

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-02400

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His official military personnel record amended to reflect a medical retirement with a 30 percent disability rating for asthma vice his current medical discharge with a 10 percent disability rating, with retroactive pay and benefits, effective the date of his original discharge.

APPLICANT'S CONTENTIONS

He was medically boarded in 2005 for asthma and received a 10 percent disability rating. At the time, he was prescribed Advair 250/50 and later Advair 500/50 and Singulair 10 mg, meeting the criteria for a 30 percent rating, which includes daily inhalation of anti-inflammatory medication. The incorrect 10 percent rating led to a medical separation instead of retirement, impacting the applicant's benefits. His current Department of Veterans Affairs (DVA) rating for asthma is 30 percent, supporting that his condition was underestimated.

The applicant recently learned about Department of Defense (DoD) medical retirement from his cousin. This led the applicant to realize his discharge rating was likely incorrect. Unaware of medical retirement until now, the applicant researched and found his asthma treatment at discharge should have qualified him for a 30 percent rating and medical retirement, not a 10 percent rating and separation. The applicant provided medication records and a redacted DVA decision letter as evidence.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an honorably discharged Air Force airman first class (E-3).

On 8 Nov 04, according to AF Form 618, *Medical Board Report*, the applicant was diagnosed with asthma; Incurred while entitled to basic pay: Yes; Existed prior to service: No; and was referred to the informal Physical Evaluation Board (IPEB).

On 29 Nov 04, according to AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board (Informal)*, the applicant was found unfit because of physical disability and diagnosed with the following:

- Category I – Unfitting Conditions Which Are Compensable And Ratable:
 - Asthma; Incurred while entitled to receive basic pay: Yes; Line of Duty: Yes; Disability Rating: 10 percent; Veterans Administration (VA) diagnostic code: 6602.
- Category II – Conditions that Can Be Unfitting But Are Not Currently Compensable Or Ratable:
 - Seasonal Allergic Rhinitis; VA diagnostic code: 6522.

The IPEB recommended discharge with severance pay (DWSP) with a compensable percentage of 10 percent.

On 17 Dec 04, according to AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, the applicant agreed with the findings and recommended disposition of the IPEB and waived his right to a formal PEB (FPEB) hearing.

On 17 Dec 04, according to an AFPC/DPPD memorandum, the Secretary of the Air Force directed the applicant be separated from active service for physical disability under the provisions of Title 10, United States Code § 1203 (10 USC § 1203), with severance pay computed under Section 1212 of this title.

On 18 Feb 05, the applicant was furnished an honorable discharge, with narrative reason for separation of Disability, Severance Pay, and credited with 2 years, 2 months, and 16 days active service.

On 12 Aug 05, according to a DVA Rating Decision, the applicant was granted service-connection for asthma with an evaluation of 10 percent, effective 19 Feb 05.

On 26 Jun 07, according to a DVA Rating Decision, evaluation of the applicant's asthma, at 10 percent disabling, was continued.

On 6 Nov 17, according to a DVA Rating Decision, evaluation of the applicant's asthma was increased to 30 percent disabling, effective 27 Aug 17.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisory at Exhibit C.

AIR FORCE EVALUATION

AFPC/DPFDD recommends denying the application. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice during Disability Evaluation System (DES) processing. Records indicate the PEB properly assigned the correct disability rating in accordance with the Veterans Administration Schedule for Rating Disabilities (VASRD) based on the applicant's inhaler use at the time of DES processing. An increase of his DVA rating over 12 years following separation due to a progression of his asthma and increased inhaler use does not warrant a change to the original PEB assigned disability rating.

The Air Force and the DVA disability systems operate under separate laws. Under the Air Force system (10 USC), the PEB must determine whether an airman's medical condition renders them unfit for continued military service relating to their office, grade, rank, or rating. To be unfitting, the condition must be such that it alone precludes the member from fulfilling their military duties. The PEB then applies the rating best associated with the level of disability at the time of disability processing. That rating determines the final disposition (DWSP, placement on the temporary disability retired list, or permanent retirement) and is not subject to change after the service member has separated. Under the DVA system (38 USC), the member may be evaluated over the years and their rating may be increased or decreased based on changes in the member's medical condition at the current time. However, a higher rating by the DVA "based on new and/or current exams conducted after discharge from service" does not warrant a change in the total compensable rating awarded at the time of the member's separation.

On 8 Nov 04, a Medical Evaluation Board (MEB) found the applicant potentially unfitting for asthma. The accompanying narrative summary indicates his current medications included Advair

250 mcg, Albuterol, and Claritin 10 mg, and he used the Albuterol as a rescue inhaler less than 2-3 times per month.

On 29 Nov 04, the IPEB found the applicant unfitting for asthma. The IPEB recommended he be DWSP with a 10 percent compensable disability rating in accordance with DoD and DVA VASRD guidelines. On 17 Dec 04, the applicant agreed with the IPEB's findings and did not appeal to the FPEB to request a possible increase to this disability rating. The applicant was subsequently DWSP, effective 18 Feb 05.

A review of the applicant's DVA records indicates, on 12 Aug 05, the DVA initially awarded a 10 percent rating for asthma, effective 19 Feb 05 (the day after separation). It is noted the applicant was processed under the older legacy DES in which the PEB and DVA made independent assessments of a member's unfitting condition(s) and could therefore, assign different diagnosis/ratings for the same condition, based on available documentation/exams at the time of processing. The DVA examinations were completed after separation and were not available nor utilized by the PEB in its unfitting decision for DES rating purposes. However, this rating decision confirms the IPEB properly applied the VASRD by assigning a 10 percent disability rating. The DVA noted in this rating decision that an evaluation of 10 percent was warranted due to the use of inhalation bronchodilator therapy. A higher evaluation of 30 percent was not warranted unless there was daily inhalation or oral bronchodilation therapy.

