RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXX BRANCH OF SERVICE: navy

CASE NUMBER: PD1101048 SEPARATION DATE: 20020107

BOARD DATE: 20120427

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty PO1/E-6 (EM1/3394), medically separated for recurrent pulmonary embolism. He was unable to perform within his Rating or meet physical fitness standards. In August 2001, he was placed on limited duty (LIMDU) and underwent a Medical Evaluation Board (MEB). Other pulmonary embolism and infarction and congenital deficiency of other clotting factors were 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 recurrent pulmonary embolism condition as unfitting, rated 0%, with application of SECNAVINST 1850.4E and Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 0% combined disability rating.

CI CONTENTION: “VA rating for discharge reason rated at 60%.” He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service PEB – Dated 20011009** | | | **VA (~3 Mo. After Separation) – All Effective Date 20020108** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Recurrent Pulmonary Embolism | 7199-7120 | 0% | Residuals, Pulmonary Emboli | 6899-6817 | 60% | 20020423 |
| Factor V (Leiden) Mutation | CAT II | |
| ↓No Additional MEB/PEB Entries↓ | | | Right Patellofemoral Syndrome | 5260-5024 | 10% | 20020423 |
| Left Patellofemoral Syndrome | 5260-5024 | 10% | 20020423 |
| Degenerative Disc Disease, Cervical Spine | 5293-5290 | 10% | 20020423 |
| 0% x 1/Not Service-Connected x 7 | | | 20020423 |
| **Combined: 0%** | | | **Combined: 70%** | | | |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-connected condition continues to burden him. It is a fact, however, that 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. This role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA). The DVA, operating under a different set of laws (Title 38, United States Code), is empowered to compensate 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 utilizes DVA evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12-month interval for special consideration to post-separation evidence. The Board’s authority as defined in DoDI 6044.40, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Recurrent Pulmonary Emboli Condition. The CI experienced two episodes of pulmonary venous thromboembolism. The first occurred in May 1999. The second episode occurred in September 1999 while on anticoagulation therapy; however, laboratory testing indicated it was at sub-therapeutic levels. Lung scanning following both of these episodes demonstrated resolution of the blood clot. The CI was found to have a genetic condition that predisposed him to abnormally increased tendency to form clots and long term anticoagulation was recommended. Due to the requirement for chronic anticoagulation he was disqualified from submarine duty. He underwent MEB and the PEB determined he was fit for continued surface duty in September 1999 shortly after the second episode of pulmonary embolism. Recurrent episodes of increased chest pain prompted evaluation for suspected recurrent pulmonary embolism in March 2000 and again in May 2001; however, pulmonary angiogram performed each time was negative for evidence of acute pulmonary embolism, chronic pulmonary embolism, or chronic pulmonary vascular disease. A computed axial tomography of the chest and CT angiography of the chest was also normal in March 2000 including other chest, lung and heart structures. A VQ scan in May 2001 was reportedly normal as well. The CI experienced persistent chronic chest pain of unclear cause that was controlled with medication but increased with activity preventing completion of the physical fitness test. A clinic encounter on 23 April 2001, noted adequate pain control with non-narcotic medication without side effects.

A 5 June 2001 clinic entry recorded the pain level was two on a scale of ten. At the time of the MEB NARSUM dated 10 August 2001, he could carry out his duties as an instructor, but he could not tolerate exercise due to chest pain. His anticoagulant medication had been changed to an injectable form. The physical examination, chest X-ray and electrocardiogram were normal. The PEB determined the CI was unfit for continued military duty and cited the use of an injectable anticoagulant versus the oral form in addition to the chest pain. At the time of the VA Compensation and Pension (C&P) examination, 3 months after separation, there had been no recurrence of pulmonary embolism. The examiner recorded a third episode of pulmonary embolism in early 2000 but primary service treatment records indicate this was ruled out by a normal pulmonary angiogram and normal CT angiogram. The CI reported chest pain with deep breathing. The physical examination was normal and spirometry was normal. The PEB rated the CI’s condition at 0% coded 7199-7120, varicose veins, while the VA assigned a rating of 60% coded 6899-6817, pulmonary vascular disease, based on subjective complaints and treatment with Coumadin, although there were no objective findings noted on examination, chest X-ray or spirometry.

