RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: navy

CASE NUMBER: PD1100850 DATE OF PLACEMENT ON TDRL: 20020202

BOARD DATE: 20120322 Date of Permanent SEPARATION: 20061207

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty PO1/E-6 (SW1, Steel Worker), medically separated for moderate persistent asthma with occupational triggers and allergic rhinitis component. The CI presented with the chief complaint of a chronic cough in July 2000. During the course of the following year, he was extensively evaluated for the cough and diagnosed with moderate obstructive lung disease and sinusitis disease. He underwent sinus surgery, was treated for gastric reflux disease and was on daily inhaled and oral asthma medications following a trial of systemic steroids. He did not respond adequately to treatment and was unable to perform within his rating or meet physical fitness standards. He was placed on temporary light duty and underwent a Medical Evaluation Board (MEB). Asthma was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. 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 asthma condition as unfitting, rated 30%; with application of SECNAVINST 1850.4E, and the CI was placed on Temporary Disability Retired List (TDRL). On the third TDRL re-evaluation the CI appeared stable and improved and the PEB finalized separation at a rating of 0% as reflected in the chart below. The CI made no appeals, and was medically separated with a 0% disability rating at TDRL-exit.

CI CONTENTION: The CI states: “I was rated at 50% on TDRL and the condition never improved to allow me to continue Military service. I utilized VA system and was rated at 100% total Service Connected Disabilities, 60% for the single condition that ended my Military service. The Navy removed me from TDRL with a 0% rating and discharged me denying me access to benefits I would have received including TriCare versus Champ VA, Space Available Flight Priviliges [sic], Concurrent Receipt of Military Retirement and VA Disability, Dental and other benefits of status as a Military Retiree.”

RATING COMPARISON:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Final Service PEB – Dated 20061025** | | | | **VA\* – All Effective Date 20020202** | | | |
| **Condition** | **Code** | **Rating** | | **Condition** | **Code** | **Rating** | **Exam** |
| **On TDRL – 20020202** | **TDRL** | **Sep** |
| Moderate Persistent Asthma W/Occupational Triggers and Allergic Rhinitis Component | 6602 | 30% | 0% | Chronic Bronchitis And Reactive Airway Disease | 6602 | 60% | 20010719 |
| Allergic Rhinitis | 6255 | 0% | 20010719 |
| ↓No Additional MEB/PEB Entries↓ | | | | Sinusitis | 6510 | 30% | 20010719 |
| Gastroesophageal Reflux Disease | 7399-7346 | 10% | 20010719 |
| Migraines Headaches | 8100 | 30%\* | 20030422 |
| Major Depressive Disorder | 9434 | 30%\* | VA Records |
| Tinnitus | 6260 | 10% | 20010717 |
| Cervical Strain | 5290 | 10% | 20010712 |
| Thoracic And Lumbar Strain | 5295 | 10% | 20010712 |
| 0% x 4/Not Service Connected x 4 | | | |
| Combined: 0% | | | | Combined: 90%\* | | | |

\* VA rating based on exam most proximate to date of permanent separation. Increased Migraine to 50%, and Depression to 50% effective 20030320 (combined 100%)

ANALYSIS SUMMARY: The CI’s opinion that he had not improved that his condition worsened over the course of his TDRL period was considered in the Board’s deliberations. The Board takes the position that subjective improvement or worsening during the period of TDRL should not influence its coding and rating recommendation at the time of permanent separation. The Board’s relevant recommendations are assigned in assessment of the service’s permanent separation and rating determination, and the TDRL rating assignment is not considered a benchmark. It is recognized, in fact, that PEB’s across the services sometimes apply an overly generous initial rating in order to meet the DoD requirement of 30% disability for placement on TDRL. This is in the member’s best interest at the time and does not mean that a final lower rating is unfair, even if perceived as incongruent with subjective severity from one rating to the next. Thus the sole basis for the Board’s permanent disability recommendation is the optimal VASRD rating for disability at the time the CI is permanently separated at exit from TDRL.

Asthma Condition. There was overlap between the CI’s asthma condition and sinusitis which had required surgery prior to TDRL and additional surgery and therapy during the TDRL period. Gastroesophageal reflux disease (GERD) was also under treatment and may have exacerbated the pulmonary symptoms. The Board considered the prior to TDRL record and concluded that only the asthma/pulmonary symptoms rose to the level of being unfitting. The asthma was exacerbated by the CI’s occupation of welding. Chest radiographs prior to separation by the VA indicated changes consistent with chronic bronchitis and asbestos exposure. With regard to rating the CI’s asthma condition on TDRL entry and exit, the Board considered multiple exams and pulmonary function tests with special attention to the exams charted below.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Spirometry | | PFT ~6 Mo. Pre-TDRL Entry  (20010718) | NARSUM ~5 Mo. Pre-TDRL Entry  (20010820) | C&P ~14 Mo. On TDRL;  ~32 Mo. Pre-TDRL Exit  (20030422) | Pulm ~2 Mo. Pre-TDRL Exit  (20061017) |
| Pre-Bronchodilator | FVC | 116.7% | 106% | Not measured | 5.97 (112%) |
| FEV1 | 75.9% | 61% | Not measured | 3.40 (77%) |
| FEV1/FVC | 65.4% | 48% | 75% | 57% |
| Post-Inhaled steroid | FVC | 111.6% | *106%??* | Not measured | 116% |
| FEV1 | 79% | 72% | Not measured | 82% |
| FEV1/FVC | 70.5% | 56% | Not measured | 58% |
| Comments;  TDRL entry: 20020202  TDRL exit: 20061207 | | DLCO/VA 81.5%; Mild obstructive, mild hyperinflation; Medications not specified | Medications Proventil, Flovent and Serevent inhalers, Zyrtec and nasal steroids; normal DLCO | Scattered wheezing both lungs; recurrent episodes requiring admission to hospital with use of Prednisone; three to four attacks a month with change of weather, exertion; continuous use of inhaled bronchodilator; asthma interferes with daily life activities | DLCO/VA 93%; Lung exam normal; medications “ …, Advair, as well as albuterol p.r.n.” “His asthma seems to be decently controlled with the current medications” |
| §4.97 Rating | | 30% (PFT-only) | PEB 30% | 60% | 30% |

The PEB’s TDRL-entry assessment (coding of 6602) and 30% rating of “moderate persistent asthma with occupational triggers and allergic rhinitis component” was well supported in the record. The pre-TDRL timeframe service record did not support frequent courses of parenteral steroids or incapacitation. The VA record and interim TDRL evaluations documented initial worsening on TDRL, with required multiple emergency room visits, courses of parenteral steroids, and frequent antibiotic treatment with radiographic documented bronchiectasis. With regard to the permanent separation (TDRL-exit) rating, the narrative summary (NARSUM) detailed pulmonary function tests (FEV1/FVC=58) meeting the 30% criteria for FEV1/FVC of 56 to 70. The NARSUM indicated the CI was well controlled on medications of “Advair, as well as Albuterol p.r.n.” This may have been interpreted as “Advair p.r.n.” indicative of (as needed) intermittent inhalational therapy (10% rating criteria), but that supposition was not supported by any other evidence in the record, which uniformly documented daily inhalational asthma therapy with episodic use of rescue medications. Pulmonary clinical note, by the NARSUM author within two weeks of the NARSUM, indicated “Advair, Combivent and Albuterol (PRN). Requiring Albuterol less frequently though still having significant attacks to the point of requiring Prednisone 2x per year.” After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends there is not reasonable doubt in the CI’s favor supporting a TDRL-entry rating higher than the PEB’s 30%, but recommends a permanent separation rating of 30% for the asthma condition.

Remaining Conditions. Other conditions identified in the DES file were cervical spine pain (VA 10%), lumbosacral (VA 10%) spine pain, crushing injury to right hand, bilateral ankle pain, right foot pain, headaches (VA 30%), sinusitis (VA 30%) and gastroesophageal reflux disease (GERD; VA 10%). Sinusitus and GERD were discussed above in the CI’s unfitting asthma condition. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were significantly clinically or occupationally active during the initial MEB period (prior to TDRL), none carried attached profiles, and none were implicated in the non-medical assessment. 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. Major depressive disorder (VA 30%) and tinnitus (VA 10%) were rated by the VA proximate to TDRL-entry, however neither condition was mentioned in the DES file. The Board does not have the authority under DoDI 6040.44 to render fitness or rating recommendations for any conditions not considered by the DES. 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. As discussed above, PEB reliance on SECNAVINST 1850.4E and/or DoDI 1332.39 for rating the asthma condition was operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the asthma condition, the Board unanimously recommends a TDRL and permanent service disability rating of 30%, coded 6602 IAW VASRD §4.97. In the matter of the sinusitis and GERD conditions, or any other medical conditions eligible for Board consideration, the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows: TDRL at 30%, and then a permanent combined 30% disability retirement as below.

|  |  |  |  |
| --- | --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **TDRL RATING** | **PERMANENT**  **RATING** |
| Moderate Persistent Asthma | 6602 | 30% | 30% |
| **COMBINED** | **30%** | **30%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110901, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs Treatment Record

President

Physical Disability Board of Review

MEMORANDUM FOR DEPUTY COMMANDANT, MANPOWER & RESERVE AFFAIRS

COMMANDER, NAVY PERSONNEL COMMAND

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATIONS

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 26 Mar 12 ICO

(c) PDBR ltr dtd 4 Apr 12 ICO

(d) PDBR ltr dtd 27 Mar 12 ICO

(e) PDBR ltr dtd 4 Apr 12 ICO

1. Pursuant to reference (a) I approve the recommendations of the PDBR set forth in references (b) through (e).

2. The official records of the following individuals are to be corrected to reflect the stated disposition:

a. Placement on the Permanent Disability Retired List with a 30 percent disability rating effective 31 August 2004.

b. Disability separation with entitlement to disability severance pay with a rating of 20 percent (increased from zero percent) effective 31 October 2004.

c. Placement on the Permanent Disability Retired List with a 30 percent disability rating effective 2 February 2002.

d. Disability separation with entitlement to disability severance pay with a rating of 10 percent (increased from zero percent) effective 15 December 2006.

3. Please ensure all necessary actions are taken to implement these decisions, including the recoupment of disability severance pay if warranted, and notification to the subject members once those actions are completed.

Assistant General Counsel

(Manpower & Reserve Affairs)