals a day” and no “extended consumption of MRE’s”. No other restrictions were placed on daily activities. The CI did well with no subsequent hospitalizations or episodes of ketoacidosis. There was only one ER visit, 19 January 2004 for low blood sugar, at a time when insulin was first initiated and the dose being adjusted. No subsequent episodes of hypoglycemia were noted in service treatment records (STRs). At the MEB/narrative summary (NARSUM) exam dictated 28 May 2004, 4 months prior to separation, the CI was continuing insulin therapy, with normal blood glucose levels on 3 consecutive clinic testings performed in October 2003, January and April 2004. No problems with hypoglycemia since January 2004 were noted. At the VA Compensation and Pension (C&P) exam performed on 1 February 2005, 6 months after separation, the CI reported frequent episodes of hypoglycemia responding to oral sugar with a hypoglycemic seizure 2 days prior without hospitalization. The CI noted that he was still adjusting to a new insulin regimen. Blood glucose level was reported as normal.

The Board directs attention to its rating recommendation based on the above evidence. The PEB and VA both rated the diabetes condition under VASRD code 7913, diabetes mellitus, but at different ratings. The PEB rated 20%, citing requirement for insulin and restricted diet. A higher rating of 40% requires these findings plus evidence of regulation of activity. The VA rated at 40% citing insulin, dietary restriction and regulation of activities due to reported frequent hypoglycemic episodes. Both agreed that a higher rating of 60%, requiring episodes of ketoacidosis or hypoglycemic reactions with one or two hospitalizations per year, was not indicated. The Board undertook to determine if a higher rating was indicated for regulation of activity. The Board noted that VASRD §4.119, defines regulation of activity for a diabetic condition as ‘avoidance of strenuous occupational or recreational activities’. This language has been clarified by case law as that situation where avoidance of strenuous activities is medically necessary, prescribed by a physician and supported by medical evidence. Lay evidence alone is insufficient to meet this component of the rating criteria. The MEB reported the CI to have exercise restrictions but referenced only the profile above. A consultation to the MEB performed on 23 June 2004 noted the CI to require regulation of activities without specification or definition. The Board found no other prescriptions for restriction of activity by any health care provider in the record in evidence. The Board noted no episodes of recurrent hypoglycemia/hyperglycemia or glucagon use prior to separation. The Board discussed the activity restrictions contained in the physical profile. Although there was restriction from military physical training when blood sugars were extremely high or unacceptably low, these were not occurring prior to separation according to STRs. These guidelines reflect prudent medical advice applicable to all insulin requiring diabetics and does not equate to the VASRD definition of regulation of activities as avoidance of strenuous occupational and recreational activities. There was no evidence in the service treatment records that indicated medical restriction of normal activities including athletic was required. The profile restriction stated that sit-ups, pushups, unlimited walking, biking, swimming, upper and lower body weight training, and running at one’s pace and distance were permitted. The Board noted the reported frequent hypoglycemia episodes described by the CI on C&P exam were associated with adjusting to a new insulin regimen. There is no documentation of hospitalizations or ER visits for treatment. The Board noted that CI was working 12-hour shifts as a corrections officer, a position with strenuous physical requirements, noted the condition to have occupational effect secondary to lack of stamina, but no effect on daily activities. The Board unanimously agreed the evidence reflects no impairment in ordinary conditions of daily life, including employment and no medically prescribed avoidance of strenuous activities due to his DM, and thus did not meet the 40% criteria. 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 diabetes mellitus, type I condition.

Chronic right mastoiditis. The CI developed a chronic right inner ear condition thought related to recurrent inner ear infections as a child. At the military entry physical examination performed on 22 October 1998, he reported no hearing loss, had a normal ear exam but evidence on audiogram of decreased low frequency hearing in the right ear. He was given an H2 profile and admitted to service. The CI underwent three operative procedures on the inner ear to improve hearing. At the last, performed on 25 February 2004, 5 months before separation, scarring with fixation and erosion of the inner ear bones, retraction of the ear drum and early cholesteotoma (erosive debris collections) were noted. A repair was under taken but the surgeon noted that additional surgical procedures with probable replacement with ear bone prosthesis would be required. At the VA Compensation and Pension (C&P) exam the CI reported occasional drainage and ringing from the right ear and dizziness.

The Board directs attention to its rating recommendation based on the above evidence. The PEB and VA both rated the condition 0% code 6200, chronic right mastoiditis. A higher rating of 10% requires the presence of suppuration or aural polyps. The Board noted no reference to aural polyps in the record in evidence. The Board adhered to the standard medical definitions of ‘suppuration’ as infection with pus/purulence and ‘otorrhea’ as clear drainage. The Board noted references to occasional otorrhea from the right ear without descriptions of suppuration. Absence of drainage is specifically denoted in the MEB and C&P examinations. Antibiotics, suggesting suppuration, were administered only once during a postoperative period. The Board unanimously agreed that a higher rating was not supported by the evidence in record. The Board considered rating under code 6205, Meniere’s syndrome, a condition involving hearing loss, vertigo and tinnitus that could be related to the CI’s unfitting ear condition. The Board noted the CI to have hearing loss, discussed below, and to report occasional tinnitus and dizziness. The Board reviewed the evaluations by ear specialists performed on 20 November 2003, 5 April 2004, and 5 May 2004 specifically documenting no vertigo and the examination by ear specialists performed in August 2004, which reported that the occasional dizziness was ‘not true vertigo’ and not consistent with a diagnosis of Meniere’s syndrome. The Board found no evidence that the occasional dizziness or tinnitus interfered with duties to the extent to be considered unfitting. The hearing loss condition was not unfitting for continued military service (see below). 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 chronic right mastoiditis condition.

Contended PEB Conditions. The contended conditions adjudicated as not unfitting by the PEB was right sided hearing loss. The Board’s first charge with respect to these conditions is an assessment of the appropriateness of the PEB’s fitness adjudications. The Board’s threshold for countering fitness determinations is higher than the VASRD §4.3 (reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 “fair and equitable” standard. Results of audiometric evaluations met auditory standards IAW AR 40-501 for military retention. This 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. After due deliberation, the Board concluded that there was insufficient cause to recommend a change in the PEB fitness determination for the right sided hearing loss condition; and, therefore, no additional disability ratings can be recommended.

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 diabetes mellitus, type I condition and IAW VASRD §4.119 the Board unanimously recommends no change in the PEB adjudication. In the matter of chronic mastoiditis condition and IAW VASRD §4.87, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended right sided hearing loss condition, the Board unanimously recommends no change from the PEB determination as not unfitting. There were no other conditions within the Board’s scope of review for consideration.

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** | |
| Diabetes mellitus, requiring insulin with restricted diet | 7913 | 20% |
| Chronic right mastoiditis | 6200 | 0% |
| **COMBINED** | **20%** | |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110825, 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 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXXXXXXXXXX, AR20120019251 (PD201100783)

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 XXXXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA