RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: NAVY

CASE NUMBER: PD0900250 BOARD DATE: 20100428

SEPARATION DATE: 20050131

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SUMMARY OF CASE: This covered individual (CI) was a Lieutenant Supply Officer medically separated from the Navy in 2005 with over 8 years of service. The medical basis for the separation was physical disability due to chronic activity-limiting low back pain. The CI was referred to the Physical Evaluation Board (PEB), determined unfit for continued Naval service, and separated at 10% disability using the Veterans Affairs Schedule for Ratings Disabilities (VASRD) and applicable Naval and Department of Defense regulations.

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CI CONTENTION: The CI states: “Although my first hint of a back problem originated while I was a midshipman at the U.S. Naval Academy, it worsened throughout my time on active duty. I ended up having a lumbar decompression in October 2001. For the duration of my military service after surgery, I remained on some type of pain medication. Nothing worked. I later found out that spinal cord pain is difficult to relieve. The Physical Evaluation Board justified not rating my condition higher by telling me that I still able to work. Going to work on Oxycontin, Fentanyl, and whatever else I was prescribed for pain doesn't constitute 'able to work'. I was told that I didn't have enough incapacitating episodes to merit a higher rating. I was basically penalized for 'sucking it up' and going to work. There were days when the pain pills or patches had me feeling so ill that my employees were worried about my personal safety. I did what I felt was right and was penalized. Had I chosen to manipulate the system and go to the doctor every time I was in pain, I'd be retired right now. The bottom line in my case is that I have spent the last 14 years of my life experiencing some degree of back pain. Over seven years have passed since my operation. Pain pills still don't work. I still get episodes of sciatica. I still have some sleepless nights. Surgery, chiropractic manipulation, therapy, medications, and even acupuncture have been attempted to alleviate my back pain. Nothing has worked."

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RATING COMPARISON:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Service PEB** | | | | **VA (3 months after Separation)** | | | | |
| **Unfitting Conditions** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| Low Back Pain  Lumbosacral Spondylosis  w/o Myelopathy and  Low Back Pain | LIMDU  IPEB  Recon PEB  5299-  5237 | LIMDU  Fit  Fit  10% | 2001101620040608  20040708  20040824 | Status Post Laminectomy with Residual Scarring  Intermittent Sciatica with Lumbar Strain (Claimed as  Low Back Pain with Radiating Pain into Legs and Painful Scars on Back)  **Then**  Lumbar Strain with Postoperative Intervertebral Disc Syndrome | 5242  5237-5243 | 10%  10% | 20050510  20070120 | 20050201  20061103 |
| Acquired Spinal Stenosis | CAT II |  |  |
| Lumbosacral Osteoarthritis | CAT II |  |  |
| Disc Disease | CAT II |  |  |
| Not Addressed by PEB | MEB H&P: scar, mid/lower back | | | Surgical Scar on Lumbar Spine | 7804 | 10% | 20070120 | 20061103 |
| Not Addressed by PEB | Separation H&P: Ongoing radiculopathy | | | Sciatica of the Right Lower Extremity associated with Lumbar Disc Disease | 8520 | 0% | 20070120 | 20061103 |
| Not Addressed by PEB | Separation H&P: Ongoing radiculopathy | | | Sciatica of the Right Lower Extremity associated with Lumbar Disc Disease | 8520 | 0% | 20070120 | 20061103 |
| Not Addressed by PEB | MEB H&P: Pseudofolliculitis Barbae | | | Pseudofolliculitis | 7813-7806 | 30%  30% | 20050510  20071205 | 20050201 |
| Not Addressed by PEB | Separation H&P: Impingement Syndrome, ? side | | | Right Rotator Cuff Tendonitis | 5024 | 10% | 20050510 | 20050201 |
| Not Addressed by PEB | Separation H&P: Impingement Syndrome, ? side | | | Left Shoulder Rotator Cuff Tendonitis | 5024 | 10% | 20050510 | 20050201 |
| Not Addressed by PEB | Separation H&P: bilateral hip pain | | | Left Hip Strain | 5024 | 10% | 20050510 | 20050201 |
| Not Addressed by PEB | Separation H&P: bilateral hip pain | | | Right Hip Strain | 5024 | 10% | 20050510 | 20050201 |
| Not Addressed by PEB | Not in DES | | | Right Patellar Tendonitis | 5260 | 10% | 20050510 | 20050201 |
| Not Addressed by PEB | NARSUM: left knee arthroscopy 1993 with partial medial and lateral meniscectomies; Separation H&P: Left Patellofemoral Syndrome | | | Left Patellar Tendonitis | 5260 | 10% | 20050510 | 20050201 |
| Not Addressed by PEB | Separation H&P: Tinnitus | | | Tinnitus | 6510 | 10% | 20050503 | 20050201 |
| Not Addressed by PEB | Separation H&P: GERD | | | Gastroesophageal Reflux Disease | 7346 | 0% | 20050510 | 20050201 |
| Not Addressed by PEB | Separation H&P: Right wrist pain | | | Right Carpal Tunnel Syndrome (Claimed As Right Wrist  Pain) | 8515 | 0% | 20050510 | 20050201 |
| Not Addressed by PEB | MEB H&P: Tinea Pedis, Onychomycosis  Separation H&P: Bilateral Bunions | | | Bilateral Hallux Valgus, Pes Planus, with Associated  Onychomycosis (Claimed as Bilateral Bunions and  Toenail Infection) | 5280-5276 | 0% | 20050510 | 20050201 |
| Not Addressed by PEB | MEB H&P: seasonal allergic rhinitis | | | Sinusitis | 6510 | 0% | 20050510 | 20050201 |
| Not Addressed by PEB | MEB H&P: Pre-hypertension | | | Hypertension | 7101 | Deferred  NSC | 20050510  20051212 | 20050201 |
| **TOTAL Combined: 10%** | | | | **TOTAL Combined (*Includes Non-PEB Conditions*):**  **70% from 20050201**  (Bilateral factor of 4.7 for 5024, 5024, 5024, 5024, 5260, 5260)  **80% from 11/03/2006**  (Bilateral factor of 4.7 for 5024, 5024, 5024, 5024, 5260, 5260) | | | | |

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ANALYSIS SUMMARY:

Analysis Lumbosacral Spondylosis w/o Myelopathy:

The CI had a long history of low back pain which intermittently severely limited his physical activity. He was a former wrestler at the United States Naval Academy and noted that the pain begin while he was a Midshipman. The narrative summary (NARSUM) of March 2004 reports it had been very difficult to run more than a short distance, less than a mile, over the previous nine years. He had pain with prolonged standing, which he found was relieved by bending at the waist as well as sitting or lying down. Episodically his pain was increased while sitting or lying down. He's had episodes of lower extremity weakness or a feeling of heaviness but denied any tripping or falling. He denied any changes in bowel or bladder habits.

The CI had a previous Limited Duty (LIMDU) Board in October 2001 after a seven year history of low back pain. At that time he had decreased range-of-motion (ROM) in all planes secondary to pain with normal strength, sensation, and deep tendon reflexes. A Magnetic Resonance Imaging (MRI) revealed multilevel lumbar stenosis with significant narrowing of the spinal canal at L3-4 and L4-5 levels.

Decompressive laminectomies were done at the L3-4 and L4-5 levels in November 2001. The CI then received extensive rehabilitation and conservative measures including a 10-week core strengthening program, chiropractic manipulation, and pain management including methadone and Duragesic patches. However, he remained in limited duty with significant continuing pain and inability to perform the physical readiness test or any vigorous activity. Intradiscal electrothermal annuplasty therapy was considered but after a second opinion, the CI reasonably declined this procedure.

An initial informal PEB found him fit for duty in June 2004 and reconsideration in July 2004 did not change the finding. However, a Formal PEB in August 2004 determined he was unfit for continued naval service because of physical disability based on chronic activity limiting low back pain. This was based on the new evidence of a non-medical assessment of 20040817 that clearly identified the inability to perform his required duties, the accommodations made by the command, and the adverse impact on the mission. The CI’s strong work ethic was noted.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Movement  Thoracolumbar | Normal ROM | ROM Military  20040330  (11 months before separation) | ROM VA C&P  20050510  (3 months after separation) | ROM VA C&P 20070120  (2 years after separation) |
| Flex | 0-90 | 75 | 85 | 90 |
| Ext | 0-20 | 10 | 20 | 30 (20) |
| R Lat flex | 0-30 | 30 | 25 | 30 |
| L lat flex | 0-30 | 30 | 25 | 30 |
| R rotation | 0-30 | 30 | 25 | 30 |
| L rotation | 0-30 | 30 | 25 | 30 |
| COMBINED | 245 | 205 | 205 | 230 |
| Notes: |  | Motor 5/5; normal sensation; DTR 2+ bilaterally; normal gait; normal posture; tender to palpation; negative straight leg raise bilaterally | Motor 5/5; normal sensation; DTR 2+ bilaterally; normal gait; normal posture; not tender to palpation; negative straight leg raise bilaterally |  |

