RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: navy

CASE NUMBER: PD1101031 DATE OF PLACEMENT ON TDRL: 20050930

BOARD DATE: 20120726 Date of Permanent SEPARATION: 20070821

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty AO1/E-6 (8342–F/A-18 Systems Organizational Maintenance Technician), medically separated for diabetes mellitus type II with fair amount of insulin resistance. The requirement for insulin was disqualifying for continued Naval service and the CI was placed on limited duty (LIMDU) and referred for a Medical Evaluation Board (MEB). Diabetes mellitus type II was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. No other conditions appeared on the MEB’s submission. The PEB adjudicated the diabetes mellitus type II with fair amount of insulin resistance condition as unfitting, adjudicated a 40% rating with likely application of SECNAVINST 1850.4E, and placed the CI on the Temporary Disability Retired List. The PEB noted the CI was a candidate for permanent limited duty but apparently this was not approved. After approximately 17 months on the TDRL, the CI was reevaluated. The PEB concluded the diabetes condition remained unfitting, and adjudicated a 20% rating with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with 20% disability.

CI CONTENTION: “UNFORTUNELLY DUE TO RECEIVING MISINFORMATION OF AN INFORMAL MEDICAL BOARDS OF 19 YEARS 7 MONTHS OF SERVICE. I WAS INFORMED I WILL BE ABLE TO MAINTAIN DEERS CERTIFICATION FOR LIFE & FAMILY MEMBERS TO MAINTAIN ID CARD. CONQUENTLY I WAS SEPARATED WITH SERVERANCE FROM TDRL AT 20% DUE TO MISINFORMATION.”

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. 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 Board for Correction of Naval Records (BCNR).

RATING COMPARISON:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Final Service PEB – Dated 20070306** | | | | **VA – All Effective Date 20051001** | | | |
| **Condition** | **Code** | **Rating** | | **Condition** | **Code** | **Rating** | **Exam** |
| **On TDRL – 20050930** |  | **TDRL** | **Sep.** |
| Diabetes Mellitus Type II | 7913 | 40% | 20% | Diabetes Mellitus Type II | 7913 | 40% | 20060712 |
| ↓No Additional MEB/PEB Entries↓ | | | | Eczema, Back and Neck | 7806 | 10% | 20060712 |
| Tinea Pedis, Bilateral Feet | 7813-7806 | 10% | 20060712 |
| 0% x 1/Not Service-Connected x 4 | | | 20060712 |
| Combined: 20% | | | | Combined: 50% | | | |

ANALYSIS SUMMARY: The Disability Evaluation System (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. The Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to the CI’s statements in the application regarding suspected DES improprieties in the processing of his case and the CI may consider application to the BCNR.

Diabetes Mellitus Type II with Fair Amount of Insulin Resistance. The CI was diagnosed with diabetes mellitus on September 20, 2004 after a week history of nausea, vomiting, dehydration. He was noted to have blurry vision, weight loss, increased fluid intake and frequent urination. He was hospitalized for initial treatment and begun on insulin and oral medication. His blood glucose improved, he was discharge and he was followed as an outpatient. Evaluation documented absence of any end organ damage or complications. The diabetes was well controlled with medication, diet and exercise, however, the internal medicine physician concluded in April 2005 that continued insulin treatment was required for control of the CI’s diabetes. Use of insulin was disqualifying for continued military duty and the CI was referred for MEB. Service treatment records reflect that the CI was exercising regularly and was not experiencing hypoglycemic episodes that warranted regulation of activities. Although the 40% rating was not supported by the evidence of the service treatment record, the PEB placed the CI on the TDRL with a rating of 40%.

A VA Compensation and Pension (C&P) examination performed on 12 July 2006 noted well controlled diabetes on oral medication and insulin, with no evidence of end organ damage or hypoglycemic episodes. Despite the fact that the C&P examination noted that the CI was active in Jujitsu without indication of any reason for restriction of activities, the VA adjudicated a 40% rating citing regulation of activities in its rating decision. At the time of the TDRL re-evaluation, narrative summary (NARSUM) performed on 27 February 2007, the CI’s diabetes was well controlled on diet and medication (oral medication and insulin). The CI felt well and denied any symptoms such as blurred vision, polyphagia, polyuria, polydipsia, lightheadedness, chest pain or shortness of breath. The CI denied any eye, cardiovascular, pulmonary, skin, or neurological symptoms. There were no hospitalizations for hypoglycemia or ketoacidosis. The physical examination was normal. Laboratory testing was normal, with normal blood glucose, negative urine microalbumin. The HgbA1C was 6% reflecting good control. The TDRL examiner concluded he was fit for release from TDRL and return “to active duty to prepare for retirement.” The accompanying internal medicine clinic record, dated 19 January 2007, noted the CI was exercising regularly and concluded the diabetes was well controlled without evidence of kidney, eye, or cardiac complications. The PEB concluded the diabetes unfitting for continued military service and adjudicated a permanent 20% rating. The Board directs attention to its rating recommendation based on the above evidence. Both at the time of placement on the TDRL and at the time of permanent disability disposition and removal from the TDRL, the CI’s diabetes was treated with diet and medication (an oral medication and insulin) meeting the VASRD criteria for a 20% rating. In order for a 40% disability rating to be awarded, the unfitting diabetes mellitus must also require regulation of activities in addition to diet and medication. These criteria are conjunctive; meaning that all three elements must be met. The definition of regulation of activities (“avoidance of strenuous occupational and recreational activities”), has been clarified by case law as the situation where avoidance of strenuous activities is medically necessary, prescribed and supported by medical evidence (lay evidence alone is insufficient to meet this component of the rating criteria). It is clear that he required insulin, oral metformin and a restricted diet. However, at the time of placement on the TDRL, and removal from the TDRL, there was no evidence that there was medically necessary or advised avoidance of strenuous activities. The Board noted that the initial PEB placing the CI on the TDRL adjudicated a 40% rating. 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. The Board’s relevant recommendations are assigned in assessment of the permanent separation and rating determination, and the TDRL rating assignment is not considered a benchmark. Thus the sole basis for the Board’s permanent disability recommendation is the VASRD rating for disability at the time the CI is permanently separated at exit from TDRL. The Board also noted the VA 40% rating, however, the Board did not find there was evidence in the C&P examination supporting a conclusion there was regulation of activity to meet the requirement for a rating higher than 20%. 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 adjudication for the diabetes mellitus condition.

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 condition and IAW VASRD §4.119, the Board unanimously recommends no change in the PEB adjudication. There were no other conditions within the Board’s scope of review for consideration.

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** | |
| **TDRL** | **PERMANENT** |
| Diabetes Mellitus Type II | 7913 | 40% | 20% |
| **COMBINED** | **40%** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111109, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

President

Physical Disability Board of Review

MEMORANDUM FOR DIRECTOR, SECRETARY OF THE NAVY COUNCIL OF REVIEW

BOARDS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATIONS

Ref: (a) DoDI 6040.44

(b) CORB ltr dtd 16 Aug 12

In accordance with reference (a), I have reviewed the cases forwarded by reference (b), and, for the reasons provided in their forwarding memorandum, approve the recommendations of the PDBR that the following individuals’ records not be corrected to reflect a change in either characterization of separation or in the disability rating previously assigned by the Department of the Navy Physical Evaluation Board:

* former USMC
* former USN
* former USN
* former USN
* former USMC
* former USN

Assistant General Counsel

(Manpower & Reserve Affairs)