RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXX BRANCH OF SERVICE: army

CASE NUMBER: PD1100808 SEPARATION DATE: 20040219

BOARD DATE: 20120525

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (77W/Water Treatment Specialist), medically separated for type I diabetes mellitus*.* He did not respond adequately to treatment and was unable to perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. He was issued a permanent P3, S3 profile and underwent a Medical Evaluation Board (MEB). Type I diabetes mellitus was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Two other conditions, as identified in the rating chart below, were forwarded on the MEB submission as medically acceptable conditions. The PEB adjudicated the Type I Diabetes Mellitus condition as unfitting, rated 20%. The CI appealed to the Formal PEB (FPEB) which upheld the decision of the PEB and he was then medically separated with a 20% disability rating.

CI CONTENTION: “Yes! Because I had other condition [*sic*] related to my service connected disability and VA gave me a 70% service connected for all my condition secondary to Diabetes.” The CI also submitted a letter dated 20110830: “This my statement why I should be retires [*sic*] from the military. I got diagnosed with diabetes in the military in May 14,2003, and wanted to continue my career in the service and Military discharge me because I was unfit for duty. Well I had diabetes with bilateral lower pereupheral [*sic*] neuropathy; hypertension; lumbar spine myositis; depression, migraine headache al [*sic*] due to my service-connected diabetes. All this [*sic*] condition are direct to service and also secondary to my service connected diabetes and was the condition that finds me unfit for duty. The military has the same guidelines as VA and should retire me for all the conditions that are associated with my service-connected diabetes that find me unfit for duty. Kindly reconsider the decision and review this regulation.” The letter included a copy of §3.303 Principles relating to service connection.

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 ratings for unfitting conditions will be reviewed in all cases. The condition of major depressive disorder as requested for consideration meets the criteria prescribed in DoDI 6040.44 for Board purview and is addressed below, in addition to a review of the ratings for the unfitting condition of type I diabetes mellitus. The other contended conditions (bilateral peripheral neuropathy, hypertension, lumbar spine myositis, and migraine headaches) 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 the Correction of Military Records (BCMR).

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service FPEB – Dated 20031029** | **VA (1 Month After Separation) – All Effective Date 20040220** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Type I Diabetes Mellitus | 7913 | 20% | Diabetes Mellitus, Type 1 with Erectile Dysfunction | 7913 | 20% | 20040325 |
| Peripheral Neuropathy, Left Lower Extremity Associated with Diabetes Mellitus, Type 1 with Erectile Dysfunction | 8520 | 10% | 20040325 |
| Peripheral Neuropathy, Right Lower Extremity Associated with Diabetes Mellitus, Type 1 with Erectile Dysfunction | 8520 | 10% | 20040325 |
| Major Depressive Disorder | Not Unfitting | Major Depressive Disorder Associated with Diabetes Mellitus, Type 1 with Erectile Dysfunction | 9434 | 30%\* | 20040316 |
| Chronic Gingivitis | Not Unfitting | Not Addressed |
| ↓No Additional MEB/PEB Entries↓ | Lumbosacral Scoliosis with Degenerative Joint Disease | 5243 | 20% |  |
| Not Service Connected x 4 |
| **Combined: 20%** | **Combined: 70%\*\*****(Bilateral factor of 1.9% for diagnostic codes 8520, 8520)** |

\*Increased to 50% effective 20090127.

\*\*Increased to 80% effective 20090127 with 9434 increased to 50% and Migraine headache 8100 added at 10%.

ANALYSIS SUMMARY: The Board acknowledges the CI’s contention that suggests 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 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. A causality linkage of any condition, such as major depressive disorder, with the unfitting diabetes mellitus condition, even if conceded, is not a basis in itself for separation/disability rating. A concomitant condition of this nature must itself be independently unfitting to merit additional rating. However the Department of Veteran 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. The Board utilizes DVA evidence proximal 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 6040.44, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Type I Diabetes Mellitus. The CI developed signs and symptoms of diabetes mellitus during a joint readiness training center (JRTC) rotation in May 2003. He had fatigue, malaise, nausea and vomiting, headache, and poor appetite. He had also had polyuria, polydipsia, and a weight loss of thirty pounds over the preceding six weeks. His glucose was 855 mg/dl and he was admitted to the hospital for initial management of diabetes. His condition required the use of insulin. At an outpatient visit on 19 May 2003, the endocrinologist noted the CI had a high degree of distress and uncertainty related to his diagnosis of diabetes. He continued to improve his blood sugar control but remained mentally distressed due to his condition and the birth of his first child. By 12 August 2003 his HgbA1C was reduced to 6.5%. An insulin pump was considered in August 2003 but does not appear that he ever received this.

