

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXX
CASE NUMBER: PD1200469
BOARD DATE: 20121114

BRANCH OF SERVICE: ARMY
DATE OF PLACEMENT ON TDRL: 20021011
DATE OF PERMANENT SEPARATION DATE: 20031112

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Major/O4, (67C/Senior Preventive Medicine Officer) medically separated for asthma. The CI had a history of symptoms consistent with asthma for over ten years. Prior to November 2001, his asthma was easily controlled with daily medications and he experienced no respiratory problems when donning protective equipment. In October 2001, he failed a physical fitness test due "asthma attack" and was then having nocturnal symptoms and inability to don protective equipment due to respiratory symptoms. He was issued a P2 profile in November 2001 for alternative physical fitness testing. His symptoms persisted, he continued to require daily controlled medications and the asthma condition did not improve adequately with treatment to meet the physical requirements of his Military Occupational Specialty or satisfy physical fitness standards. In June 2002, he was issued a permanent P3 profile and referred for a Medical Evaluation Board (MEB). The MEB identified and forwarded moderate persistent asthma as the only condition for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated the asthma condition as unfitting, rated 30%, with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD). The CI was placed on the temporary disability retired list (TDRL) because his condition was not sufficiently stable for final adjudication. The CI was re-evaluated almost 14 months later and the PEB recommended removal of the CI from the TDRL with a permanent disability rating of 10%. The CI made no appeals and was medically separated with a 10% disability rating.

CI CONTENTION: "I was originally diagnosed with asthma after returning from Desert Shield/Storm in 1991. I was able to control the asthma through medication and it did not impact my ability to deploy. However, in 2001, I began experiencing adverse health effects while wearing the protective mask and during physical fitness tests due to asthma. I was placed on a permanent profile and began the medical evaluation board. I was discharged from the Army Oct, 2002 after 17 years of service and placed on the temporary retired list with a disability rating of 30%. The VA had also completed its assessment and assigned a disability rating of 30% as well in November, 2002. The following year, the Army reduced my disability to 10% and removed me from the retired list and changed my status. However, the VA reassessment in 2005 still resulted in a 30% disability rating. I ask that the DOD reconsider the 10% rating and align to the VA rating."

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 Army Board for the Correction of Military Records.

TDRL RATING COMPARISON:

Service PEB – Dated 20031022				VA – All Effective Date 20021011			
Condition on TDRL entry – 20021011	Code	Rating		Condition	Code	Rating	Exam
		TDRL	Sep.				
Asthma	6602	30%	10%	Asthma	6602	30%*	20020925
↓No Additional MEB/PEB Entries↓				0% x 4/Not Service Connected x 4			
Combined: 10%				Combined: 30%			

*30% rating continued after scheduled VA C&P review examination in February 2005.

ANALYSIS SUMMARY: The Board notes the current Department of Veterans’ Affairs (DVA) ratings listed by the CI for his service-connected condition but must emphasize that its recommendations are premised on severity at the time of separation. The DVA ratings which it considers in that regard are those rendered most proximate to separation. 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.

Asthma Condition. There were two pulmonary function tests (PFTs) 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.

PFTs	PFTs performed ~4 Mo. Pre-TDRL entry Used in NARSUM & VA C&P	PFTs performed ~2 Mo. Pre-TDRL exit Used by PEB at TDRL exit
FEV1 (% Predicted)	117%	93%
FEV1/FVC	112%	82%
Meds	Daily inhaled steroids Daily inhaled beta agonists	Daily inhaled steroids Inhaled beta agonists as needed
§4.97 Rating	30%(daily inhaled steroids)	30%(daily inhaled steroids)

At the MEB exam performed almost 4 months prior to TDRL entry, the CI reported diagnosed with asthma symptoms and an asthma attack in 1991. He was taking Serevent, Flovent, Albuterol and Zyrtec. The MEB physical exam noted normal lung examination.

