

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXX
CASE NUMBER: PD1200374
BOARD DATE: 20121128

BRANCH OF SERVICE: ARMY
DATE OF PLACEMENT ON TDRL: 20050502
DATE OF PERMANENT SEPARATION: 20070221

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty PV2/E-2 (92G10/Food Service Specialist), medically separated for asthma. The CI developed dyspnea on exertion during basic training in August 2003. By November 2004, he had failed every PT test administered, carried the diagnosis of asthma and was being treated with oral and inhaled medications. The CI did not improve adequately with treatment to meet the physical requirements of his Military Occupational Specialty or satisfy physical fitness standards. He was issued a permanent P3 profile and referred for a Medical Evaluation Board (MEB). The MEB identified and forwarded asthma as the only condition for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated the asthma condition as unfitting, rated 30% and placed the CI on the Temporary Disability Retired List (TDRL). Approximately 2 years later, the PEB adjudicated the CI's asthma as sufficiently stable and rated it 10% with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD). The CI appealed the ruling and the US Army Physical Disability Agency reviewed the case and concluded it was properly adjudicated by the PEB. The CI was medically separated with a 10% disability rating.

CI CONTENTION: "My disability in which I occurred (sic) during service has not left and I am still suffering from my Asthma."

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 as requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview; and, is addressed below, in addition to a review of the ratings for the unfitting condition. 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 Correction of Military Records.

TDRL RATING COMPARISON:

Service IPEB – Dated 20070129				VA – All Effective Date 20111213			
Condition on TDRL entry 20050502	Code	Rating		Condition	Code	Rating	Exam
		TDRL	Sep.				
Asthma	6602	30%	10%	Asthma	6602	30%	20120113
↓No Additional MEB/PEB Entries↓							
Combined: 10%				Combined: 30%			

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI's application regarding the significant impairment with which his service-incurred condition continues to

burden him. 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 DES has neither the role nor the authority to compensate members for anticipated future severity or potential complications of conditions resulting in medical separation. That role and authority is granted by Congress to the Department of Veterans Affairs (DVA), operating under a different set of laws (Title 38, United States Code). The Board evaluates DVA evidence proximal to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness decisions and rating determinations for disability at the time of separation. It is noted for the record that the Board recognizes the significant interval (59 months) between the date of separation and the DVA evaluation. DoDI 6040.44, under which the Board operates, specifies a 12-month interval for special consideration to VA findings. This does not mean that the DVA information was disregarded, as it was a valuable source for clinical information and opinions relevant to the Board's evaluation. In matters germane to the severity and disability at the time of separation, however, the information in the record was assigned proportionately more probative value as a basis for the Board's rating recommendations.

Asthma Condition. There were three pulmonary function test (PFTs) 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 Function Tests	NARSUM 2 Mos. Pre-TDRL entry	TDRL re-eval 6 Mos. Pre-Sep.	VA 59 Mos. Post-Sep
FEV1 % Predicted	93%	82%	78%
FEV1/FVC	80%	75%	67%
Meds	Post Bronchodilator PFT Albuterol as needed Advair daily	Pre-Bronchodilator PFT Rare Albuterol use Advair daily Singulair stopped by CI	Pre-Bronchodilator PFT Albuterol daily Advair daily
\$4.97 Rating	30% (daily Advair)	30% (daily Advair)	30% (daily Advair)

The narrative summary (NARSUM) prepared approximately 3 months prior to TDRL entry noted progressive worsening of shortness of breath during physical activity during basic training in November 2004 at which time the CI had bronchitis. Treatment of the bronchitis along with use of bronchodilators did not resolve the shortness of breath which continued throughout Advanced Infantry Training where he failed his physical fitness test. In May 2004, the CI was evaluated in a pulmonary clinic where he underwent a Methacholine challenge test that revealed mild obstruction at baseline with moderate airway hyperactivity. He was treated with Advair and a 5-day course of oral steroids which failed to improve his symptoms. The CI also underwent an exercise stress test that was consistent with asthma and a laryngoscopic exam ruled out vocal cord dysfunction (VCD). His symptoms occurred with any exertion, hot or cold weather and with wearing his gas mask. Physical exam revealed clear lungs with good air movement. PFTs are documented in the chart above. At the MEB exam prepared approximately 2 months prior to TDRL entry, the CI reported asthma triggered by running, temperature changes, any physical work and that he wheezes at night. The MEB physical exam noted normal lung exam.

At TDRL entry, the PEB adjudicated the CI's asthma condition using VASRD code 6602, Asthma, and rated it 30% based on daily medication use. This is consistent with VASRD rating guidelines granting a 30% evaluation for normal PFTs and daily use of inhaled anti-inflammatory medication. The next higher rating, 60%, requires abnormal PTFs, or; at least monthly visits to a physician for required care of exacerbations, or; intermittent (at least three per year) courses of systemic (oral or parenteral) corticosteroids. These conditions were not met in this case. 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 at TDRL entry for the asthma condition.

The CI had a TDRL re-evaluation approximately 6 months prior to final separation. That exam documented “zero emergency room visits and zero hospitalizations for his asthma.” Albuterol use was very rare and he was “only using his Advair inhaler once daily in the morning.” The CI had self-discontinued his Singulair. His lungs were clear to auscultation bilaterally with good air movement. Pertinent PFT results are summarized in the chart above. His frequent nocturnal symptoms were likely related to the fact that he was not using an evening dose of Advair. It was recommend that he use his Advair inhaler twice a day and continue to use his rescue Albuterol inhaler. The VA Compensation and Pension (C&P) exam performed 59 months after final separation documented the following pertinent items: Albuterol use three times daily, Advair use once daily, no work lost due to asthma and no asthma flare-ups in the past year. Pertinent PFT results are summarized in the chart above.

The Board directs attention to its rating recommendation based on the above evidence. At final separation, the PEB applied VASRD code 6602, asthma, and rated it 10% based on “intermittent use of inhaler.” The PEB proceedings document further noted “no evidence submitted supporting daily use of medication (no medication profile was submitted).” The VA also utilized VASRD code 6602, asthma, and rated it 30% presumably based on the daily use of Advair as reported in the VA C&P examination. Rating criteria for VASRD code 6602 are based on PFT results, medication use and frequency of provider visits for exacerbations. Proximal to separation, the CI had non-compensable PFT results, did not have any asthma exacerbations and did not require any systemic steroid use. Therefore, he does not meet criteria for the 60%, rating so deliberations settled on a 10% vs. 30% discussion. Although the TDRL re-evaluation exam 6 months prior to separation documented daily Advair use, the PEB’s proceedings document suggested they required a medication profile be submitted as proof of medication use required to meet the 30% rating threshold. In requesting a Formal PEB hearing, the CI submitted a rebuttal letter with two key points, first, he was taking Advair on a daily basis and secondly, he attempted to get a medication profile but was unsuccessful. All three of the formal history and physical exam documents pertaining to asthma document the CIs daily use of inhaled anti-inflammatory medication. The VA C&P examination performed approximately 59 months after final separation also documented daily Advair use however, was too remote from separation to be of any probative value for rating purposes. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a final disability rating of 30% for the asthma 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. 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 condition, the Board unanimously recommends a final disability rating of 30%, coded 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 his prior medical separation:

UNFITTING CONDITION	VASRD CODE	RATING
		PERMANENT
Asthma	6602	30%
	COMBINED	30%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120416, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXX, DAF
President
Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency
(TAPD-ZB / XXXXXX), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation
For XXXXXXXX, AR20120022681 (PD201200374)

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

XXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
 DoD PDBR
 DVA