

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXX
CASE NUMBER: PD1200621
BOARD DATE: 20121113

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20031120

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSG/E-6 (11M10/Fighting Vehicle Infantryman), medically separated for an asthma condition. The CI did not improve adequately with treatment to satisfy physical fitness standards. The CI developed shortness of breath and coughing with mild exertion and exercise intolerance. He was prescribed Advair twice a day and Albuterol as needed. He was issued a permanent P3 profile and referred for a Medical Evaluation Board (MEB). The MEB was returned for reconsideration and additional testing and a NARSUM addendum were considered by the MEB. The asthma condition was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR40-501, chpt 3-27c. The MEB forwarded no other conditions for PEB adjudication. The PEB adjudicated the asthma condition as unfitting “with CHCS/Pharmacy record noting intermittent use - no medications from April 2003 until July 2003”, rated 10%, with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: “The VA has my rating at 80% for service connected disabilities. The Army never addressed all of my conditions. I was pressured to get out seven years before retirement. I was told that I would never make E-7. I wanted to stay until 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 asthma condition requested for consideration meets the criteria prescribed in DoDI 6040.44 for Board purview, and is accordingly addressed below. The other unspecified requested 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 Correction of Military Records.

RATING COMPARISON:

Service IPEB – Dated 20030829			VA (4 Mos. Post-Separation) – All Effective Date 20031121			
Condition	Code	Rating	Condition	Code	Rating	Exam
Asthma	6602	10%	Bronchial Asthma	6602	10%*	20040324
No Additional MEB/PEB Entries			Patellofemoral, Syndrome, R Knee	5014	10%	20040324
			Patellofemoral, Syndrome, L Knee	5014	10%	20040324
			Tinnitus	6260	10%	20040324

	0% X 1 / Not Service-Connected x 1	20040324
Combined: 10%	Combined: 40%	

*Asthma increased to 30% effective 20090316 (combined 80%)

ANALYSIS SUMMARY: The Board acknowledges the CI's contention suggesting that ratings should have been conferred for other conditions documented at the time of separation and for conditions not diagnosed while in the Army (but later determined to be service-connected by the VA). While the Disability Evaluation System (DES) considers all of the member's medical conditions, compensation can only be offered for those medical conditions that cut short a member's career, and then only to the degree of severity present at the time of final disposition. The Department of Veterans Affairs (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. The Board also acknowledges the CI's assertions that he was pressured to separate before retirement. It is noted for the record that the Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to asserted improprieties in the disposition of a 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. It must also judge the fairness of PEB fitness adjudications based on the fitness consequences of conditions as they existed at the time of separation.

Asthma Condition. The pulmonary and pulmonary function test (PFTs) evaluations in evidence, which the Board weighed in arriving at its rating recommendation, with documentation of additional ratable criteria, are summarized in the chart below.

Pulmonary Exam	~5 Mo. Pre-Sep	MEB Addendum ~4 Mo. Pre-Sep	VA C&P ~7 Mo. Post-Sep
FEV1 (% Predicted)	76%	Ref 5 Mo. Pre-Sep PFTs	--
FEV1/FVC	85%		--
Meds	Albuterol as needed, Advair twice daily; 1 course systemic steroids past year	Advair(dose increased) twice daily, Albuterol as needed, Optimally managed...current medication course	Advair twice daily, Albuterol as needed, Allegra daily; fine expiratory wheezes bilat
§4.97 Rating	30%	30% (PEB 10%)	30% (VA 10%)

The CI presented with exercise intolerance in October 2002, a year prior to separation. He was treated with inhaled Advair (artificial steroid, w/ anti-inflammatory) twice daily and inhaled Albuterol (bronchodilator) as needed "but was still unable to perform running and heavy exertional activities." He was placed on a P3 profile which triggered the MEB. At the MEB exam, performed 8 months prior to separation, the CI reported some improvement in his shortness of breath and cough with medications, but continued exercise and heavy exertional activity intolerance. The MEB physical exam noted normal lung exam, and a post-bronchodilator FEV of 79%. His medications were Advair twice daily and Albuterol as needed. The MEB Addendum 5 months prior to separation described the asthma condition as "moderate in nature and being optimally managed on the patient's current medications" and PFTs as described above. The CI was also evaluated for paradoxical vocal cord dysfunction (including bronchoscopy in June 2003), which was "stable and not amenable to further treatment." The service treatment records (STR) documented several visits to the CHMC with complaints of shortness of breath and activity intolerance. The STR also documented receipt of nebulizer treatments and prescription refills at the CHMC.

At the VA examination, performed 7 months after separation, the CI reported daily inhaler use. The physical exam demonstrated fine expiratory wheezes bilaterally in posterior lung fields. PFTs were stated as pending, with no VA PFTs proximate to that exam date in evidence. The Board directs attention to its rating recommendation based on the above evidence. The VA rated the asthma at 10% coded 6602, however the exam and rating narrative indicated daily inhaled medication use (including an artificial steroid). [VARD "Your VA examination shows your therapy consists of three different inhaled medications on a daily basis. You last used oral steroids in January 2003. You have daily wheeze and cough. Examination of the lungs revealed fine expiratory wheezes bilaterally. Service connection for bronchial asthma is granted with an evaluation of 10 percent disabling effective 23 November 2003, date following discharge."]

The PEB's DA Form 199 disability description "Asthma with CHCS/Pharmacy record noting intermittent use - no medications from April 2003 until July 2003" makes it clear that its 10% rating for asthma was derived from the VASRD, without daily medication use ("CHCS/Pharmacy record noting intermittent use"). It is clear that the CI's PFTs would not justify a rating higher than 10%. The use of daily inhaled corticosteroids and bronchodilators would justify a rating of 30%. The key question to the Board was whether there was reasonable doubt as to the CI's severity based on medication use.

The CI was seen by military and private physicians. All treatment notes and the VA exam indicated daily inhaled medication use. The CI was treated with oral steroids by a private physician which was noted in the service asthma outpatient documentation, but no oral steroid medication was noted in the CHCS/Pharmacy record medication profile. The CI was also treated with Nystatin for oral thrush in June 2003. Oral thrush is not usually seen in adults except with immune suppression (chronic systemic steroid use or diseases), or as most likely in this case the use of inhaled corticosteroids when used without ideal technique (inhaled medication deposits too much in the mouth).

The Board discussed at length the probative value of the treatment records indicating daily medication use and the CHCS/Pharmacy record documenting no CHCS dispensed inhaled controller medication for a 4-month period adjudged by the PEB to indicate intermittent inhaled medication use. Given the CI's prescribed Advair dosing of one puff twice a day, two canisters of Advair from any source not captured by the CHCS/Pharmacy record medication profile would cover that timeframe. The Board considered that the CHCS/Pharmacy record did not include the oral steroids that were clearly prescribed by a civilian physician and per multiple treatment records were taken by the CI. The Board also noted that CHCS/Pharmacy records, especially in 2003, did not include any civilian pharmacy provided medication or medications issued from outside the main pharmacy such as clinic medication cabinets, emergency departments/inpatient sources (such as pulmonary testing labs or bronchoscope labs), or from civilian provider's direct dispensing from samples or other sources.

After review of the entirety of the evidence on the CI's medication history, the Board majority determined that there was reasonable evidence that the CI had access to multiple providers for his prescriptions which were very likely not reflected in the CHCS/Pharmacy record medication profile. All treatment notes and histories indicated "daily inhalational or oral bronchodilator therapy, or; inhalational anti-inflammatory medication" which met the 30% rating criteria. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board majority 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. 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 by a vote of 2:1, recommends a disability rating of 30%, coded 6602 IAW VASRD §4.97. The single voter for dissent (who recommended no recharacterization of asthma at 10%) submitted the appended minority opinion. 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 her prior medical separation:

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

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120605, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans’ Affairs Treatment Record

XXXXXXXXXXXXXXXXXXXXX
President
Physical Disability Board of Review

MINORITY OPINION:

The minority voter agrees with the statement in the above proceedings that, "The key question to the Board was whether there was reasonable doubt as to the CI's severity based on medication use." The PEB rated the asthma condition at 10% based upon what they considered insufficient evidence demonstrating that the CI was actually taking "the daily inhalational or oral bronchodilator therapy, or; inhalational anti-inflammatory medication" as required by the VASRD Code 6602 to reach the 30% rating. The PEB stated, "Asthma with CHCS/Pharmacy record noting intermittent use - no medications from April 2003 until July 2003." A review of the pharmacy records in evidence validates the PEB's observations. The board discussion hinged upon the assumption that the CI "allegedly" received additional asthma medications and refills from his non-military physician during the aforementioned period of April 2003 until July 2003. This explanation falls short in that if the civilian prescriptions were not filled at the military facility (the more logical course of action from a personal financial perspective, and one that would have been captured by the evidence at hand); then civilian pharmacy records would logically have been presented to refute the PEB finding. Likewise it is unreasonably speculative to conclude that all of the undispensed medications were garnered as physician office samples. The minority voter believes that there is insufficient objective evidence and an overly speculative rationale, even with liberal concession of reasonable doubt, to support the majority conclusion which was the keystone for elevating the rating to 30%. The minority opinion was apparently shared by the VA rating official who conferred a 10% rating. When challenged with this argument, the majority response was that the rating official made an "error." The minority voter does not find enough benefit of the doubt to declare that the VA rating official was in error, along with the members of the PEB.

The Secretary is respectfully urged to consider the minority recommendation that there be no recharacterization of the CI's disability and separation determination, as follows:

UNFITTING CONDITION	VASRD CODE	RATING
Asthma	6602	10%
	COMBINED	10%



DEPARTMENT OF THE ARMY
ARMY REVIEW BOARDS AGENCY
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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
 XXXXXXXXXXXXXXXXXXXX, AR20120021793 (PD201200621)

1. 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 reject the Board's recommendation and accept the Board's minority opinion as accurate that the applicant's final Physical Evaluation Board disability rating remains unchanged. There is insufficient justification to support the Board's recommendation in accordance with Army and Department of Defense regulations.

2. 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

XXXXXXXXXXXXXXXXXXXXXXXXX
 Deputy Assistant Secretary
 (Army Review Boards)

CF:
 () DoD PDBR
 () DVA