The initial narrative summary (NARSUM) prepared approximately 3 months prior to TDRL entry noted the CI’s initial presentation to the pulmonary clinic in November 2001 after experiencing symptoms consistent with persistent asthma for the previous 10 years. It was noted that his last visit to the emergency department was approximately ten years prior and that he had a positive Methacholine challenge test (MCT) in September 1991 (the MCT result primary document is not available for review). He failed an Army physical fitness test (APFT) due to exertional symptoms and had no previous difficulty donning respiratory protective equipment. At the time of presentation to the pulmonary clinic, the CI was using inhaled bronchodilators and corticosteroid medications on a daily basis. In November 2001, he was issued a P2 profile for alternate APFT and his asthma condition was monitored. On follow-up in June 2002, the CI was still requiring daily controller medications, continued to be symptomatic with exertional activities, experienced an asthma exacerbation during a local field training exercise, admitted to nocturnal symptoms two to three times a week and was unable to don respiratory protective equipment presumable due to respiratory symptoms. Physical exam revealed clear lungs. PFT results, performed 4 months prior to TDRL entry, and medication use are documented in the chart above.

At the VA Compensation and Pension (C&P) exam performed almost a month prior to TDRL entry prior to separation, documented a history similar to that outlined above with the following additional information: never required hospitalization for asthma, no need for oral steroids and treatment with both beta 2 agonists, long and short acting, and inhaled steroids. Physical examination revealed clear lungs to auscultation. This C&P examination referred to PFT results obtained on 25 June 2002, the same PFT results referred to in the initial NARSUM.

The TDRL evaluation summary prepared almost 2 months prior to separation documents the following interval history concerning the 11 month interval spent on TDRL. The CI continued on the daily medications of Advair (twice daily), Flonase, Zyrtec and Albuterol as needed. The CI reported symptoms approximately once a month with no nocturnal symptoms and no need for daily Albuterol use. He had two asthma exacerbations in April 2003 that required only fast acting Albuterol inhalers with no mention of oral steroid use. Physical exam revealed lungs to be clear to auscultation bilaterally. PFT data is summarized in the chart above.

The Board directs attention to its rating recommendation based on the above evidence. The PEB initially utilized VASRD code 6602, asthma, and rated it 30% based on daily inhaled medications with normal PFTs and placed the CI on TDRL. Three months after TDRL entry, the VA coded the asthma using 6602 and rated it 30%; citing the same PTF results used by the PEB at TDRL entry and treatment with beta 2 agonist and short acting inhaled steroids. Fourteen months after TDRL entry, the PEB reevaluated the CI, making its final adjudication of asthma, coded 6602, and rated at 10% citing "pharmacy record noting intermittent use of medications since being placed on TDRL." The rating criteria for VASRD code 6602 rely on evaluation of the PFTs, the frequency of medication use, physician visits and asthma exacerbations. The 10% rating requires an FEV-1 of 71- to 80% predicted or; FEV-1/FVC of 71 to 80% or; intermittent inhalational or oral bronchodilator therapy and is the rating given by the PEB's final adjudication. This PEB rating was specifically based on the lack of documentation concerning the CI's daily use of inhaled medications. Both the NARSUM and the TDRL re-evaluation summary document PFT results that were above compensable levels and therefore the rating recommendation in this case is to be based entirely on medication use. The records present for review document that daily inhaled steroids were consistently recommended by the medical providers and the CI consistently reported using them as recommended. The medication profile is the key information required to justify a 30% rating in this case, as the intermittent inhalational bronchodilator medication use required for a 10% rating is easily met. The criteria for the next higher rating, 30%, include "daily inhalational or oral bronchodilator therapy, or; inhalational anti-inflammatory medication." Any frequency of use of inhalational anti-inflammatory medication satisfies the rating criteria and the pharmacy records are compatible with either a once daily dosing regimen or an intermittent twice-daily dosing regimen. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a permanent 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 30% permanent disability rating, 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 to reflect a permanent combined 30% disability retirement upon removal from the TDRL as below:

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

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120604, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXXXXX
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 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation
for XXXXXXXXXXXXXXXXXXXXXXXX, AR20120021426 (PD201200469)

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

XXXXXXXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
() DoD PDBR
() DVA

