

RECORD OF PROCEEDINGS  
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX  
CASE NUMBER: PD1200717  
BOARD DATE: 20130108

BRANCH OF SERVICE: ARMY  
DATE OF PLACEMENT ON TDRL: 20020113  
DATE OF PERMANENT SEPARATION: 20031024

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**SUMMARY OF CASE:** Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (55B/Ammunition Specialist) medically separated for asthma. He experienced on onset of exertional dyspnea in 1996 and was eventually diagnosed with asthma. He remained under satisfactory control until his symptoms escalated in 2001, and failed to respond adequately to meet the physical demands of his Military Occupational Specialty (MOS). He was consequently issued a permanent P3 profile and referred for a Medical Evaluation Board (MEB). Asthma was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. A second condition, sensorineural hearing loss, was forwarded as meeting retention standards. No other conditions were submitted by the MEB. The Informal PEB (IPEB) adjudicated the asthma condition as unfitting, rated 30%, citing the criteria of the Veterans Administration Schedule for Rating Disabilities (VASRD); additionally determining that the hearing condition was not unfitting. The CI was placed on the Temporary Disability Retired List (TDRL); and, after 21 months on TDRL, the asthma condition was considered to be stable but still unfitting. The IPEB at this time rated the asthma at 10%, determining that the VASRD daily medication criterion was no longer met. The CI appealed to a Formal PEB (FPEB), which likewise arrived at a 10% rating under VASRD criteria; and, he was permanently separated with that disability rating.

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**CI CONTENTION:** The application states: "Was diagnosed with mild to severe asthma while currently on active duty. Then was put on TDRL from 2002-2004. Went to Ft Sam Houston TX to a rating board where I was down graded [sic] from 30% to a final 20% [sic]. I have other disabilities that render my daily activities as noted below but wasn't given the opportunity to discuss other issues that are listed below. All these illness are service connected according to the VA." The additional conditions referenced were listed as lumbar spine, left knee, and right knee conditions.

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**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 rating for the unfitting asthma condition is addressed below. The hearing condition, identified as not unfitting by the PEB, was not requested for review and is thus not within the DoDI 6040.44 defined purview of the Board. The requested lumbar spine and knee conditions were not identified by the PEB, and accordingly are also not within the Board's purview. The above conditions which were excluded from scope, or any condition or contention outside the Board's defined scope of review, remain eligible for future consideration by the Army Board for Correction of Military Records (ABCMR). The Board further acknowledges the CI's assertion that he was not given the opportunity for consideration of other conditions for rating; and, notes for the record that it has no jurisdiction to investigate or render opinions in reference to such allegations. Remedy for these alleged procedural improprieties must also be sought from the ABCMR.

**RATING COMPARISON:**

Final FPEB - 20031027				VA (17 Mo. Prior to Adjudication Date*) – All Effective 20020114			
On TDRL - 20020114	Code	Rating		Condition	Code	Rating	Exam
Condition		TDRL	Sep.				
Asthma	6602	30%	10%	Asthma	6602	30%	20020411
Sensorineural Hearing Loss		Not Unfitting		Bilateral Hearing Loss	6100	0%	20020410
No Additional MEB Entries.				Chondromalacia, R Knee	5010	10%	20020417
				Medial Meniscal Tear, L Knee	5003-5260	10%	20020417
				DDD, Lumbar Spine	5242	10%	20020417
				0% X 2 / Not Service Connected X 1			20020417
				<b>Combined: 30% → 10%</b>			

\*Represents VA rating proximate to TDRL placement; no VA rating proximate to permanent separation.

**ANALYSIS SUMMARY:**

**Asthma Condition.** With no pre-existing pulmonary history, the CI developed episodes of exertional bronchospasm while stationed in Germany in 1996. This was treated symptomatically until July 1997 when a diagnosis of asthma was made, and he was started on maintenance medications. He fared well and pulmonary function testing (PFT) was normal until more severe symptoms developed in January 2001. His medications were changed to daily Flovent (inhalational steroid) and Serevent (inhalational bronchodilator), with a rescue inhaler (Albuterol) as needed. Despite this regimen, his PFT parameters deteriorated; and, the pulmonary consultant recommended a MEB. The narrative summary (NARSUM) at that time documented the medication regimen noted above, and the CI was placed on TDRL.

VA outpatient records for the period of TDRL are in evidence. Early notes indicate continued maintenance on the same meds, although a pulmonary note from 24 April 2002 indicates that the symptoms were worse and that the CI had ran out of medicines 2 months previously. A follow-up orthopedic note of 16 September 2002 lists asthma meds on the medication list (with no comment on symptomatology), but subsequent notes do not include asthma meds on the medication list until after the IPEB of 18 July 2003. The TDRL NARSUM of 17 April 2003 states, "He has usually been controlled with his flovent and serevent. However, he ran out of these one month ago and has not got them refilled. He is consequently using his albuterol on a frequent basis." In his rebuttal to the IPEB finding (which invoked the medication profile as a basis for concluding that daily medication use was not sustained), the CI submitted his copy of the medication profile and recent progress notes from the VA. The medication profile lists 24 April 2002 as the last dispensing of asthma meds until 20 August 2003 (after IPEB). The earliest entry in the submitted VA progress notes was dated 20 August 2003 and did not include asthma meds on the medication list. An entry dated 9 September 2003 stated, "Patient called for refill of all meds and stating he needs a doctor's statement saying that he uses an inhaler daily." The ratable PFT results and medication use attendant to the Board's recommendation are charted below:

Ratable Parameters	20010314 (Pre-TDRL)	20020411 (VA Rating)	20030217 (Final Service)
FEV1 (% Predicted)	66%	68%	102%
FEV1/FVC	87%	84%	99%
Meds	Daily inhaled agents.	Daily inhaled agents.	Disputed.
§4.97 Rating	30%	30%	10%*

\*30% if daily inhaled medication requirement is supported.

The Board directs attention to its rating recommendation based on the above evidence. The unequivocal VASRD code for rating asthma is 6602. VASRD §4.97 defines both PFT-derived criteria and clinical treatment criteria for rating under 6602. The specified PFT parameters (as charted above) support in themselves the 30% ratings conferred by the IPEB entering TDRL and by the VA evaluation shortly thereafter. The PFT parameters probative to the Board's permanent rating recommendation, however, support only a 10% rating. The Board must judge, regarding its permanent rating recommendation, whether the 30% criterion of "daily inhalational or oral bronchodilator therapy, or; inhalational anti-inflammatory medication" was adequately supported by the evidence. It is acknowledged that the VASRD is somewhat outdated for asthma since modern treatment has expanded to include many treatment agents not employed when the existing rating criteria were promulgated. Contemporary regimens routinely employ daily maintenance with a variety of inhaled anti-inflammatory (steroid) and/or bronchodilator agents. The VA most commonly concedes the 30% rating if there is a prescription for daily use of any of these agents; and, the Board accepts the precedent that the therapeutic use of these newer agents satisfies the 30% criteria in effect; even though it is clear that this encompasses many cases of relatively mild disease associated with minimal limitations and disability. Members agreed, however, that it is reasonable to take the position that the evidence in such cases should satisfy an assumption that the treatment regimen supporting the higher rating was necessary to maintain the good control which would otherwise satisfy only the 10% criteria. The evidence establishes fairly conclusively that the CI could not have maintained daily medication use during at least a 12-month period (conceding a 3 month treatment period from his April 2002 refills) leading up to the IPEB. This encompassed the interval during which his PFT performance was quite satisfactory. The re-initiation of active daily treatment occurred after a compelling secondary gain impetus was apparent, and it is difficult to conclude that this was based on worsening acuity of disease. 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's TDRL or permanent adjudications of 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 and IAW VASRD §4.97, the Board unanimously recommends no change in the PEB adjudications for the period of temporary retirement or permanently. 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
Asthma	6602	30%	10%
	<b>COMBINED</b>	<b>30%</b>	<b>10%</b>

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120519, w/atchs.
- Exhibit B. Service Treatment Record.
- Exhibit C. Department of Veterans Affairs Treatment Record.

XXXXXXXXXXXXXXXXXX, DAF  
President  
Physical Disability Board of Review

SFMR-RB

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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for  
XXXXXXXXXXXXXXXXXX, AR20130000728 (PD201200717)

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

XXXXXXX  
Deputy Assistant Secretary  
(Army Review Boards)

CF:  
 DoD PDBR  
 DVA