Other Conditions mentioned in Disability Evaluation System (DES):

Pseudofolliculitis; Right Rotator Cuff Tendonitis; Left Shoulder Rotator Cuff Tendonitis; Left Hip Strain; Left Patellar Tendonitis; Tinnitus; Gastroesophageal Reflux Disease; Right Carpal Tunnel Syndrome; Bilateral Hallux Valgus, Pes Planus, with Associated Onychomycosis; Sinusitis; Surgical Scar on Lumbar Spine

No interference with satisfactory performance of required duties. No duty restrictions or accommodations directly attributable to these conditions.

Other conditions not mentioned in DES:

Sciatica of the Right Lower Extremity associated with Lumbar Disc Disease, Sciatica of the Right Lower Extremity associated with Lumbar Disc Disease; and Right Patellar Tendonitis

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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 Board 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 determined that the CI’s condition at the time of separation from service is appropriately rated at 10% based on the VASRD General Rating Formula for Diseases and Injuries of the Spine.

Back conditions are rated based on functional limitations demonstrated by limitations of the ROM of the spine with or without symptoms such as pain (whether or not it radiates), stiffness, or aching. Associated neurologic abnormalities are rated separately under the appropriate VASRD code. On both the Navy and VA examinations the forward flexion of the CI’s thoracolumbar spine was greater than 60 degrees but not greater than 85 degrees and this warrants a 10% disability rating. Neither examination documented abnormal gait, abnormal spinal contour, or neurological abnormality.

Intervertebral Disc Syndrome (preoperatively or postoperatively) can be evaluated either under the General Rating Formula for Diseases and Injuries of the Spine or under the Formula for Rating Intervertebral Disc Syndrome Based on Incapacitating Episodes, whichever method results in the higher evaluation when all disabilities are combined under VASRD §4.25. There is no evidence of incapacitating episodes as defined in the VASRD, i.e. physician prescribed bed rest, other than at the time of surgery. Therefore the CI’s back condition is rated using the General Rating Formula for Diseases and Injuries of the Spine.

The Board also considered the following conditions and unanimously determined that none were unfitting at the time of separation from service and therefore no disability rating is applied: Pseudofolliculitis; Right Rotator Cuff Tendonitis; Left Shoulder Rotator Cuff Tendonitis; Left Hip Strain; Left Patellar Tendonitis; Tinnitus; Gastroesophageal Reflux Disease; Right Carpal Tunnel Syndrome; Bilateral Hallux Valgus, Pes Planus, with Associated Onychomycosis; Sinusitis; and Surgical Scar on Lumbar Spine. These conditions did not interfere with satisfactory performance of required duties and no functional limitations can be attributed to these conditions.

The other diagnoses rated by the VA (Sciatica of the Right Lower Extremity associated with Lumbar Disc Disease; Sciatica of the Right Lower Extremity associated with Lumbar Disc Disease; and Right Patellar Tendonitis) were not mentioned in the DES package and is therefore outside the scope of the Board. The CI retains the right to request his service Board of Correction for Naval Records (BCNR) to consider adding these conditions as unfitting.

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RECOMMENDATION: The Board therefore recommends that there be no recharacterization of the CI’s disability and separation determination.

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090319, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

**DEPARTMENT OF THE NAVY**

SECRETARY OF THE NAVY COUNCIL OF REVIEW BOARDS 720 KENNON STREET SE STE 309

WASHINGTON NAVY YARD DC 20374-5023

IN REPLY REFER TO

1850

CORB:003

1 June 2010

From: Director, Secretary of the Navy Council of Review Boards

To:

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR)

Ref: (a) 0001 6040.44

(b) PDBR ltr of 4 May 10

1. Pursuant to reference (a), the PDBR reviewed your case and forwarded its recommendation (reference (b)) to the Department of the Navy for appropriate action.
2. On 28 May 2010, the Assistant Secretary of the Navy (Manpower & Reserve Affairs) took action on your case by accepting the recommendation of the PDBR that no change be made to the characterization of separation or disability rating assigned by the Department of the Navy's Physical Evaluation Board.
3. The Secretary's decision represents final action in your case by the Department of the Navy and is not subject to appeal or further review by the Board for Correction of Naval Records.

'Copy to: PDBR