

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XX
CASE NUMBER: PD1200908
BOARD DATE: 20130124

BRANCH OF SERVICE: MARINE CORPS
SEPARATION DATE: 20020430

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Cpl/E-4 (1171/Hygiene Equipment Operator), medically separated for persistent asthma. Asthma condition could not be adequately rehabilitated. The CI did not improve adequately with treatment to meet the physical requirements of her Military Occupational Specialty or satisfy physical fitness standards. She was placed on limited duty and placed on light duty and referred for a Medical Evaluation Board (MEB). The MEB forwarded no other conditions for PEB adjudication. The PEB adjudicated the mild to moderate persistent asthma condition as unfitting, rated 0% with application of DoD instruction 1332.39. The CI made no appeals, and was medically separated with a 0% disability rating.

CI CONTENTION: "My asthma was severe and they changed it when I went for another exam, but gave me the lowest rating possible when I was discharged."

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 (BCNR).

RATING COMPARISON:

Service IPEB – Dated 20020211			VA (14 Mos. Post-Separation) – All Effective Date 20020501			
Condition	Code	Rating	Condition	Code	Rating	Exam
Mild to Moderate Persistent Asthma	6602	0%	Asthma	6602	10%	20030719
↓No Additional MEB/PEB Entries↓			Not Service-Connected x 8			
Combined: 0%			Combined: 10%			

*Per last VARD on record combined rating changed to 90% effective 20050502

ANALYSIS SUMMARY:

Mild to Moderate Persistent Asthma Condition. The CI was diagnosed with asthma in 2000 and was treated with inhaled bronchodilators. Spirometry 8 March 2001 was normal with FEV1 98% predicted and an FEV1/FVC ratio of 79% (91% predicted). However an exercise bronchoprovocation test March 2001 was positive confirming the diagnosis and daily inhaled steroid medication was added to her treatment. At the time of follow up in 11 July 2001, the CI was not using the inhaled steroid medication and she was advised to use the medication daily. The MEB narrative summary (NARSUM), dictated 1 August 2001, lists only inhaled bronchodilator medication used as needed, but later indicates prescription for daily inhaled steroid. The MEB history and physical examination dated 14 January 2002 lists inhaled bronchodilator and inhaled steroids in the medication list indicating "regular use" without

further detail. Service treatment records (STRs) leading up to the date of separation continue to list inhaled steroid and bronchodilator. There was no VA Compensation and Pension (C&P) examination proximate to separation. The first C&P examination was 19 July 2003, 15 months after separation. At that time, inhaled bronchodilator and inhaled steroid medication was listed. The CI declined spirometry testing.

The Board directs attention to its rating recommendation based on the above evidence. The ratable pulmonary function parameters (FEV-1 and FEV-1/FVC) in the STRs were normal but the March 2001 results minimally supported a 10% rating. The treatment regimens documented in the NARSUM examination reported that the CI was prescribed daily inhaled steroid medication along with a rescue inhaler supporting the 30% rating while the C&P examination noted intermittent bronchodilator supporting the 10% rating. The Board noted STRs leading up to separation listed inhaled steroid medication in the active medication list. There is no evidence in this case that the CI did not require daily maintenance with either Flovent or Azmacort (which was listed as her daily medication on multiple examinations around the time of separation) in order to maintain good control of her asthma. The majority of the Board considered the minority voter's analysis but did not conclude the evidence was sufficiently convincing to conclude that the treatment agents were not being utilized on a daily basis. 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% using code 6602 for the mild to moderate persistent 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. In the matter of the mild to moderate persistent 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 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
Mild to Moderate Persistent Asthma	6602	30%
	COMBINED	30%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120608, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

XX
Director
Physical Disability Board of Review

Minority Opinion. The minority voter concluded the preponderance of evidence of the service medical record indicated the CI was not using the asthma medications as prescribed and therefore did not meet the threshold for the 30% rating based on medication use. Prior to the NARSUM, a pattern of non-use of medication was documented in the STRs. Following the time of the NARSUM, 1 August 2001, there are no clinical encounters for care of asthma or for refill of asthma medications. The asthma medications are intermittently listed in STRs following the NARSUM and are inconsistently recorded. No STR entry is in evidence that documents actual refill of these medications between 1 August 2001 and separation, 9 months later. The presence of multiple clinic encounters in the evidence of record suggests that if such documentation existed it would have been present in the evidence available for review. The minority voter concludes the asthma condition more nearly approximates the 10% rating.

MEMORANDUM FOR DEPUTY COMMANDANT, MANPOWER & RESERVE AFFAIRS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

Ref: (a) DoDI 6040.44
(b) PDBR ltr dtd 11 Feb 13

1. Pursuant to reference (a) I have reviewed the recommendation of the Physical Disability Board of Review set forth in reference (b). For the reasons provided therein, I concur with the opinion of the minority voting member.
2. The official record of the following individual is to be corrected to reflect the stated disposition:
 - a. xx former USMC: Separation from the naval service due to physical disability rated at 10% (increased from 0%) effective 2 May 2002.
3. Please ensure all necessary actions are taken to implement this decision and that subject member is notified once those actions are completed.

xx
Principal Deputy
Assistant Secretary of the Navy
(Manpower & Reserve Affairs)