RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: marine corps

CASE NUMBER: PD0900120 BOARD DATE: 20090819

SEPARATION DATE: 20040630

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SUMMARY OF CASE: This covered individual (CI) was a Marine Sergeant Maintenance Management Specialist medically separated from the Marine Corps in 2004 after eleven years of service. The medical basis for separation was mechanical low back pain.

The CI had back pain since 1997 which gradually worsened in frequency and severity. He underwent a Medical Evaluation Board (MEB) 14 Dec 2001 and six months of limited duty (LIMDU) was recommended. He was returned to full duty in June 2002. However, despite appropriate treatment including physical therapy, sports medicine, and chiropractic care he was not able to perform his duties or a full physical fitness test secondary to his back pain which was constant and radiated down his right leg. Pain was increased with physical activity, especially running but also occurred at rest. It was relieved somewhat with rest and pain medication. An MEB completed May 2003 recommended 8 months LIMDU, however HQMC directed a Physical Evaluation Board (PEB) Jul 2003. Two separate MRI exams were done. The May 2000 study demonstrated central disc bulges at L5-S1 and L4-L5 without evidence of spinal stenosis or definite nerve root compression. The April 2003 study suggested mild bilateral L5-S1 neural foraminal narrowing. Lumbar spine X-ray done September 2002 showed a narrow L5-S1 disc space. HLA B-27 was positive in August 2003.

Appropriate therapy failed to alleviate his symptoms and he was referred 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 5295 Mechanical Low Back Pain using the Veterans Affairs Schedule for Ratings Disabilities (VASRD) and applicable Navy and Department of Defense regulations. He appealed to the Board for Correction of Naval Records (BCNR) and this Board considered his case in September 2006. The BCNR determined that his back pain was the only unfitting condition and that there was no evidence that it should have been rated at greater than 20%.

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CI CONTENTION: “I served 11 years in the Marine Corps, was unable to re-enlist but was given a medical separation due to my back condition, I believe the rating should be changed due to the fact that there are over 60 medical reports in my active duty records from May 1994 until my time of discharge showing the progression and severity of this condition, but in site of it I was determined and continued to serve in the Corps. This back condition has altered my quality of life due to my inability to stand or sit for long periods of time, run or walk for long distances as well as the limited range of motion effecting my ability to put on shoes or socks. I petitioned the Naval Discharge Review Board and the Board of Correction for Naval Records for consideration for a medical retirement and was denied, now my hopes is that I will at least be considered for a accurate and fair rating and granted any changes if applicable. Thank you.”

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RATING COMPARISON:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Previous Determinations** | | | | | | | | |
| **Service IPEB 6 months prior to separation** | | | | **VA exam 5 months prior to separation** | | | | |
| **PEB Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam Date** | **Effective date** |
| Mechanical Low  Back Pain | 5295 | 20% | 20031219 | Disc Protrusion L3 Through S1 With Foraminal Stenosis  Lumbar Spine [Predischarge Exam] | 5238-5243  5243-5237  5243-5237 | 10%  10%  20% | 20040115  20061120  20081210 | 20040701  20040701  20080926 |
| Disc Bulge Without Herniation At L3/L4, L4/L5, L5/S I (00000). Related Category 2 Diagnosis. |  | Cat II |  |  |  |  |  |  |
| Mild Bilateral L4, L5, S1 Neural Foraminal  Narrowing (72210). Related Category 2 Diagnosis. |  | Cat II |  |  |  |  |  |  |
|  |  |  |  | Patellofemoral Syndrome Left Knee (pre-discharge exam) | 5260-5024 | 10% | 20040115 | 20040701 |
|  |  |  |  | Patellofemoral Syndrome Right Knee (pre-discharge exam) | 5260-5024 | 10% | 20040115 | 20040701 |
|  |  |  |  | Chronic Rotator Cuff Syndrome Left Shoulder (pre-discharge exam) | 5299-5203 | 10% | 20040115 | 20040701 |
|  |  |  |  | Chronic Rotator Cuff Syndrome Right Shoulder (pre-discharge exam) | 5299-5203 | 10% | 20040115 | 20040701 |
|  |  |  |  | Onychomycosis Bilateral Feet [Predischarge Exam] | 5284-7813 | 0%  0 | 20040115  20061120 | 20040701 |
| **TOTAL Combined: 20%** | | | | **TOTAL Combined (*incl non-PEB Dxs*): 40% from 20040711** (Bilateral factor of 3.4 Percent for diagnostic codes 5203, 5203, 5024, 5024)  **50% from 20080926** (Bilateral factor of 3.4 Percent for diagnostic codes 5203, 5203, 5024, 5024) | | | | |

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ANALYSIS SUMMARY:

Mechanical Low Back Pain

Mil exam: MEB 20030519 no ROM, progress note 20020923

VA exams: 20040115, 20061120, 20081210

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| --- | --- | --- | --- | --- | --- | --- |
| Movement  Thoracolumbar | Normal Range of Motion  (ROM) | ROM Mil  (# for VASRD)  20020923 progress note | ROM VA  20040115  (# for VASRD) | ROM VA PAIN  20040115  (# for VASRD) | ROM VA  20061120  Limited by pain (# for VASRD) | ROM VA  20081210  Limited by pain (# for VASRD) |
| Flex | 0-90 | 70 | 75 (75) | 75 (75) | 90 | 40 |
| Ext | 0-30 | 20 | 10 (10) | 10 (10) | 30 | 20 |
| R Lat flex | 0-30 | Fingertips to knee joint (30) | 30 (30) | 30 (30) | 30 | 20 |
| L lat flex | 0-30 | Fingertips to knee joint (30) | 30 (30) | 30 (30) | 30 | 20 |
| R rotation | 0-30 | NM | 25 (25) | 25 (25) | 30 | 20 |
| L rotation | 0-30 | NM | 25 (25) | 25 (25) | 30 | 20 |
| TOTAL | 240=VA normal | 150-210 | 195 | 195 | 240 | 140 |
|  |  | TTP bilat paraspinal muscles; neg SLR | Normal gait and posture; positive SLR bilaterally; normal neuro: no numbness, paresthesias, or radiating pain | Repetitive use-Pain, weakness and lack of endurance; normal posture and gait; neg SLR bilat; neuro nl | No radiation of pain, spasms, or tenderness; SLR neg bilat; pain with repetitive motion; nl contour of spine |  |

Navy:

The Navy PEB considered this case in December 2003 and at that time the 2003 VASRD was in effect. They rated the CI’s Mechanical Low Back Pain using VASRD 5295 and assigned a 20% rating. This rating requires muscle spasm on extreme forward bending, loss of lateral spine motion, unilateral, in standing position. However, none of these findings were documented on the MEB NARSUM or MEB History and Physical.

The MEB Narrative Summary (NARSUM) dated 20030520 discussed MRI results, symptoms, and treatment history but did not include any physical examination. The MEB History and Physical that was done 20030801 documented bilateral paraspinal muscle tenderness to palpation, negative straight leg raise, and toe touch to quads with subjective pain to L4/L5/S1. No ROM examination was done but this was not required by the 2003 VASRD. However, a progress note in the service treatment record (STR) dated 20020923 had a ROM exam and the results are listed in the chart above. A lumbar spine X-ray done September 2002 showed a narrow L5-S1 disc space.

The Navy PEB acknowledged the objective findings of mild intervertebral disc bulges from L3 through S1 and mild bilateral neural foraminal narrowing at L4 through S1, they declared these to be conditions related to the mechanical low back pain and not compensable.

VA:

Using an evaluation completed five months before the time of separation from the Marine Corps, the Veterans Administration (VA) rated this disability as 5238-5243 Disc Protrusion L3 through S1 with Foraminal Stenosis Lumbar Spine at 10%. This rating was done using the 2004 VASRD general rating formula for diseases and injuries of the spine which became effective 25 June 2004. The 10% rating is based on thoracolumbar flexion of 75 degrees and total ROM of 195 degrees. A later evaluation in 2008 resulted in a rating of 20% because the CI’s condition had worsened and his ROM had become more limited.

Analysis:

While the 2003 VASRD was in effect when the PEB made their rating determination, the 2004 VASRD was in effect when the CI separated. If the 2004 VASRD is used, a 10% rating based on the limited ROM present at the time of separation is warranted. The CI did complain of pain radiating into right buttock and leg even though MRIs did not show any definite nerve impingement. However, the general rating formula for the spine includes ‘With or without symptoms such as pain (whether or not it radiates), stiffness, or aching in the area of the spine affected by residuals of injury or disease.’ He had no documented motor or sensory abnormalities in either lower extremity and there is no justification for rating a radiculopathy separately.

Bilateral patellofemoral syndrome and bilateral chronic rotator cuff syndrome

Navy:

These conditions were mentioned in the MEB History and Physical but there is insufficient evidence in the record to consider these conditions as unfitting.

VA:

Rated as above.

Bilateral feet Onychomycosis:

Navy: No mention of this condition in any PEB paperwork.

VA:

Rated as above.

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BOARD FINDINGS 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 unanimously concluded that the CI’s condition is appropriately rated at a 20% for Mechanical low back pain.

The back condition rates as 10% using the 2004 VASRD general rating formula for diseases and injuries of the spine based on thoracolumbar flexion of 70 degrees, tenderness to palpation of thoracolumbar paraspinal muscles, and pain on motion. The 2004 VASRD was in effect at the time the CI separated from the Marine Corps and this version should be used to rate his unfitting conditions. However, IAW DoDI 6040.44 the Board cannot recommend a reduction. The board’s only option therefore is to recommend no recharacterization of the 20% rating.

The Board also examined Bilateral Patellofemoral Syndrome and Bilateral Chronic Rotator Cuff Syndrome (which were mentioned in the MEB history and physical) and did not find sufficient evidence to consider these conditions as unfitting. Bilateral Feet Onychomycosis was not mentioned in any PEB paperwork and could not be considered by the Board.

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RECOMMENDATION: The PDBR therefore recommends that there be no re-characterization of the CI’s disability and separation determination.

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| Unfitting Condition | VASRD Code | Rating |
| Mechanical Low Back Pain | 5295 | 20% |
| Combined | 20% |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090203, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

