

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1200894
BOARD DATE: 20130124

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20030612

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Soldier, SGT/E-5(77F/Fuel Handler), medically separated for an asthma condition. The CI did not improve adequately with treatment to meet the physical requirements of her Military Occupational Specialty (MOS); meet worldwide deployment standards or satisfy physical fitness standards. She was issued a permanent P3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded moderate persistent asthma IAW AR 40-501. No other conditions appeared on the MEB's submission. The Physical Evaluation Board PEB adjudicated the asthma condition as unfitting, rated 10%, with application of the Veterans Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: The CI states: "1) I was not informed of appeal options when final decision was presented; 2) I was diagnosed by Dr. --- in March 2000 at Martin Army Community Hospital ER at Ft. Benning and began follow-up care at Ft. Hood with Dr. -- at TMC 6 & Thomas Moore Health Clinic, which enrolled me in the asthma program/class; 3) Decision seems to have been made due to Rx profile which only shows prescriptions beginning in 2002 (according to AHLTA), which presents a gap/missing information from date of diagnosis(2000); 4) Various instructions were given regarding usage of Albuterol by various providers (first told to use on daily basis, then instructed(by other providers conducting medication reconciliation process when being seen for other issues) to use other inhalers on a daily basis and Albuterol is used only as a rescue inhaler when other medications fail; 5) I've used home remedy of hot tea, honey, and lemon juice mixture to alleviate flare up symptoms as well as eating a tablespoon of warm honey to control wheezing since diagnosis; 6) Was enrolled in EFMP at Ft. Hood after my discharge from service and issued a nebulizer, which I currently still use; 7) Condition has not gotten any better and still limits my activities(various factors causes flare ups allergies, strenuous activities, weather/temperature changes, coughing, laughing, etc)."

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 remaining conditions rated by the VA at separation and listed on the DD Form 294 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 PEB – Dated 20030417			VA (4 Mos. Pre-Separation) – All Effective Date 20030613					
Condition	Code	Rating	Condition	Code	Rating	Exam		
Asthma	6602	10%	Asthma	6602	30%	20030220		
↓No Additional MEB/PEB Entries↓			Left Knee Patellofemoral Pain Syndrome	5299-5024	10%	20030220		
			Low Back Strain	5295	10%	20030220		
			0% X 3 / Not Service-Connected x 1			20030220		
			Combined: 10%			Combined: 40%		

ANALYSIS SUMMARY: The Board acknowledges the CI’s opinion that she was not informed of an appeals option, that the service record shows a gap of missing medication profiles from the time she was diagnosed with asthma and finally that she had various instructions regarding the use of her inhalers. It must be noted for the record that the Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to allegations regarding suspected improprieties or faulty medical care. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB disability ratings and fitness determinations as elaborated above.

Asthma Condition. The CI sought care in the emergency room for difficulty breathing in March 2000 and was diagnosed with acute asthma which necessitated treatments with subcutaneous epinephrine (emergent treatment for severe allergic or severe airway compromise), beta agonist nebulizer treatments and injectable steroid treatment. There was a paucity of evidence since this emergent encounter for treatment of asthma until August 2002. This entry documented that she had been to an asthma class, had a received a spacer, had used her albuterol 3 times in 2 weeks and reported no night symptoms for the past 2 weeks. The examiner prescribed the anti-inflammatory inhaler Flovent and the beta agonist Albuterol with the instructions “use as necessary until she feels better.” She was not seen by pulmonary until February 2003 who documented she had had multiple visits for asthma since her emergency room visit, was using the medications Albuterol, Flovent, and Serevent (long acting beta agonist) for the last 2-3 months and was passing her physical training tests however had difficulty performing MOPP training. The examiner diagnosed moderate persistent asthma. The medication profile reflected prescriptions for the asthma medications Flovent, Serevent, and Albuterol, the allergy medications Flonase and Zyrtec prior to separation. After separation, the medication profile reflected the asthma medications Advair and Singulair and allergy medication Nasonex and Zyrtec. The permanent profile limitations included an alternate physical training test, walk and run at own pace and distance and no use of protective mask. The commander’s statement corroborated her medical condition, limitations and additionally documented she had difficulty performing her duties in smoky or confined areas and could only perform office duties under her MOS. There were no hospitalizations or episodes of respiratory failure in evidence. There was one pulmonary function test (PFT) in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation; as summarized in the chart below.

DOS 20030612

Pulmonary Exam	MEB ~3 Mo. Pre-Sep
FEV1 (% Predicted)	84
FEV1/FVC	88
Meds	Albuterol as needed; Flovent, Serevent, Flonase
§4.97 Rating	10%* vs.30%

*Based on PFT criteria alone

At the MEB exam the CI reported she was using her Albuterol several times daily. The MEB physical exam demonstrated normal head, ears, nose mouth, throat and cardiopulmonary findings. Spirometry was unremarkable and revealed no significant change with bronchodilator medication. A methacholine challenge study was contraindicated due to her previous known asthma exacerbations. The examiner diagnosed moderate persistent asthma and opined the current clinical condition required the use of daily controller medications and that her condition was stable at this time. At the VA Compensation and Pension (C&P) exam, prior to separation, the CI reported attacks three to four times per week, both day and night, currently took the asthma medications; Albuterol, Serevent, and Flovent and the allergy medications Zyrtec and Flonase which helped her sinus congestion. The C&P exam demonstrated clear drainage of the nose, tenderness of the frontal sinuses and normal cardiopulmonary findings. A Computer Tomography (CT) sinus X-ray revealed marked edema of the turbinate's and an abnormal right osteomeatal complex. The examiner referenced the service PFT's and diagnosed mild to moderate persistent asthma and seasonal allergic rhinitis.

The Board directs attention to its rating recommendation based on the above evidence. The PEB and VA applied the same VASRD code 6602 (Asthma, bronchial) and were subject to the same rating criteria IAW §4.97—Schedule of ratings—respiratory system. VASRD §4.97 rating criteria for asthma are based on the number and severity of clinical exacerbations; the type and the frequency of medications used to treat the condition; and PFT values for FEV1 and FEV1/FVC ratio. IAW VASRD §4.96 special provisions regarding evaluation of respiratory conditions PFT's are required to evaluate respiratory conditions unless the condition meets exception to this requirement which in this case it did not. VASRD §4.96 also specifies when evaluating based on PFTs, use post-bronchodilator results in applying the evaluation criteria in the rating schedule unless the post-bronchodilator results were poorer than the pre-bronchodilator results. All members readily agreed that the PFT in the MEB exam are post-bronchodilator measurements as specified by §4.96 and further acknowledges the exam is normal and a rating higher than 10% could not be achieved by the PFT criteria alone. There is no evidence for respiratory failure, frequent exacerbations requiring physician intervention, daily use of high dose corticosteroids or immune-suppressive medications, or frequent use of systemic corticosteroids. Therefore the higher 60% or 100% ratings IAW 6602 criteria are not supported. The treatment criteria underpinning the 10% and 30% ratings are the pivotal points for decision in this case. The 10% rating requires "intermittent inhalational or oral bronchodilator therapy;" the 30% rating requires "daily inhalational or oral bronchodilator therapy; or inhalational anti-inflammatory medication." The PEB assigned a 10% rating as the medication profile did not reflect quantities compatible with daily therapy. The VA generally concedes the 30% rating if there is a prescription for any of these agents, and the Board's precedent has been to follow suit, even though it is clear that this encompasses many cases of well-controlled disease associated with minimal limitations and disability. The Board however does take the reasonable position that the evidence in such cases should satisfy an assumption that the treatment regimen supporting the higher rating is necessary to maintain good control of the condition. That question is only raised in cases where there is evidence that the condition is well controlled in spite of documented non-compliance or only sporadic use of the medications in question. It was debated as to whether it was satisfactorily established in this case that the CI, although clearly prescribed treatments meeting the 30% criteria, actually required the daily regimen to defend the good control evidenced by the PFT results or symptom control. The action officer opines the CI's asthma impairment meets the requirement for daily inhalational anti-inflammatory medication as the condition is classified as moderate persistent asthma which is treated with daily anti-inflammatory medication as the first line treatment. Furthermore the evidence reflects the persistence of symptoms and additionally medication instructions that were inconsistent with her disease process. Finally, the evidence supports, prior to separation, active prescription management, changing from Flovent and Serevent to Advair and the addition of Singulair, reflecting good faith in the CI seeking care to manage and optimize her asthma. After due deliberation, considering all of the evidence and mindful of

VASRD §4.3 (Resolution of 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. 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 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 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 20120619, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

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Director
Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency
(TAPD-ZB / xxxxxxxx), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation
for xxxxxxxxxxxxxxxxxxxx, AR20130003486 (PD201200894)

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

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Deputy Assistant Secretary
(Army Review Boards)