RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1100947 SEPARATION DATE: 20030307

BOARD DATE: 20120423

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty PFC/E-3 (35R10 / Avionic Repair Repairer), medically separated for diabetes mellitus type I. He was issued a permanent P3 profile and underwent a Medical Evaluation Board (MEB). Insulin dependent diabetes was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. 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 diabetes mellitus type I condition as unfitting, rated 20% with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 20% combined disability rating.

CI CONTENTION: The CI requests an increased rating of 40% for diabetes due to recent hospitalization for diabetic ketoacidosis, development of periodontal disease attributed to diabetes, and the potential for future complications. He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20030129** | | | **VA (1 Mo. After Separation) – All Effective Date 20030308** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Diabetes Mellitus Type I | 7913 | 20% | Diabetes Mellitus | 7913 | 20% | STR |
| ↓No Additional MEB/PEB Entries↓ | | | 0% x 0 / Not Service-Connected x 0 | | | |
| **Combined: 20%** | | | **Combined: 20%** | | | |

ANALYSIS SUMMARY: The DES 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. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions resulting in medical separation nor 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. It must also judge the fairness of PEB fitness adjudications based on the fitness consequences of conditions as they existed at the time of 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. Furthermore, a “crystal ball” requirement is not imposed on the service PEB’s by the Board; and, the 12-month window specified in DoDI 6040.44 is appropriate for rating comparisons but not for new developments after separation.

Diabetes Mellitus Type I. The CI presented for medical care in October 2002 with symptoms consistent with diabetes including increased thirst, polyuria, fatigue, increased hunger, muscle cramps, weight loss. He was diagnosed with type I insulin requiring diabetes and begun on insulin and diet therapy. After beginning treatment, he had no further symptoms due to diabetes, and no episodes of ketoacidosis or hypoglycemia (low blood sugar) requiring hospitalization. At the time of the MEB narrative summary (NARSUM), examination dated 30 December 2002, he was doing well and the examination was normal. There was no evidence of neuropathy, retinopathy, nephropathy or cardiovascular disease and none would be medically expected until after several years of disease. An evaluation of 20% is assigned if there is a requirement for insulin or oral hypoglycemic agent, and restricted diet. A higher evaluation of 40% is not warranted unless regulation of activities are medically required. Because the CI’s condition required both insulin and oral hypoglycemic medication as well as dietary restrictions, it met the criteria for a 20% rating. Both the PEB and VA assigned a 20% rating based on the service treatment records, and the VA rating remained unchanged following VA Compensation and Pension (C&P) examination 18 May 2007, 4 years after separation. The evidence at the time of separation justified the 20% rating determined by the PEB and IAW VASRD §4.119. The CI did not require medically prescribed regulation of activities necessary to justify the higher 40% rating, he did not require frequent visits to a diabetic care provider, nor were there episodes of ketoacidosis, hypoglycemic reactions, hospitalizations or diabetic complications that could support higher ratings. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the diabetic condition.

Other Contended. The CI notes he has developed periodontal disease associated with his diabetes. Review of service dental records indicates the CI was classified as dental class II relating to pain around tooth #17 with mesial angulation. No gum disease was noted. Dental class II indicates the requirement for non-urgent dental treatment or reevaluation for oral conditions, which are unlikely to result in dental emergencies within 12 months. Class II patients are fit for duty and worldwide deployable. There was no evidence for concluding that a dental condition interfered with duty performance to a degree that could be argued as unfitting. The contended periodontal disease attributed to diabetes was not present prior to separation and is not eligible for consideration under the rules of the military disability evaluation system. The Board determined therefore that there were no dental conditions subject to service disability rating.

Remaining Conditions. No other conditions were noted in the NARSUM, identified by the CI on the MEB physical or found elsewhere 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. The Board therefore has no reasonable basis for recommending any additional unfitting conditions for separation rating. 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. 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 contended dental condition, the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as additionally unfitting for rating at separation.

RECOMMENDATION: The Board, therefore, recommends that there be no recharacterization of the CI’s disability and separation determination, as follows:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Diabetes Mellitus Type I | 7913 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111005, 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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXXXXX, AR20120008202 (PD201100947)

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 XXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA