RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD11-00927 SEPARATION DATE: 20070817

BOARD DATE: 20120531

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSG/E-6 (11B3P/Infantryman), medically separated for history of chest pain with EKG evidence of a septal infarct and sinus arrhythmia; and for asthma. 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 profile and underwent a Medical Evaluation Board (MEB). Left bundle branch block (LBBB), asthma, and obstructive sleep apnea (OSA) were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB’s submission. The PEB adjudicated the history of chest pain with EKG evidence of a septal infarct and sinus arrhythmia condition and the asthma condition as unfitting, rated 0% and 0% respectively, with likely application of DoDI 1332.39 and the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 0% combined disability rating.

CI CONTENTION: “The Army discharged me after 15 years of service for sleep apnea, asthma and LBB. The VA rated me at 50% for the same disability immediately after I had been discharged. The Army was my career, I had intended to do at least 20 years of service prior to my health concerns. I feel I should have been retired medically given the VA's findings, my unfitness for continued service and my record of honorable service in peace and war.”

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 LBBB (LBB-chest pain …), OSA and asthma conditions requested for consideration meet the criteria to fall within the Board’s purview prescribed in DoDI 6040.44 and are addressed below. Of note, the CI’s contention that he was discharged for OSA was in error, as the PEB found the OSA condition to be not unfitting. 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 PEB – Dated 20070509** | | | **VA (3 Mo Pre- & 1 Mo. Post-Sep.\*) – All Effective Date 20070818** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chest Pain with EKG Evidence | 7099-7005 | 0% | Left Bundle Branch Block | 7099-7015 | 0% | \* see note |
| Asthma | 6602 | 0% | OSA and Asthma | 6602-6847 | 50% | \* see note |
| OSA | Not Unfitting | |
| ↓No Additional MEB/PEB Entries↓ | | | 0% x 5/Not Service-Connected x 7 | | | \* see note |
| **Combined: 0%** | | | **Combined: 50%** | | | |

\* VA exam(s) of 20070613 and clarification exam of 20070904 were not in evidence or available (see analysis). Two C&P Exams (General dated 20070613 and an exam clarification dated 20070904) are not in evidence or available from the VA; multiple requests were unsuccessful in locating these exams. However, these exams are summarized in the VARD dated 20070906. A subsequent VARD dated 20080220 was within one year of separation, but did not increase or decrease the VA disability ratings of 20070906.

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.

Cardiovascular Condition (Chest Pain). The CI’s chest pain began in 2004 and cardiac evaluation disclosed mild mitral and tricuspid valve regurgitation with left ventricular ejection fraction (LVEF) of 55 to 60% (low normal range) [35 months prior to separation]. In November 2005 during a run, the CI blacked out and the initial EKG revealed anterior infarction (heart attack). Stress testing in December 2005 [20 months prior to separation] indicated good functional capacity (METS 10.4) with abnormal EKG changes and was considered equivocal. Special cardiac testing (Cardiolite, and then Adenosine perfusion test) indicated rate dependant LBBB may have interfered with the Cardiolite scan; however, the Adenosine scan confirmed a large scar area in the septal wall, with normal wall motion and no evidence of ischemia. Cardiac catheterization in February 2006, per CI report, reported normal coronary arteries.

At the MEB exam on December 27, 2006, 8 months prior to separation, the CI reported ongoing chest pain, dizziness, blacking out, shortness of breath, easy fatigability, and blurring of vision. His chest pain had changed from exertional-only, to include chest pain at rest sometimes. The MEB physical exam noted clear lungs, regular heart rhythm, and normal heart sounds with no murmurs or gallops. Restrictions of run and ruckmarch at own pace/distance were in the profile, with the CI permitted to perform the alternate APFT tests.

Summary of the VA Compensation and Pension (C&P) exams, from between 2 months prior to separation and/or a month after separation as indicated in the VA rating determination summary, indicated the CI reported angina, shortness of breath, and syncope attacks without receiving treatment for the condition. The exam summary indicated normal heart sounds and exercise stress testing was interpreted as normal (unknown if by record or new test performed), with METs level of 10.5. It stated “the physician was unable to provide a diagnosis because no pathology was present. Although the VA physician did not provide a diagnosis, you were thoroughly evaluated by a cardiologist during military service who diagnosed symptomatic LBBB.” VA service-connection was granted and the VA rating was 0%.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Date of Separation: August 17, 2007 | | | | |
| Cardio Exam | *Cardiac Exam ~35 Mo. Pre-Sep* | Stress Test ~20 Mo. Pre-Sep | NARSUM  ~8 Mo. Pre-Sep | VA\* ~2 Mo. Pre- and/or ~1 Mo. Post-Sep |
| METS | *Not measured* | 10.4% | Not measured | 10.5% (?\*) |
| Ejection-Fraction | *55-60%* | Good EF w/o WMAs but mitral posterior leaflet regurgitation | Not noted |  |
| Medication | *Not noted* | Not noted | None for cardio | None for cardio |
| Comments |  | Arrhythmias: None; Overall impression: Equivocal stress test | IBEP assigned 0% for coronary arteries studies were normal; EF 55-60%; Chest pains limits functional | VA exam provided no LBBB pathology, Assigned 0% since cardiologist while in service diagnosed LBBB |
| §4.104 Rating | *0%* | 0% | 0%-10% | 0% |