The Board noted that the CI did not have varicose veins, or documentary evidence of peripheral venous thrombosis and that it is reasonable to consider rating the unfitting medical condition under other VASRD diagnostic codes including 6817. The CI had not had a recurrent pulmonary embolism during the 2 years prior to separation while on anticoagulant medication. The recurrent episode in September 1999 was noted to have occurred in context of sub-therapeutic medication levels. Subsequent evaluations in March 2000 and May 2001 were normal showing no evidence of acute or chronic pulmonary thromboembolism, or pulmonary vascular disease. The Board considered the CI’s contention that his condition meets VASRD criteria for a 60% rating. The evidence clearly establishes that, after the second pulmonary embolism in September 1999, the CI did not have recurrent or chronic pulmonary thromboembolism as specified in the criteria for the 60% rating under diagnostic code 6817, pulmonary vascular disease. He had a genetic predisposition for the formation of blood clots and was taking anticoagulant medication to prevent possible recurrent pulmonary thromboemboli. However, the presence of the genetic predisposition does not equate to a diagnosis of actual chronic pulmonary thromboembolism, including following resolution of a prior event. The fact that treatment for the predisposition has been recommended and followed does not equate with the serious level of occupation impairment that the 60% level describes and does not meet the criteria for a 60 % evaluation under diagnostic code 6817. The Board considered the CI’s persisting chest pain with deep breathing that worsened with physical exertion. The pain with deep breathing is consistent with pleuritic type pain, and the Board considered rating under the code for pleural disease.

However, ratings under the code for pleural disease is based on spirometric impairment in lung function and there was no residual impairment of lung function that was ratable under other VASRD codes. The Board considered whether this pain could be considered a persisting symptom of resolved pulmonary embolism sufficient to warrant the 30% rating under 6817. Repeated pulmonary angiograms were normal without evidence of recurrent or chronic pulmonary embolism and CT scanning did not detect any other source for the pain. Although an objective cause was not shown on diagnostic imaging, the problem began in relation to the previous pulmonary embolism. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the majority of the Board recommends a separation rating of 30% for persisting symptoms of chest pain following resolution of pulmonary thromboembolism, coded 6817.

Other PEB Conditions. The other conditions forwarded by the MEB and adjudicated as not unfitting by the PEB was factor V (Leiden) mutation which is a category II condition which contributed to the unfitting condition but was not separately unfitting by the PEB.

Remaining Conditions. Other conditions identified in the DES file were a single episode of a severe migraine in 1998 or 1999 with no reoccurrence, bilateral knee pain, low back pain, fractured right little toe, mild to moderate high frequency hearing loss and right lateral thigh hematoma. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were significantly clinically or occupationally active during the MEB period; none carried attached duty limitations or LIMDU; and, none were implicated in the non-medical assessment (NMA). 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. Additionally bilateral patellofemoral syndrome and degenerative disc disease of the cervical spine and several other non-acute conditions were noted in the VA proximal to separation were not documented 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.

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 for rating the pulmonary thromboembolism condition was operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the pulmonary thromboembolism condition, the Board by a vote of 2:1 recommends a separation rating of 30% coded 6817 IAW VASRD §4.97. The single voter for dissent (who recommended no recharacterization) submitted the addended minority opinion. In the matter of factor V (Leiden) mutation, migraine, knee pain, low back pain, 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. 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 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 his prior medical separation:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Recurrent Pulmonary Embolism | 6817 | 30% |
| **COMBINED** | **30%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111110, 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

Minority Opinion.

The Minority voter concluded that the rating more nearly approximated the 0% rating adjudicated by the PEB. The NARSUM examiner stated that the etiology of the CI’s chest pain was not established. There were no objective findings of residuals by pulmonary angiogram or CT scanning of the chest including the pleura and other chest structures. Chest pain due to the pleural irritation from a pulmonary embolism normally resolves unless there is a complication resulting in scarring which was not shown in the CI’s case. Regardless of cause, the CI’s pain was controlled by medications and did not interfere with routine military duties indicating that no impairment in civil occupation was apparent. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the pulmonary embolism condition.

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

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Recurrent Pulmonary Embolism | 7199-7120 | 0% |
| **COMBINED** | **0%** |

MEMORANDUM FOR DIRECTOR, SECRETARY OF THE NAVY COUNCIL OF REVIEW

BOARDS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

XXXXXXXXXXXXXXXXX

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 7 May 12

I have reviewed the subject case pursuant to reference (a) and non-concur with the majority recommendation of the PDBR as set forth in reference (b). I do, however, concur with the minority voting member, for the reasons cited in his opinion, that XXXXXXXXX condition was appropriately rated at zero percent at the time of his separation. Therefore, XXXXXXXXX records will not be corrected to reflect a change in either his characterization of separation or in the disability rating previously assigned by the Department of the Navy’s Physical Evaluation Board.

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Principal Deputy

Assistant Secretary of the Navy

(Manpower & Reserve Affairs)