RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXX BRANCH OF SERVICE: Army

CASE NUMBER: PD1200222 SEPARATION DATE: 20031209

BOARD DATE: 20120906

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a National Guard SFC/E-7 (75H40/Personnel Administration), medically separated for diabetes mellitus (DM). The CI was placed on insulin in 2002 which led to a P3 profile. His profile did not have physical fitness or functional limitations, but he was unable to meet worldwide deployment standards and was referred for a Medical Evaluation Board (MEB). Two other conditions, as identified in the rating chart below, were also identified and forwarded by the MEB. The Informal Physical Evaluation Board (IPEB) adjudicated the DM condition as unfitting, rated 20%, with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The remaining conditions were determined to be not unfitting. The CI appealed to the Formal PEB (FPEB), which affirmed the IPEB findings and was then medically separated with a 20% disability rating.

CI CONTENTION: “Medical condition of diabetes, hernia, and heart condition merits reconsideration. The assessment of the Veteran’s Administration was not in agreement with the assessment of the active duty medical separation. The Veteran’s Administration assessment of 60%. This condition assessment merits a medical retirement.”

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 diabetes mellitus condition requested for consideration meets the criteria prescribed in DoDI 6040.44 for Board purview, and is accordingly addressed below. The diabetic renal insufficiency and anemia conditions rated by the Department of Veterans’ Affairs (DVA) at separation are within the Board’s purview. The other requested hernia and heart conditions are not within the Board’s purview. 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 the Correction of Military Records (BCMR).

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service FPEB – Dated 20030813** | | | **VA (~1 Mos. Pre-Separation) – All Effective Date 20031210** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| DM, Requiring Insulin and Restricted Diet | 7913 | 20% | DM | 7913 | 20% | 20031120 |
| Diabetic Renal Insufficiency and Hypertension | 7101-7541 | 30% | 20031120 |
| Mild Anemia | Not Unfitting | | Anemia | 7700 | 10% | 20031120 |
| Elevated Liver Enzymes | Not Unfitting | | No VA entry | | | 20031120 |
| ↓No Additional MEB/PEB Entries↓ | | | Traumatic Arthritis Left Hip | 5010-5252 | 10% | 20031120 |
| Traumatic Arthritis Right Hip | 5010-5252 | 0% | 20031120 |
| 0% X 4 / Not Service-Connected x 7 | | | 20031120 |
| **Combined: 20%** | | | **Combined: 60%** | | | |

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 service members for anticipated future severity or potential complications of conditions resulting in medical separation. That role and authority is granted by Congress to the 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. The Board further acknowledges the CI’s contention for ratings for other conditions documented at the time of separation, and notes that its recommendations in that regard must comply with the same governance. 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 DVA, however, 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.

Diabetes Mellitus Condition. The CI was diagnosed with DM type II in 1995 and was managed on oral medications until 2002 when he was placed on insulin for rising blood sugar levels and newly diagnosed DM type I. He experienced three hypoglycemic episodes requiring emergent treatment and hospitalizations within the first 8 months of initiating insulin treatment and the evidence reflects no further episodes thereafter. The evidence did not reflect hospitalizations for hyperglycemia or diabetic ketoacidosis. His DM responded quickly to treatment as reflected in a normal HgA1C value from of 9.4 (normal <6.0) in April 2002, to 4.7 in August 2002 and 5.5 in August 2003. Additionally, in 2002, he was placed on a renal protective medication (Lisinopril) for renal insufficiency with creatinine averaging 1.3-1.5 (normal <1.1), likely due to his DM. Finally, he was experiencing new onset fatigue and after an extensive laboratory, radiographic and procedural evaluation, requiring a bone marrow biopsy, by a hematologist he was diagnosed with low white blood cell count (leukopenia) and a low red blood cell count (anemia). The hematologist opined the anemia was due to chronic disease, likely from his DM and recommended close monitoring. He was placed on a P3 profile for insulin requiring DM and was limited for deployment and duty assignments. The commanders statement documented in June 2003 that the CI’s “medical condition has in no way interfered with his duty performance.” He further documented the CI maintained a high state of physical readiness, routinely attained a near maximum score for his APFT, was a highly valued member of his section and of the command and his duty performance was exemplary. The commander strongly recommended he be adjudged as being physically fit.

At the MEB exam, completed in May 2003, the CI reported fatigue, lack of mental concentration which was affecting his ability to perform his work and duties, but he remained motivated to work. He took insulin 70/30 subcutaneously in the morning and the evening 15 and 10 units, respectively. The MEB physical exam documented a normal physical, normal HgA1C, leukopenia, anemia, elevated liver enzymes and a low testerone level. The medical examiner listed seven diagnoses and recommended further evaluation for all of them. At the VA Compensation and Pension (C&P) exam, performed prior to separation, the CI reported his MEB diagnoses and treatment plans and in addition reported; left and right hip pain, sleep apnea, hearing loss, tinnitus and a painful umbilical hernia. The VA C&P exam documented painful right and left non compensable hip flexion, enlarged nonspecific, submandibular glands, and otherwise normal exam.

The Board directs attention to its rating recommendation based on the above evidence. The Board notes that both the MEB and VA exams were complete, well documented, and similar in terms of ratable data and therefore the Board assign both exams equal probative value. The PEB and VA chose the same coding options for the condition 7913 (DM) and both were IAW §4.119 Schedule of ratings-endocrine system. Both rated 20% which is assigned if there is a requirement for insulin and restricted diet, or oral hypoglycemic agent and restricted diet.” IAW VASRD code 7913 the 40 and 60%, in addition to meeting the 20% rating requirements, both require a restricted diet and regulation of activities and the 60% rating further specifies the rating requires 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. The Board agreed the evidence does not support regulation of activities and therefore the 40% criteria are not met and for the same reasoning neither the DM renal insufficiency nor the anemia of chronic disease could be considered under the 60% criteria. The VA rated renal insufficiency with hypertension, a complication of DM, separately which is consistent with the VASRD 7913. The VA coded 7541 (Renal involvement in DM, sickle cell anemia, systemic) analogous to 7101 (hypertensive vascular disease (hypertension and isolated systolic hypertension) and rated as renal dysfunction at 30% qualifying the hypertension at least 10% disabling under diagnostic code 7101. The Board agreed there is no evidence of hypertension in the MEB, VA exam or in the service treatment record and therefore at best would meet the 7541 0% rating for non-compensable hypertension under 7101. The Board could not consider the DM renal insufficiency separately as it was not in the PEBs final rating recommendation. 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.

Contended PEB Conditions. The condition adjudicated as not unfitting by the PEB was anemia. The Board’s first charge with respect to this condition is an assessment of the appropriateness of the PEB’s fitness adjudications. The Board’s threshold for countering fitness determinations is higher than the VASRD §4.3 (reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 “fair and equitable” standard. The medical evidence of the anemia condition was discussed under the DM condition for possible consideration with a higher rating under the 7913 DM code. This condition was not profiled, implicated in the commander’s statement nor judged to fail retention standards. It was reviewed by the action officer and considered by the Board. There was no indication from the record that this condition significantly interfered with satisfactory duty performance. After due deliberation in consideration of the preponderance of the evidence, the Board concluded that there was insufficient cause to recommend a change in the PEB fitness determination for the anemia condition and, therefore, no additional disability ratings can be recommended.

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 DM condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended mild anemia condition, the Board unanimously recommends no change from the PEB determinations as not unfitting. 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:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Diabetes Mellitus, Requiring Insulin and Restricted Diet | 7913 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120218, 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

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency

(TAPD-ZB / ), 2900 Crystal Drive, Suite 300 Arlington, VA 22202

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXXXXXXXXXXXXXXXXX, AR20120016897 (PD201200222)

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 XXXXXXXXXXXXXXXXXXX

Deputy Assistant Secretary

(Army Review Boards)

CF:

( ) DoD PDBR

( ) DVA