\* Two C&P Exams (General dated June 13, 2007 and exam clarification from QTC September 4, 2007) are not in evidence or available from the VA; multiple requests were unsuccessful in locating these exams. These exams were summarized in the VARD September 6, 2007 (See text).

The Board directs attention to its rating recommendation based on the above evidence. VASRD §4.100, Application of the evaluation criteria for diagnostic codes 7000–7007, 7011, and 7015–7020 was discussed and not all rating elements were noted in all exams. There was no evidence of significant cardiac hypertrophy or dilatation, or heart failure. Both measurements of METs testing were greater than 10, and ejection fraction was over 50%. The CI did not have continuous cardiac medication required. The heart valve regurgitation, without impact on METs or ejection fraction, is not compensable. The CI’s symptomatic arrhythmia condition of LBBB is not a supraventricular arrhythmias (7010), nor was LBBB sustained. There was no evidence of arteriosclerotic (atherosclerotic) heart disease (coronary artery disease, CAD; 7005) on cardiac catheterization. The CI did have functional limits due to his LBBB and had symptoms of shortness of breath (dyspnea), fatigue, chest pain (angina), and dizziness; with possible syncope.

The PEB coded analogous to 7005 (CAD) and the VA coded analogous to 7015 (atrioventricular block), both at 0%. Both codes use similar rating criteria; however, 7015 appears to be closer to the pathophysiology of the LBBB condition. The 10% rating criteria (for 7015 or 7005) is: “workload of greater than 7 METs but not greater than 10 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; continuous medication required.” The Board deliberated if the note for 7105 concerning unusual arrhythmia and possible extra-scheduler rating warranted a 10% rating due to the CI’s symptoms and functional limitations, despite the 10.4 and 10.5 METs testing. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board majority concluded that there was insufficient cause to recommend a change in the PEB 0% adjudication for the chest pain condition.

Asthma Condition. The CI had shortness of breath and was diagnosed with asthma, mild persistent by pulmonary medicine with a positive methacholine challenge. There was some positive PFT response to Albuterol, and the CI was prescribed Albuterol. The CI’s exercise related shortness of breath may be attributed to either his cardiac and/or his pulmonary unfitting conditions and there was no definitive apportionment available from the record. There was no evidence of hospitalizations, respiratory failure, or use of systemic or inhaled steroids. There was no evidence of daily inhalational or oral bronchodilator therapy, or; inhalational anti-inflammatory medication. At the level of asthma in this case, the rating hinges on pulmonary function tests (PFTs/Spirometry) of FEV1 or FEV1/FVC, and/or on medication use.

There were two pulmonary evaluations in evidence documenting the ratable parameters which the Board weighed in arriving at its rating recommendation. These exams are summarized in the chart below (as noted the Board did not have the source VA exams in record, but used the rating determination summary):

|  |  |  |
| --- | --- | --- |
| Pulmonary Exam | PFT/Pulmonary ~7 Mo. Pre-Sep | VA ~3Mo. Pre-Sep\* |
| FEV1 (% Predicted) | 91% pre-; 100% post-Rx | 95% |
| FEV1/FVC | 70% pre-; 75% post-Rx | 77% |
| Meds | Not noted | CI stated he was using Albuterol Inhaler-- frequency not noted |
| Comments | “PFTs unimproved by bronchodilators” (Source indicated FEV1 improved by 10% in POST-RX study) | VA conceded asthma per in-service pulmonologist; VA physician provided no asthma diagnosis (see text) |
| §4.97 Rating | 10% (PEB 0%) | 0%-10% (VA rating 50% with OSA) |

\* Two C&P Exams (General dated June 13, 2007 and exam clarification from QTC September 4, 2007) are not in evidence or available from the VA; multiple requests were unsuccessful in locating these exams. These exams were summarized in the VARD September 6, 2007

At the MEB, the CI reported using Albuterol and having shortness of breath. PFTs are charted above, and the pulmonary exam was otherwise normal. The CI also had a history of mild allergies and heartburn. At the VA C&P exam prior to separation (by summary), the CI reported using Albuterol and the pulmonary exam was normal. Per the VASRD, “the physician stated your FEV1 was most indicative of your current pulmonary function.”

The Board directs attention to its rating recommendation based on the above evidence. The narrative summary (NARSUM), DD Form 2697, and VA documents indicated the CI was taking Albuterol in what was at most an episodic, as needed, frequency. The limited medication profile in evidence did not indicate issuance of any asthma controller medication, or Albuterol; however, multiple PFT tests indicated CI’s use of bronchodilator for testing and are a potential off-profile source for the CI’s prescribed Albuterol. The PEB disability description stated “Asthma with most recent FEV of 91%. … (CI) is not using any regular asthma type medication.” The PEB-stated FEV1 of 91% was almost certainly taken from the PFT/Pulmonary consult charted above, as the NARSUM did not restate the PFTs values, but indicated the pulmonary consult was attached. The source PFTs documented an FEV1/FVC of 70% with a 10% improvement in FEV1, and 5% improvement in FEV1/FVC following bronchodilators for an FEV1/FVC of 75% POST-RX (after treatment). The PEB coded asthma under 6602 at 0% as described above. The VA coded the CI’s combined respiratory conditions (asthma and OSA) as 6602-6847 at 50% IAW VASRD §4.96 (a) and stated “The law requires when certain respiratory conditions coexist, a single rating will be assigned under the diagnostic code which reflects the predominant disability,” then documented why either a 60% asthma rating or a 100% OSA rating was not reached as being the next higher rating above the granted 50%.

The Board deliberated on which exam had the highest probative value for rating, and what medications the CI was most likely taking. The Board adjudged that there was reasonable doubt that the CI was episodically using Albuterol which meets the 10% rating criteria. The service PFTs and pulmonary specialist consult were considered as having the highest probative value. The documented post-treatment FEV1/FVC of 75% met the 10% rating criteria (IAW §4.96, special provisions regarding evaluation of respiratory conditions, (d), (5), post-bronchodilator results are applied in the evaluation criteria in the rating schedule). As discussed below, the Board adjudged the OSA condition as not unfitting and therefore not ratable as part of a combined respiratory system rating. This OSA fitness determination is military-specific and is not bound by the VASRD rule-set or VA determination of service connection. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 10% for the asthma condition IAW VASRD §4.97.

Contended PEB Condition (OSA). The only contended condition adjudicated as not unfitting by the PEB was OSA. The Board’s first charge with respect to this condition is an assessment of the appropriateness of the PEB’s fitness adjudication. 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. OSA was part of the P3 profile, implicated in the commander’s statement as part of the duty restricting profile (without specifics), and the NARSUM and MEB noted that it failed retention standards. The NARSUM indicated hypersomnolence and OSA-like symptoms led to a sleep study, diagnosis of OSA requiring use of continuous airway pressure (CPAP) machine, and that “since being on CPAP he no longer has somnolence.” Despite the local profile restriction of “non-deployable (due to need to wear CPAP),” routinely OSA is not considered unfitting solely on the basis of field and operational impediments to the use of CPAP. There is no evidence in this case that OSA was associated with any unfitting impairments (such as excessive daytime sleepiness) not corrected by CPAP. The PEB’s fitness adjudication was therefore expected and reasonable. After due deliberation in consideration of the preponderance of the evidence, the Board concluded that there was insufficient cause to recommend a change in the PEB fitness determination for the OSA contended condition and, therefore no additional disability rating 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. As discussed above, PEB reliance on DoDI 1332.39 for rating asthma was likely operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the chest pain condition and IAW VASRD §4.100 and §4.104, the Board by a vote of 2:1 recommends no change in the PEB adjudication. The single voter of dissent (who recommended adopting a rating of 10%, coded 7099-7015) did not elect to submit a minority opinion. In the matter of the asthma condition, the Board unanimously recommends a disability rating of 10%, coded 6602 IAW VASRD §4.97. In the matter of the contended OSA conditions, 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 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** |
| Chest Pain with EKG Evidence | 7099-7015 | 0% |
| Asthma | 6602 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111013, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

XXXXXXXXXX

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 XXXXXXXXXXXX, AR20120011845 (PD201100927)

1. 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 to modify the individual’s disability rating to 10% without recharacterization of the individual’s separation. This decision is final.

2. I direct that all the Department of the Army records of the individual concerned be corrected accordingly no later than 120 days from the date of this memorandum.

3. I request that a copy of the corrections and any related correspondence be provided to the individual concerned, counsel (if any), any Members of Congress who have shown interest, and to the Army Review Boards Agency with a copy of this memorandum without enclosures.

BY ORDER OF THE SECRETARY OF THE ARMY:

Encl XXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA