RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100941 DATE OF PLACEMENT ON TDRL: 20050826

BOARD DATE: 20120622 Date of Permanent SEPARATION: 20060721

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Soldier, SPC/E-4(21W, Carpentry/Masonry), medically separated for dyspnea on exertion primarily due to vocal cord dysfunction. The CI had onset of breathing problems in basic training that worsened throughout her military service. Her initial diagnosis was asthma compounded by vocal cord dysfunction. She was undergoing treatment and could not meet the physical requirements of her Military Occupational Specialty (MOS). She was issued a permanent P3 profile and referred for a Medical Evaluation Board (MEB). Vocal cord dyskinesia and asthma, moderate persistent were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Allergic rhinitis and axis I: occupational problem with axis II: avoidance traits, as identified in the rating chart below were also identified and forwarded by the MEB as meeting retention standards. The PEB adjudicated asthma, compounded by vocal cord dysfunction as unfitting, rating it at 30% (6599, 6520, 6602), with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The PEB indicated the CI’s condition was not considered stable for permanent rating, adjudicated the remaining conditions as not unfitting and placed the CI on the Temporary Disability Retired List (TDRL) with ratings as reflected in the chart below. At the TDRL re-evaluation the CI’s breathing problems and limitations continued. The PEB found the CI unfit at 10% (6602, 6599, 6520) stating “Change in rating code secondary to change in diagnosis. Rated as analogous to laryngeal stenosis with FEV1 of 78%. Stable for rating purposes.” The PEB disability description section indicated that “the medical evidence in your recent evaluation now indicates that your disease, asthma, is no longer unfitting and thus was not rated by the Board.” The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: “I feel my rating should be changed, because I wasn’t given a fair appointment at my first yearly TDRL physical at all which had me put off. At the time of my first (yearly) annual TDRL appointment I was pregnant with my first son. I was induced at 39 weeks with him due to my asthma, pre-clampsia and leaking high amounts of proteins in my urine. I was also in the hospital for almost a week given breathing treatments every 2 hours. I still suffer to date with these/this asthma/chronic asthma. I currently receive TDIU from the VA, because I am unemployable for Asthma alone. Then, I was granted the 50% for migraines, which was on my MEB file, they never put PTSD on there but overseas I was a victim of sexual assault. The MEB tried to make it as if I was making up illnesses but in my civilian life I am suffering worse that in the military. You all can put in my social security number and name. I should have medical records (military) from October 2001 – July 2010. I was married to an Army Sergeant from August 2006 to July 2010. For VA purposes, they still list me as Astin Shanell Martin-Bell, although they have my divorce decree and all.” [*sic*]

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 asthma condition requested for consideration and the unfitting vocal cord dysfunction (VCD) conditions meet the criteria prescribed in DoDI 6040.44 for Board purview, and are accordingly addressed below. The other requested conditions, migraines (not an MEB diagnosis on DA Form 3947) and posttraumatic stress disorder (PTSD), 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).

TDRL RATING COMPARISON:

|  |  |
| --- | --- |
| **Service PEB – Dated 20060615** | **VA** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| **On TDRL – 20050826** |  | **TDRL** | **Sep. 20060721** |
| Asthma, Compounded by Vocal Cord Dysfunction | 6599 6520 6602 | 30% |  | Asthma | 6602 | 30% | STRs | 20050826 |
|  | Asthma |  |  | Not Unfitting | 20070320 |
|  | Dyspnea on Exertion primarily due to vocal cord dysfunction | 6602 6599 6520 |  | 10% |
| Conversion Disorder Manifested by Vocal Cord Dyskinesia\* | 9424\* | 0% | STRs | 20050826 |
| 9424-9411\* | 30% | 20070321 | 20070130 |
| Allergic Rhinitis | Not Unfitting | Allergic Rhinitis | 6522 | NSC | STR | 20050826 |
| Axis I: Occupational ProblemAxis II: Avoidance Traits | Not Unfitting | *See Codes 9424 and 9424-9411 above* |
| ↓No Additional MEB/PEB Entries↓ | Lumbar Strain | 5237 | 10%\* | 20051223 | 20050826 |
| 0% x 1/Not Service-Connected x 6 | STRs | 20050826 |
| Combined: 10% | Combined | 40% | 20050826 |
| 60% | 20070130 |

\* Conversion disorder … VCD 9424 changed to PTSD with Conversion disorder … VCD and depression at 30% effective 20070130 as charted above.

ANALYSIS SUMMARY: The Board acknowledges the CI's contention suggesting that ratings should have been conferred for other conditions documented at the time of separation, some of which were evaluated and determined not to be individually unfitting for continued service. 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. The is responsible for maintaining a fit and vital fighting force. 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 re-evaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time. The Board is empowered to evaluate the fairness of fitness determinations, and to make recommendations for rating of conditions which it concludes would have independently prevented the performance of required duties (at the time of TDRL entry and final separation). The Board’s threshold for countering DES 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.

Dyspnea on Exertion. There was significant overlap of symptoms and disability due to the diagnoses of vocal cord dysfunction and asthma. The initial narrative summary (NARSUM) and PEB considered the CI unfitting for asthma compounded by vocal cord dysfunction and rated the CI under (analogously to) the asthma coding criteria for daily inhaled corticosteroids for both conditions. At the initial MEB (for TDRL entry), the CI reported shortness of breath that began in basic training, with worsening, exacerbations with “waxing and waning shortness of breath and cough” with exertional and night-time symptoms. Symptoms were made worse at work with exposure to fumes and during deployment. She was diagnosed with vocal cord dyskinesia and asthma (moderate persistent) by pulmonary specialists. She had coexisting allergic rhinitis and was on chronic asthma controller inhaled medication (Fluticasone/Salmeterol – Advair), and as needed bronchodilator (Albuterol). The MEB physical exam noted marked allergic changes to the nasal turbinates, and clear lung exam. Pulmonary function tests (PFTs) demonstrated a mixed pattern with severe obstruction and marked reversible airway obstruction following bronchodilator use. Follow-up PFTs were similar, but difficult to interpret due to “variable nature of respiratory efforts.” The pulmonary specialist discussed the overlap of VSD and asthma, VCD being a possible conversion disorder and VCD being a treatable condition, but not yet fully treated. The MEB psychiatric consult did not diagnose a conversion disorder, but an axis I diagnosis of occupational problems. The PEB rated this exam at 30% as described above for combined asthma and VCD. The VA rated the CI from her service treatment records (STRs) at 30% for asthma and 0% for conversion disorder manifested by VCD. A VA exam, 4 months into the TDRL period indicated the same history and symptoms as the STRs and continued chronic asthma controller medication use and the VA continued their 30% rating during subsequent rating determinations. Otolaryngology exams also indicated similar symptoms as the STRs.

The TDRL re-evaluation clearly indicated the diagnoses of VCD and asthma as both the chief complaint and final diagnosis. The CI was on daily inhalational controller medication (Advair) with as needed albuterol. Symptoms were similar to prior exams and the examiner indicated both VAD and asthma did not meet standards, both conditions remained stable and specified “her vocal chord [sic] dysfunction and asthma affect her ability to perform basic tasks required of a soldier to include running or working in dry, dusty hot environments.” The PEB rated this exam at 10% indicating the CI’s dyspnea was primarily due to VCD and asthma was not unfitting. Treatment records indicated systemic steroid treatment only once in the year prior to TDRL entry and once prior to permanent separation. Physician required treatment was noted to be approximately quarterly for respiratory conditions. There were three pulmonary exam results in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation; as summarized in the chart below.

|  |  |  |  |
| --- | --- | --- | --- |
| Pulmonary Exam\* | MEB ~6 Mo. Pre-TDRL | VA ~7 Mo. Pre-Sep |  ~2 Mo. Pre-Sep from TDRL |
| FEV1 (% Predicted) | 56% to 68% Post-Rx | 72% to 60% Post-Rx | 78% to 84% Post-Rx |
| FEV1/FVC | 72% to 83% Post-Rx | 80% to 70% Post-Rx | 79% to 84% Post-Rx |
| Meds | Advair daily; Albuterol as needed; PFTs unreliable | Daily inhaled anti-inflammatory medication; PFT poor effort post albuterol (fatigued) with discrepancy from clinical exam | Advair daily; Albuterol as needed; good PFTs; “no significant response to bronchodilator” |
| §4.97 Rating | 30% | 30% | 30% |

\* VASRD §4.96, Special provisions regarding evaluation of respiratory conditions was considered

The Board directs attention to its rating recommendation based on the above evidence. There was no evidence of significant speech of communication deficit to be considered aphonia (6519). The post-separation VA diagnosis of PTSD for additionally rating the CI’s VCD within a mental health code was considered outside of the scope of the Board. At both entry into, and exit from, TDRL, the disability of shortness of breath and respiratory symptoms was considered the unfitting condition.

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 TDRL-entry adjudication (30%) for the asthma, compounded by vocal cord dysfunction condition. Regarding the permanent separation rating, the Board agreed that the preponderance of the evidence indicated the CI’s primary unfitting disability was episodic shortness of breath. The Board considered justifiable rating considerations were unfitting VCD with not-unfitting asthma coded analogous to 6602 (asthma) criteria of 30% for chronic inhaled steroid and bronchodilator medication, or if the asthma condition was unfitting and therefore straight coding to 6602 at 30% was indicated. There was no indication in the TDRL evaluation that the CI’s diagnoses had been changed or that there was any apportionment of symptoms or duty restrictions to one diagnosis (VCD) over the other (asthma). The Board considered that the PEB coding analogous to 6520 (Larynx, stenosis of, including residuals of laryngeal trauma), did not adequately consider all of the CI’s respiratory symptoms and disability.

The Board concluded therefore that the asthma condition was additionally unfitting, but that it should be rated in conjunction with the overlapping VCD condition without a separate additional disability rating. After due deliberation, considering all of the evidence and the preponderance of the evidence, the Board recommends a disability rating of 30% coded analogously as 6520-6602 for the combined unfitting respiratory VCD and unfitting asthma conditions.

Contended PEB Conditions. The contended condition adjudicated as not unfitting by the PEB at permanent separation (end of TDRL) was asthma. Asthma was discussed above in the dyspnea on exertion (shortness of breath) section above as part of the CI’s respiratory conditions.

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 asthma compounded by vocal cord dysfunction condition, the Board unanimously recommends no change in the PEB adjudication for TDRL-entry disability rating of 30%, coded 6599-6520 6602 IAW VASRD §4.97. In the matter of the separation rating for dyspnea on exertion primarily due to vocal cord dysfunction, in conjunction with the contended asthma condition, the Board unanimously recommends a final disability rating of 30%, coded 6520-6602 IAW VASRD §4.97. 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; and, that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of her prior medical separation:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| **PERMANENT** |
| Asthma, Compounded by Vocal Cord Dysfunction | 6599 6520 6602 |  |
| Vocal Cord Dysfunction with Asthma | 6520-6602 | 30% |
| **COMBINED** | **30%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111015, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

 XXXXXXXXXXXXXX

 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, AR20120011912 (PD201100941)

1. Under the authority of Title 10, United States Code, section 1554(a), I approve the enclosed recommendation of the Department of Defense Physical Disability Board of Review (DoD PDBR) pertaining to the individual named in the subject line above to recharacterize the individual’s separation as a permanent disability retirement with the combined disability rating of 30% effective the date of the individual’s original medical separation for disability with severance pay.

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:

 a. Providing a correction to the individual’s separation document showing that the individual was separated by reason of permanent disability retirement effective the date of the original medical separation for disability with severance pay.

 b. Providing orders showing that the individual was retired with permanent disability effective the date of the original medical separation for disability with severance pay.

 c. Adjusting pay and allowances accordingly. Pay and allowance adjustment will account for recoupment of severance pay, and payment of permanent retired pay at 30% effective the date of the original medical separation for disability with severance pay.

 d. Affording the individual the opportunity to elect Survivor Benefit Plan (SBP) and medical TRICARE retiree options.

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 XXXXXXXXXXX

 Deputy Assistant Secretary

 (Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA