RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: NAVY

CASE NUMBER: PD1200289 SEPARATION DATE: 20031117

BOARD DATE: 20120913

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SK2/E-5 (Aviation Storekeeper), medically separated for asthma. Despite a comprehensive treatment regimen of bronchodilators, corticosteroids and anti inflammatory medications, the CI did not improve adequately to meet the physical requirements of his rating or satisfy physical fitness standards. He was placed on limited duty [LIMDU] for 18 months and referred for a Medical Evaluation Board (MEB). Asthma was listed on the NAVMED 6100/1 and was forwarded to the Physical Evaluation Board (PEB). The informal PEB adjudicated asthma as unfitting rated at 10% with probable application of SECNAVINST 1850.4E and Department of Defense Instruction (DoDI) 1332.39. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: “Treating physician was deployed in support of Operation Iraqi Freedom. Substitute physician submitted for PEB after two visits. Treating physician was 0-6 Department Head. Upon return from deployment, had final exam before separation. Treating physician did not agree with substitute physician’s finding that was submitted to the PEB. I was ready for separation and didn’t press the issue any further.”

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.

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service FPEB – Dated 20030708** | **VA (2 Mos. Pre-Separation) – All Effective Date 20031118** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Asthma | 6602 | 10% | Asthma | 6602 | 30% | 20030904 |
| ↓No Additional MEB/PEB Entries↓ | Migraine Headaches | 8100 | 30% | 20030904 |
| Left Elbow Strain | 5206 | 10% | 20030904 |
| Left Knee Strain | 5260 | 10% | 20030904 |
| Not Service-Connected x 1 |  |
| **Combined: 10%** | **Combined: 60%** |

ANALYSIS SUMMARY: The Board acknowledges the CI’s assertions that the substitute physician’s findings submitted to the PEB did not accurately reflect the CI’s condition. It is noted for the record that the Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to the CI’s statements in the application regarding suspected improprieties in the processing of his case. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to VASRD standards, based on severity at the time of separation.

Asthma Condition. There were two pulmonary function test (PFT) evaluations 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 Exam | MEB ~8 Mo. Pre-Sep | VA ~2 Mo. Pre-Sep |
| FEV1 (% Predicted) | 78% | 91% / 79% (Pre / Post) |
| FEV1/FVC | 84% | 84% **/** 81% (Pre / Post) |
| Medications | Serevent 2x/day inhaled; Singulair daily [oral]; Albuterol as needed (2-3 times a week) | Serevent 2x/day; Singulair daily; Albuterol prn |
| §4.97 Rating | 30% (PEB 10%) | 30% |

The CI initially presented with excessive shortness of breath (SOB) with exercise in September 2000. The CI continued was diagnosed with mild exercise induced asthma by pulmonary in October 2001 and was started on a daily inhaled corticosteroid (Azmacort) with a bronchodilator (Proventil) pre exercise and as needed. Pulmonary function testing (PFT) demonstrated mild airflow obstruction and a borderline response to daily bronchodilator therapy. The CI was followed closely by pulmonary with medication adjustments with the addition of a second daily bronchodilator (Serevent/Salmeterol) and a change in his daily inhaled steroid therapy to include Flovent, then a transition to Advair. Treated for possible exacerbating conditions (gastro esophageal reflux disease [GERD] and post nasal drip) did not decrease symptoms.

At the MEB examination, performed 8 months prior to separation, the CI had persistent exercise intolerance and an inability to perform any significant exercise at a high level, along with occasional (1-2x/week) nighttime symptoms. The CI was continued medications of 2 daily inhaled bronchodilator (Serevent), daily oral leukotriene inhibitor (Singulair), and an as needed inhaled bronchodilator (Albuterol). The PFT’s (charted above) demonstrated no significant response to bronchodilators and the findings were consistent with mild air flow obstruction. Treatment records indicated the CI was followed by a Pulmonologist monthly for 3 months in 2003; however, the remainder of the follow-up was intermittent and the CI did not require urgent care, ER visits or hospitalizations for asthma. Records did not indicate treatment with 3 or more courses of systemic (oral or parenteral) corticosteroids in the year prior to separation. Chest X-rays were normal.

At the VA Compensation and Pension (C&P) exam performed 2 months prior to separation, the CI reported SOB, at rest and with physical exertion such as ambulating three city blocks in addition to limitations in performing heavy strenuous activities with lifting, pushing, pulling and carrying heavy objects. The CI noted limitations in activities of daily living with climbing stairs, pushing a lawnmower and taking out trash. His asthma medication treatment regimen continued with normal PFTs made worse with bronchodilators as summarized in the chart above.

The Board directs attention to its rating recommendation based on the above evidence. The PEB and VA both coded the asthma condition under 6602. The PEB PFTs were in the range for the 10% criteria (71-80% predicted), while the VA PFTs were normal or to the 10% criteria. However, VASRD criteria differ from DODI guidance that was in effect at the time, and rating IAW VASRD criteria alone, the CI’s medication history and use are the crux of the rating deliberations in this case.

The narrative summary (NARSUM), service treatment records (STR), and prior to separation VA C&P examination all indicate that the CI required and used daily inhalational bronchodilator and oral medications which would support a 30% rating IAW VASRD code 6602 (“daily inhalational or oral bronchodilator therapy or inhalational anti-inflammatory medication”) and VASRD §4.97. 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 steroid (anti-inflammatory) and/or bronchodilator agents. The Board agreed that there was sufficient evidence to conclude that the CI was prescribed and used his required daily treatment; and, therefore recommends 30% as the fair rating for asthma in this case.

After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a 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. As discussed above, PEB reliance on SECNAVINST 1850.4E or DoDI 1332.39 for rating asthma was operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the asthma condition, the Board unanimously recommends a 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:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Asthma | 6602 | 30% |
| **COMBINED** | **30%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120320, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

 President

 Physical Disability Board of Review

MEMORANDUM FOR DEPUTY COMMANDANT, MANPOWER & RESERVE AFFAIRS

 COMMANDER, NAVY PERSONNEL COMMAND

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATIONS

Ref: (a) DoDI 6040.44

 (b) PDBR ltr dtd 3 Oct 12 ICO

 (c) PDBR ltr dtd 3 Oct 12 ICO

 (d) PDBR ltr dtd 12 Oct 12 ICO

1. Pursuant to reference (a) I approve the recommendations of the Physical Disability Board of Review set forth in references (b) through (d).

2. The official records of the following individuals are to be corrected to reflect the stated disposition:

 a former USN, XXX-XX: Disability retirement with a final disability rating of 40 percent effective 18 June 2002.

 b. former USN, XXX-XX: Disability retirement with a final disability rating of 30 percent effective 17 November 2003.

 c. XXX XX former USMC: Disability separation with a final disability rating of 10 percent (increased from 0 percent) effective 30 December 2004.

3. Please ensure all necessary actions are taken to implement these decisions, included the recoupment of disability severance pay if warranted, and subject members are notified once those actions are completed.

 Assistant General Counsel

 (Manpower & Reserve Affairs)