A subsequent DVA rating decision, dated 26 Jun 07, indicates that following a Sep 06 reevaluation, DVA continued the original 10 percent evaluation for this condition. The DVA noted the applicant complained of asthma attacks every few months and the requirements for a higher 30 percent evaluation were still not met as previously mentioned. A DVA rating decision, dated 6 Nov 17, (over 12 years after separation) indicates the applicant's rating for asthma was increased to 30 percent. The DVA based this new rating decision on daily inhalational therapy due to the progression of the applicant's asthma at that time.

The complete advisory opinion is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 4 Dec 24 for comment (Exhibit D) and the applicant replied on 14 Dec 24. In his response, the applicant contended the DoD DES and the VASRD both determine ratings based on the severity of the condition at the time of separation. His MEB documentation from 7 Nov 04 confirms he required daily inhalational therapy, specifically Advair 250 mcg twice daily. This is not a rescue inhaler used intermittently, but a maintenance medication indicating a higher level of care.

Under VASRD diagnostic code 6602 (asthma), a 30 percent rating generally requires daily inhalational or oral bronchodilator therapy or daily inhalational anti-inflammatory medication. The MEB report clearly states the applicant was prescribed and was using Advair 250 mcg twice daily to control his moderate, persistent asthma. Advair is a combination of a long-acting bronchodilator and a corticosteroid (anti-inflammatory), which places his treatment regimen squarely within the criteria for a 30 percent rating.

The advisory opinion appears to focus on the applicant's use of the Albuterol rescue inhaler less than 2-3 times per month, reasoning that such infrequent usage indicated a less severe condition. However, the rating criteria does not hinge solely on rescue inhaler frequency. Instead, it emphasizes the requirement for daily maintenance therapy, which the applicant was receiving. That daily therapy, Advair, establishes a baseline that was more severe than would be captured by a 10 percent rating. The decision to award the applicant a 10 percent rating at the time of separation appears to have overlooked the documented fact that he had already escalated to a

regimen consistent with at least a 30 percent rating. While post-service changes in his DVA rating are not retroactively applicable, the essential point is at the time the applicant left service, he was on daily inhalational therapy, meeting the criteria for a higher rating under the VASRD.

Given the MEB records confirm daily inhalational therapy at the time of separation, it is evidence the applicant met the criteria for a 30 percent disability rating rather than the 10 percent initially assigned. There is sufficient evidence to conclude the original determination did not fully account for his established daily maintenance medication usage. The applicant requests the Board correct his military records to reflect a retirement at 30 percent disability rating for asthma, consistent with the documented treatment regimen.

The applicant's complete response is at Exhibit E.

FINDINGS AND CONCLUSION

1. The application was not timely filed, but it is in the interest of justice to excuse the delay.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, to include the applicant's rebuttal, the Board concludes the applicant is the victim of an error or injustice. While the Board notes the recommendation of AFPC/DPFDD against correcting the record, the Board finds a preponderance of the evidence substantiates the applicant's contentions. Specifically, the applicant's in-service medical record, dated 11 Feb 04, provided by the applicant, reflects "Active Medications – Advair – INH 250 mcg, take 1 inhalation BID." Additionally, the applicant's medical summary, dated 7 Nov 04, provided to the MEB, and later considered by the IPEB, reflects the applicant was prescribed "Advair 250 mcg – one puff bid [twice daily]" to control his moderate, persistent asthma. Under VASRD diagnostic code 6602 (asthma), a 30 percent rating generally requires daily inhalational or oral bronchodilator therapy or the use of an inhalational anti-inflammatory medication. As written, the VASRD does not require use of an inhalational anti-inflammatory medication on a daily basis. Advair is a combination of a long-acting bronchodilator and a corticosteroid (anti-inflammatory), which places the applicant's treatment regimen within the criteria for a 30 percent rating. Therefore, the Board recommends correcting the applicant's records as indicated.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show:

a. On 29 Nov 04, he was found unfit to perform the duties of his office, rank, grade, or rating by reason of physical disability, incurred while he was entitled to receive basic pay; the diagnosis in his case was Asthma, that his condition was under VASRD code 6602; with a disability rating of 30 percent; the degree of impairment was permanent; the disability was not due to intentional misconduct or willful neglect; the disability was not incurred during a period of unauthorized absence; and the disability was not as a direct result of armed conflict or caused by an instrumentality of war and was not combat-related.

b. On 18 Feb 05, he was discharged from active duty and on 19 Feb 05, he was permanently retired with a compensable percentage for physical disability of 30 percent.

c. His election of the Survivor Benefit Plan option will be corrected in accordance with his expressed preferences and/or as otherwise provided for by law or the Code of Federal Regulations.

CERTIFICATION

The following quorum of the Board, as defined in Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2024-02400 in Executive Session on 16 Apr 25:

, Panel Chair
, Panel Member
, Panel Member

All members voted to correct the record. The panel considered the following:

Exhibit A: Application, DD Form 149, w/atchs, dated 6 Jul 24.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, AFPC/DPFDD, w/atchs, dated 3 Dec 24.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 4 Dec 24.
Exhibit E: Applicant's Response, w/atch, dated 14 Dec 24.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

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Board Operations Manager, AFBCMR