RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: NAVY

CASE NUMBER: PD1200153 TDRL REMOVAL DATE: 20080815

BOARD DATE: 20120711 tdrl placement date: 20050203

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty CTM3/E-4 (CTM, Cryptologic Technician, Maintenance), medically separated for type I diabetes. The condition was discovered in July 2003 after several weeks of weight loss and worsening multiple symptoms. His condition was ultimately controlled, but it could not be adequately managed to meet the physical requirements of his Rating or satisfy physical fitness standards. He was placed on limited duty (LIMDU) and referred for a Medical Evaluation Board (MEB). The MEB forwarded type I diabetes as medically unacceptable IAW SECNAVINST 1850.4E. Two other conditions, identified in the rating chart below, were also identified and forwarded on the MEB submission. The PEB adjudicated the diabetes condition as unfitting, rated 40%, and placed the CI on the Temporary Disability Retired List (TDRL). He was continued on TDRL with periodic reevaluations and underwent a final evaluation after three years on TDRL. At that time, the PEB determined the condition was stable and adjudicated type I diabetes as permanently unfitting, rated 20% with application of the Veterans Administration Schedule for Rating Disabilities (VASRD); and euthyroid goiter and hypertension as Category III: conditions that are not separately unfitting and do not contribute to the unfitting condition(s). The CI made no appeals, and was medically separated with a 20% disability rating.

CI CONTENTION: “According to Title 38 Book C Section 4.199 Subsection 7913 20% disability is: Requiring insulin and restricted diet, or; oral hypoglycemic agent and restricted diet where 40% states: Requiring insulin, restricted diet, and regulation of activities. During my remaining time in the Navy after I was diagnosed with Type I Diabetes I was on limited duty status as I had to monitor my activities and still do to this day. This is stated in my Military Medical record. I am also required to take four Insulin injections a day. When I was first diagnosed I met the 100% schedule which states: Requiring more than one daily injection of insulin, restricted diet, and regulation of activities (avoidance of strenuous occupational and recreational activities) with episodes of ketoacidosis or hypoglycemic reactions requiring at least three hospitalizations per year or weekly visits to a diabetic care provider, plus either progressive loss of weight and strength or complications that would be compensable if separately evaluated. In the initial stages I was around 224 1bs. and by the time I was diagnosed I had dropped down to 143 1bs. The weight loss was during the course of 3 months which at that time I was visiting the medical clinic on Bolling AFB at least once every two weeks. I was placed on TDRL from 02/03/2005 – 08/15/2008 and due to taking care of myself my original rating of 40% was dropped to 20% and I was removed from the TDRL. I currently see a doctor every 3 months for my condition.”

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).

TDRL RATING COMPARISON:

|  |  |
| --- | --- |
| **Final Service PEB – Dated 20080307** | **VA\* – All Effective Date 20050202** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| **On TDRL – 20050203** |  | **TDRL** | **Sep.** |
| Type I Diabetes | 7913 | 40% | 20% | Diabetes Mellitus Type I | 7913 | 20% | STR |
| Euthyroid Goiter |  Cat III | Euthyroid Goiter | 7999-7900 | 0% | STR |
| Hypertension |  Cat III | Hypertension | 5010 | 0% | STR |
| ↓No Additional MEB/PEB Entries↓ | 0% x 1/Not Service-Connected x 1 | STR |
| **Combined: 20%** | **Combined: 20%** |

\*VA rating based on service treatment record (STR)

ANALYSIS SUMMARY: The CI’s implication that he had not improved over the course of his TDRL period and that the final rating should not have been lowered was considered in the Board’s deliberations. The Board takes the position that subjective improvement or worsening during the period of TDRL should not influence its coding and rating recommendation at the time of permanent separation. 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. 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. Thus the sole basis for the Board’s recommendation is the optimal VASRD rating for disability at the time the CI is permanently separated.

Type I Diabetes Condition. The Board notes that the only source for the TDRL exit date is the CI’s DD 294. Once the diagnosis was made and appropriate treatment instituted, the CI’s condition rapidly stabilized and weight loss reversed. He was briefly hospitalized only once, and that was at the time of initial diagnosis. An initial profile stated: “exercise at own pace.” A LIMDU dated 3 May 2004, specified “no heavy machinery or work at heights, no scuba.” At the time the CI was placed on the TDRL (3 February 2005), the PEB rated the diabetes condition at 40% under VASRD code 7913. The concurrent Department of Veterans’ Affairs (DVA) decision assigned a 20% rating under the same code. A 60% rating required “insulin, restricted diet, and regulation of activities with episodes of ketoacidosis or hypoglycemic reactions requiring one or two hospitalizations per year or twice a month visits to a diabetic care provider, plus complications that would not be compensable if separately evaluated.” Since the CI did not exhibit these findings, the Board has no basis to recommend a rating higher than that assigned by the PEB for the diabetes condition at the time of initial placement on TDRL.

Next the Board turned its attention to a permanent rating at the time of removal from TDRL. An interim TDRL reevaluation narrative summary (NARSUM) performed on 18 August 2006, reported that the CI walked a mile per day and played basketball once per week for 2-3 hours. He experienced two hypoglycemic episodes per week, but hospitalizations were not reported. He was noted to be overweight at 197.5 pounds. He was encouraged to increase the frequency of his exercise to 4-7 days per week and to initiate weight training. The final TDRL reevaluation NARSUM examiner, on 6 June 2008, 2 months prior to removal from the TDRL, reported that the CI was adhering to his prescribed insulin regimen, had experienced no hypoglycemic symptoms and had not developed ketoacidosis. His hemoglobin A1C level was 7.2, indicating reasonably good control. An outpatient clinic note dated 8 September 2008, a month after removal from TDRL, documented a weight of 191 pounds. Several notes counseled the CI regarding the need for weight loss.

The Board directs attention to its rating recommendation based on the above evidence. While the CI required insulin and dietary restriction, he did not require medically prescribed regulation of activities necessary to justify the higher 40% rating. Indeed, the Board notes the instruction by the interim TDRL examiner to increase his amount and type of exercise. Furthermore, 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. The evidence at the time of removal from TDRL justified the 20% rating determined by the PEB and IAW VASRD §4.119. 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 type I diabetes 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 type I diabetes 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** |
| Type I Diabetes | 7913 | 40% | 20% |
| **COMBINED** | **40%** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120226, 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)