

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX
BRANCH OF SERVICE: ARMY

CASE: PD-2023-00039
SEPARATION DATE: 20031208

SUMMARY OF CASE: Data extracted from the available evidence of record reflects this covered individual (CI) was an active duty E6, Personnel Services Specialist, medically separated from the Temporary Disability Retired List (TDRL) for “asthma” with a disability rating of 10%.

CI CONTENTION: Pulmonary function testing and/or medications should have been rated 30% by the PEB. The complete submission is at Exhibit A.

SCOPE OF REVIEW: The panel’s scope of review is defined in DoDI 6040.44. It is limited to review of disability ratings assigned to those conditions determined by the Physical Evaluation Board (PEB) to be unfitting for continued military service, and when specifically requested by the CI, those conditions identified by the Medical Evaluation Board (MEB) but determined by the PEB to be not unfitting or non-compensable. Any conditions outside the panel’s defined scope of review, and any contention not requested in this application, may remain eligible for future consideration by the Board for Correction of Military Records. The panel’s authority is limited to assessing the fairness and accuracy of PEB rating determinations and recommending corrections when appropriate. The panel gives consideration to VA evidence, particularly within 12 months of separation, but only to the extent that it reasonably reflects the severity of disability at the time of separation.

RATING COMPARISON:

SERVICE PEB - 20031106			VARD - NA			
Condition	Code	Rating	Condition	Code	Rating	Exam
Asthma	6602	10%	No VA Examination in Evidence			
COMBINED RATING: 10%			COMBINED RATING OF ALL VA CONDITIONS: NA			

ANALYSIS SUMMARY:

Asthma. According to the service treatment record (STR) and MEB narrative summary (NARSUM), the CI’s asthma began in August 1996 with shortness of breath (SOB) thought to be associated with allergies. He was separated and placed on the TDRL on 1 October 2000.

The 24 June 2003 TDRL re-valuation NARSUM examination, 5 months before separation, noted complaints of SOB with exercise. The examiner noted the CI still used inhalers daily and “chronic steroids and long-acting Beta Agonist,” and specifically recorded current medications as Advair (inhalational steroid/bronchodilator combination) and albuterol (inhalational bronchodilator) as needed. Physical examination showed lungs were clear to auscultation bilaterally, with no crackles or rales, and symmetric excursion on inspiration and expiration.

During pulmonary function tests (PFTs) on 29 October 2003, 1 month prior to separation, results showed an FEV-1 of 93% of predicted and an FEV-1/FVC of 71%, post-bronchodilator. An undated pharmacy medication profile showed the CI was prescribed Advair on 5 September 2003. There was no VA examination proximate to separation in evidence.

The panel directed attention to its rating recommendation based on the above evidence. The CI was removed from the TDRL with a permanent disability disposition of separation with severance pay at 10%. The formal PEB cited "FEV-1 77%, 87% after inhaled bronchodilator...on intermittent inhalational bronchodilator therapy...medication profiles showed that [CI] received no medication between 27 November 2002 and 5 September 2003." Panel members noted that a 30% rating stipulates "FEV-1 of 56- to 70-percent predicted, or; FEV-1/FVC of 56 to 70 percent, or; daily inhalational or oral bronchodilator therapy, or; inhalational anti-inflammatory medication." In his rebuttal to the informal PEB's rationale that the medication profile did not demonstrate he received asthma medication over a 10-month period, the CI stated he had provided reasonable and physical evidence to show he had obtained his medication through informal channels. The panel agreed that although the medication profile showed all refills remaining for the prescribed medications, there was also STR evidence showing access to medications at commercial pharmacies and physician offices in the form of samples. Panel members agreed the TDRL examination and undated medication profile supported the CI's use of anti-inflammatory medication (Advair), which warrants a 30% rating. A 60% rating was not justified in the absence of at least monthly visits to a physician for required care of exacerbations, or intermittent (at least three per year) courses of systemic corticosteroids. After due deliberation, considering all the evidence and mindful of VASRD §4.3 (reasonable doubt), the panel recommends a disability rating of 30% for the asthma at the time of TDRL removal.

BOARD FINDINGS: In the matter of the asthma, the panel recommends a disability rating of 30%, coded 6602 IAW VASRD §4.97, at the time of TDRL removal and permanent disability disposition. There are no other conditions within the panel's scope of review for consideration.

The panel recommends the CI's prior determination be modified as follows; and, that the discharge with severance pay be re-characterized to reflect permanent disability retirement, effective the date of medical separation:

CONDITION	VASRD CODE	PERMANENT RATING
Asthma	6602	30%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20230425, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans Affairs Record

AR20230009614, XXXXXXXXXXX

XXXXXXXXXX

Dear XXXXXXXXXXX:

I accept the recommendation of the Department of Defense Physical Disability Board of Review (DoD PDBR) to re-characterize your separation as a permanent disability retirement with the combined disability rating of 30% effective the date of your medical separation for disability with severance pay. Enclosed is a copy of the Board's recommendation and record of proceedings for your information.

The re-characterization of your separation as a disability retirement will result in an adjustment to your pay providing retirement pay from the date of your original medical separation minus the amount of severance pay you were previously paid at separation.

The accepted DoD PDBR recommendation has been forwarded to the Army Physical Disability Agency for required correction of records and then to the U.S. Defense Finance and Accounting Service to make the necessary adjustment to your pay and allowances. These agencies will provide you with official notification by mail as soon as the directed corrections have been made and will provide information on your retirement benefits. Due to the large number of cases in process, please be advised that it may be several months before you receive notification that the corrections are completed and pay adjusted. Inquiry concerning your correction of records should be addressed to the U.S. Army Physical Disability Agency, 1835 Army Boulevard, Building 2000, JBSA, Fort Sam Houston, TX 78234.

A copy of this decision has also been provided to the Department of Veterans Affairs.