An MEB narrative summary (NARSUM) was completed 28 July 2003 and while it does not include an examination, it references the history and physical reported on the DD Fm 2807-1, SF 507 and DD Fm 2808. The DD Fm 2807-1 is dated 20 May 2003 but the DD Fm 2808 is not dated. No abnormal physical findings are noted except a scar on the scalp. A VA Compensation and Pension (C&P) exam was completed 25 March 2004, one month after separation. It noted the CI had required insulin continually since his diagnosis and that he had remained unemployed since separation from service. This exam noted deceased sensation in both feet and poor balance as well as a fungal infection in the webs between his toes. No eye pathology was noted. Lab tests revealed poor control of his blood sugar with a HgbA1C of 14.2% and a blood glucose of 298 mg/dl.

Both the PEB and the VA rated the condition as 7913 type I diabetes mellitus at 20% for diabetes requiring insulin and a restricted diet. A higher rating is not warranted because regulation of activities is not required. After due deliberation, considering all of the evidence and mindful of Veteran’s Administration Schedule for Rating Disabilities (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 condition.

Major Depressive Disorder. The only contended condition adjudicated by the PEB as not unfitting is major depressive disorder. The Board’s first charge with respect to this condition 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.

A psychiatric addendum to the MEB NARSUM was completed on 25 September 2003, five months prior to separation. The examiner notes that the CI first experienced symptoms of depression near the time of his diagnosis with diabetes, a chronic illness. He was undergoing a MEB for diabetes and desired to remain on active duty. He therefore avoided contact with any mental health services until he first sought care in August 2003. His depression was manifested with insomnia, anhedonia, anxiety, crying spells, low energy, fatigue, poor concentration, and feelings of hopelessness, helplessness, and worthlessness. He had suicidal ideas without any specific plans. He remained engaged in psychotherapy and pharmacologic therapy (Celexa and Trazadone) and noted a mild improvement in his depressive symptoms with medication. Mental status examination documented a moderately depressed mood and an affect that was flat and mood congruent. Attention and concentration skills were mildly impaired. The examiner noted the diagnosis of major depressive disorder began in May 2003 and had significantly impacted his military performance. He opined a current GAF of 55 and noted that while there was a slight improvement with medication, the CI was still having sufficient symptoms to interfere with effective military performance and his current functional status had a moderate impact on duty. His mental health impairment was significant enough to warrant an S3 permanent profile which prohibited carrying or firing a weapon and no assignment to isolated areas where psychiatric care was not available. The permanent profile is dated 8 October 2003. The commander’s letter does not mention any mental health impairment but this letter is dated 21 May 2003, which coincides with the onset of the depression and precedes the permanent profile. The inability to carry or fire a weapon renders this soldier unfit to perform his required duties. However, the MEB NARSUM notes the inability to fire a rifle is attributed to the diabetes condition. After due deliberation, the Board determined, by simple majority, that the preponderance of the evidence with regard to the functional impairment of major depressive disorder does not favor its recommendation as an additionally unfitting condition. The Board concluded therefore that this condition could not be recommended for additional disability 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 type I diabetes mellitus condition and IAW VASRD §4.119, the Board unanimously recommends no change in the PEB adjudication. In the matter of the major depressive disorder condition, the Board, by 2 to 1 vote, recommends no change in the PEB adjudication. The single voter for dissent (who recommended adding major depressive disorder as an additionally unfitting condition) did not elect to submit a minority opinion.

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** |
| Type I Diabetes Mellitus | 7913 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110830, 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 XXXXXXXXXXXXXXX, AR20120010172 (PD201100808)

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 XXXXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA