RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: navy

CASE NUMBER: PD0900005 BOARD DATE: 20091007

SEPARATION DATE: 20080531

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SUMMARY OF CASE: This covered individual (CI) was a Lieutenant Junior Grade Surface Warfare Officer who was medically separated from the Navy in 2008 after over four years of service. He was also a Midshipman at Annapolis from 2000-2004. The medical basis for the separation was lower back pain. CI was referred to the PEB, found unfit and separated at 20% disability.

The CI was treated for back pain several times while at the Naval Academy and his pain continued to worsen while on active duty. Initially he responded to conservative therapy but in late 2006 he developed radiculopathy and was referred to neurosurgery. An MRI in April 2007 revealed a large disc herniation on the right at L5-S1 and in May 2007 he underwent a right laminectomy and microscopic diskectomy. He initially did well but after a few months his symptoms returned and a repeat MRI showed a recurrent disc herniation on the right. He underwent a second laminectomy and diskectomy in September 2007. He had slow clinical improvement after this surgery and continued to have pain, radicular pain, and sensory deficits. He also continued to have motor deficits on examination. Multiple treatment modalities were tried including epidural steroid injections but none brought relief. A Medical Evaluation Board (MEB) was started in December 2007 but was terminated because less than six months had elapsed since his surgery. An addendum to the original medical board was provided by Neurology in March 2008 and this information was forwarded to the Navy Physical Evaluation Board (PEB).

The Informal PEB determined he was unfit for continued military service and he was then separated with a 20% disability for 5237 Lumbar Radiculopathy, Low Back Pain status-post L5-S1 Diskectomy times two using the Veterans Affairs Schedule for Ratings Disabilities (VASRD) and applicable Navy and Department of Defense regulations.

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CI CONTENTION: “My back injury (lumbar spine intervertebral disc syndrome), was rated at 20% by a Navy PEB in April 2008. On July 23, 2008, the VA took the same injury and rated it at 40% using the VASRD. I request that my Navy disability be re-evaluated to match my VA rating for the same injury.”

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RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Previous Determinations** | | | | | | | | |
| **Service** | | | | **VA (Predischarge Exam)** | | | | |
| **PEB Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam Date** | **Effective date** |
| Lumbar Radiculopathy, Lower Back Pain S/P L5-S1 Diskectomy Times Two | 5237 | 20% | 20080318 | Lumbar spine intervertebral disc syndrome with radiculopathy | 5242 | 40% | 20080423 | 20080601 |
|  |  |  |  | OSA | 6847 | 50% | 20080423 | 20080601 |
|  |  |  |  | Low back surgical scar | 7804 | 10% | 20080423 | 20080601 |
|  |  |  |  | Tinnitus | 6260 | 10% | 20080423 | 20080601 |
| **TOTAL Combined: 20%** | | | | **TOTAL Combined (*incl non-PEB Dxs*): 80**% **from 20080601** | | | | |

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ANALYSIS SUMMARY:

Back pain with radiculopathy

Navy:

No complete range of motion (ROM) examination of the thoracolumbar spine was present in the NARSUM, the addendum, or the service treatment record (STR). The original MEB from 12/2007 stated radicular pain started at 75 degrees of flexion but did not specify when back pain occurred. The addendum from 3/2008 stated back pain and radicular pain started at 60 degrees. Both examinations noted antalgic gait with limping, decreased sensation in the right lower extremity, and 4/5 motor strength for right foot dorsiflexion and toe extension. The motor examination was documented in detail and appeared to be comprehensive and thorough. The motor weakness was also documented in multiple progress notes in the STR.

VA:

Using an evaluation completed one month prior to the time of separation from the Navy, the Veterans Administration (VA) rated this disability as 5242 Lumbar Spine Intervertebral Disc Syndrome with Radiculopathy at 40%. This rating was based on a flexion of the thoracolumbar spine limited to 20 degrees with pain on any movement. The VA examination also noted antalgic gait, muscle spasm, localized tenderness, and objective sensory deficits. No motor deficits were noted but the documentation of the motor exam appeared cursory, simply stating no lumbosacral motor weakness. There was no description of findings for individual muscle groups.

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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 PDBR to the extent they were inconsistent with the VASRD in effect at the time of the adjudication. After careful consideration of all available information, the Board concluded by simple majority that the CI’s condition is appropriately rated at a combined 30% with 20% for 5243 Intervertebral Disc Syndrome and 10% for 8621 Neuritis, Common Peroneal Nerve Rated as Mild Incomplete Paralysis using the VASRD and its general rating formula for diseases and injuries of the spine.

The Board opined that 5243 Intervertebral Disc Syndrome is the most accurate code for the CI’s condition. The presence of an antalgic gait was documented on multiple examinations, both Navy and VA, and this warrants a minimum 20% rating for 5243 regardless of the ROM limitations. The Navy ROM examinations from the NARSUM and the addendum were incomplete but similar. The VA ROM examination was more complete but was vastly less than the Navy exam of one month prior. Flexion limited to 20 degrees would be rated at 40%. While it is theoretically possible that the CI’s condition deteriorated this much in one month the Board determined that this examination was less likely than not an accurate picture of the CI’s condition at the time of separation.

The Board also determined that the CI’s radiculopathy should be rated separately under an appropriate VASRD code IAW Note 1 of the VASRD general rating formula for diseases and injuries of the spine. While the general rating formula includes pain, whether or not it radiates, in the rating criteria for diseases and injuries of the spine Note 1 states that associated objective neurologic findings should be rated separately under an appropriate code. Although no EMG or nerve conduction studies were done, the CI had objective findings of motor impairment and sensory impairment on multiple examinations, including those done by a neurologist. The Board determined this was sufficient evidence of the presence of an objective neurologic abnormality. The Navy PEB specifically included radiculopathy as part of the CI’s unfitting condition and this Board is not empowered to reverse the designation of unfitness. The Board determined that 8621 Neuritis of the Common Peroneal Nerve most accurately describes the neurologic abnormalities. The Board opined that while present, the motor and sensory abnormalities were mild and rated the condition at 10%.

The Board also examined Obstructive Sleep Apnea and did not find it to be unfitting. The other diagnoses rated by the VA were not mentioned in any PEB paperwork and could not be considered by the Board.

The single voter for dissent (who recommended no recharacterization) elected not to submit a minority opinion.

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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 the CI’s prior medical separation.

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| --- | --- | --- |
| Unfitting Condition | VASRD Code | Rating |
| Intervertebral disc syndrome | 5243 | 20% |
| neuritis, common peroneal nerve rated as mild incomplete paralysis | 8621 | 10% |
| Combined | 30% |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090114, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

MICHAEL F. LoGRANDE

President

Physical Disability Board of Review

