RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXX BRANCH OF SERVICE: navy

CASE NUMBER: PD0900349 COMPONENT: REGULAR

BOARD DATE: 20090812 SEPARATION DATE: 20030616

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SUMMARY OF CASE: This covered individual (CI) was a Petty Officer Second Class Aviation Maintenance Administrationman medically separated from the Navy in 2003 after more than eleven years of service that included almost six years of sea service. The medical basis for the separation was Chronic back and leg pain, postoperative, right greater than left.

The CI had L4-L5 laminectomy and diskectomy done 20020118 for chronic low back pain with bilateral anterior thigh pain and numbness, right greater than left, with walking only one block. He would develop tingling in his legs and had to stop and sit. These symptoms are consistent with neurogenic claudication. He continued to have pain after surgery, in his low back and below his right buttock shooting into right leg and opted for conservative treatment. However he continued to have symptoms in his right leg and then developed similar symptoms in his left leg. A repeat MRI in September 2002 showed no change from the previous postoperative study from April 2002 and he was referred to the pain clinic for steroid injections. Duty limitations were continued. However, the epidural steroid injection did not provide any relief 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 Chronic back and leg pain, postoperative, right greater than left using the Veterans Affairs Schedule for Ratings Disabilities (VASRD) and applicable Navy and Department of Defense regulations.

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CI CONTENTION: The CI contends that ‘The decompressive laminectomy and diskectomy, post-operative, did not correct or improve my physical well being. The outcome is debilitating, rendering me incapable of gaining suitable employment. The effects are permanent and have worsened since date of discharge from Portsmouth Naval Hospital and forty five days in-home recovery. As a result, I am now rated 100% (Individual Unemployability), awarded by the Department of Veterans Affairs. In addition, I am in receipt of Social Security disability, found to be fully favorable June 3, 2005. Furthermore, my application for the Department of Veterans Affairs Vocational Rehabilitation and Employment program was denied January 21, 2004, due to my medical condition.’

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RATING COMPARISON:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Previous Determinations** | | | | | | | | |
| **Service** | | | | **VA** | | | | |
| **PEB Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam Date** | **Effective date** |
| Chronic back and leg pain, postoperative, right greater than left | 5295 | 20 | **20030312** | Status post L4-L5 laminectomy and diskectomy with post operative chronic pain and bilateral lower extremity radicular symptoms | 5292 | 40  40 | 200304  20040522 | **20030617** |
|  |  |  |  | Bilateral quadriceps and calf myalgias, causing insomnia | 5099-5025 | 10 | 200304 | **20030617** |
|  |  |  |  | Right lower extremity radiculopathy in the L4-5 dermatome, formerly evaluated as bilateral quadriceps and calf myalgias, causing insomnia associated with status post L4-L5 decompressive laminectomy and disckectomy with postoperative chronic pain | 8599-8520 | 20 | 20060304 | **20050811** |
|  |  |  |  | Left lower extremity radiculopathy in the L4-5 dermatome, formerly evaluated as bilateral quadriceps and calf myalgias, causing insomnia | 8599-8520 | 10 | 20060304 | **20030617** |
|  |  |  |  | Patellofemoral syndrome, left knee | 5099-5003 | 10 | 200304 | **20030617** |
|  |  |  |  | Patellofemoral syndrome, right knee | 5099-5003 | 10 | 200304 | **20030617** |
|  |  |  |  | Status post lower back lipoma excision with scar | 7805 | 0 | 200304 | **20030617** |
|  |  |  |  | Scar, status post L4-L5 decompressive laminectomy and diskectomy | 7805 | 0 | 200304 | **20030617** |
|  |  |  |  | Irritative dermatitis, left lower lip | 7806 | 0 | 200304 | **20030617** |
|  |  |  |  | Nerve sensation loss on left side of mandibular area secondary to tooth extraction of tooth 17 | 8407 | 0 | 200304 | **20030617** |
|  |  |  |  | Bilateral hand athrosis | 5010 | 0  10 | 200304  20060304 | **20030617**  **20050811** |
|  |  |  |  | Coccydynia | 5299-5298 | 0 | 200304 | **20030617** |
|  |  |  |  | Dyspepsia | 7399-7346 | 0 | 200304 | **20030617** |
|  |  |  |  | Unemployability |  |  |  | **20050811** |
| **TOTAL Combined: 20%** | | | | **TOTAL Combined (*incl non-PEB Dxs*):**  **60**% from 20030617 (bilateral factor 2.7 for 5003, 5003, 8520)  **70**% from 20050811 (bilateral factor 4.8 for 8520, 8520, 5003, 5003, 5010) | | | | |

ANALYSIS SUMMARY:

Back Pain

Navy: The CI was initially seen for back pain in 1998 which appears to have at least partially resolved until he was seen in 2000 for back pain. In addition to back pain he also complained of bilateral anterior thigh pain and numbness, right greater than left with walking only one block. He had an MRI that showed a herniated disc at L4-L5 that was compressing the nerves and eventually had a laminectomy and diskectomy. While MRI showed the surgery was successful in relieving the compression of the nerves, he continued to have back and leg pain and leg paresthesias in the L4 and L5 dermatomes.

A complete range of motion (ROM) exam was not done by the Navy but these measurements were not required for rating in 2003. His evaluation did state he could bend barely halfway to his toes. Notes in the STR state his range of motion is limited by pain and tightness in his back. This is consistent with the VA measurement of 45 degrees.

VA: Using an evaluation completed two months prior to the time of separation from the Navy, the Veterans Administration (VA) rated this disability as 5292 Status post L4-L5 laminectomy and diskectomy with post operative chronic pain and bilateral lower extremity radicular symptoms at 40% for severe limitation of motion of the lumbar spine. He had thoracolumbar flexion of 45 degrees, extension of 25 degrees, right and left lateral flexion and right and left rotation all 30 degrees. He also had guarding and tenderness to palpation. The 2003 VASRD did not have specific ROM limitations to use for rating and only had descriptive terms of mild, moderate, and severe limitation of motion under code 5292. One year later the CI was evaluated for an increased rating and his ROM had become more limited. Flexion was now 40, extension 10, right lateral flexion 15, and left lateral flexion and bilateral rotation all at 20. However at this time the present day general rating formula for the spine was in use and if he had been rated using these criteria he would only rate at 20%. The VA cited 38 CFR 3.951 which states rating reductions are only appropriate if deductions are warranted under both the old and new criteria. Since his condition had not improved, it was not appropriate to lower his rating and they continued the previous rating of 40%.

Analysis:

The back pain appears to be rated appropriately at 20%. His limitation of ROM is not severe, but it is moderate and would therefore be rated at 20%, not 40%. The VA code of 5292, Spine, limitation of motion of, lumbar does seem more appropriate than the Navy code of 5295 Lumbosacral strain. But a 20% rating under 5295, which is what the Navy did, would be acceptable.

Leg Pain/ Radiculopathy

Navy: The Navy PEB included leg pain, right greater than left, as part of the CI’s unfitting condition but did not account for this pain in the rating of his conditions. The VASRD code 5295, Lumbosacral strain does not include radiculopathy or leg pain. The CI complained about numbness and tingling prior to surgery and more severe symptoms after surgery. It is not clear if the PEB intended to include the leg pain/radiculopathy as part of the justification for the 20% rating but this would not be appropriate.

VA: The VA initially rated his radiculopathy as bilateral quadriceps and calf myalgias causing insomnia. However at the evaluation done in 2006 the physician examiner noted that in reality the CI had had radiculopathy all along and the rating codes were updated to reflect this.

Analysis:

The CI had documented central compression of L4-L5 on MRI on 20000601 and 20011115 and surgery 20020118, so nerves were being compressed for at least 18 months. His symptoms remained within the L4-5 dermatomes both before and after surgery. He has a neuritis rather than just neuralgia because of the tingling, numbness and paresthesias. It is a sensory neuritis. His continued paresthesias and radicular pain after surgery are more likely than not related to permanent damage to these nerve roots. These paresthesias, pain, and severe limitations are unfitting and should be rated in addition to rating the back pain. Paragraph 4.123 discuses rating of neuritis for sciatic nerve and states the maximum rating for neuritis with sciatic nerve involvement that is not characterized by organic changes will be that for moderately severe, incomplete paralysis.

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BOARD FINDINGS IAW DoDI 6040.44, the Board used the Veteran’s Affairs Schedule of Rating Disabilities (VASRD) as the most favorable basis for rating. After careful consideration of all available information, the Board concluded by simple majority that the CI’s condition is appropriately rated as Chronic back pain 5295 at 20%, Sciatic nerve neuritis, mild incomplete paralysis, right lower extremity 8620 at 10%, and Sciatic nerve neuritis, minimal incomplete paralysis, left lower extremity 8620 at 0% for a combined 30% using the 2003 VASRD.

The Navy evaluation and the pre-separation VA evaluation support a 20% rating for back pain with moderate limitation of motion of the spine and spasm on extreme forward bending. While the Navy did not rate the CI’s leg pain or radiculopathy separately, they did include it as part of his unfitting condition. The Board felt his radiculopathy should be separately rated because the 2003 VASRD does not include the current general rating formula for the spine in which ratings are made based on limitation of ROM with or without pain (whether or not it radiates). Therefore the condition of leg pain cannot be accounted for in the spine rating. The neuritis code, 8620, was chosen because the CI did not merely have a dull intermittent pain that radiated in the distribution of L4 and L5. He had constant pain that was at times excruciating and had sensory disturbances of both numbness and paresthesias in the distribution of L4-L5 which were exacerbated by prolonged sitting, standing, and walking. A zero percent evaluation is assigned for the left side IAW VASRD paragraph 4.31. The bilateral factor is not applied because the disability is of compensable degree in only one lower extremity (VASRD paragraph 4.26(c)).

The Board also examined bilateral knee pain, dyspepsia, and bilateral hand arthrosis and did not find any of these conditions 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 concurred with rating 5295 at 20% but felt that both right and left 8620 ratings should be 0%) elected not to submit a minority opinion. He agreed that the Navy considered the CI’s bilateral leg pain to be unfitting and could not be accounted for using the 5295 VASRD code alone. However, he did not believe either condition met the criteria for the minimum rating of 10%.

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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 |
| Chronic back pain, status post L4-5 laminectomy and diskectomy | 5295 | 20 |
| Sciatic nerve neuritis, mild incomplete paralysis, right lower extremity | 8620 | 10 |
| Sciatic nerve neuritis, minimal incomplete paralysis, left lower extremity | 8620 | 0 |
| Combined | 30% |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090514, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

President

Physical Disability Board of Review

MEMORANDUM FOR COMMANDER, NAVY PERSONNEL COMMAND

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR)

RECOMMENDATION ICO XXXXX, XXX-XX-XXXX

Ref: (a) DoDI 6040.44

Encl: (1) PDBR ltr dtd 20 Aug 09

1. I have reviewed the subject case pursuant to reference (a) and approve the recommendation of the Physical Disability Board of Review (enclosure (1)).

2. The member’s official records are to be corrected to reflect the following disposition:

a. Retirement from the naval service due to physical disability rated at 30% with placement on the Permanent Disability Retired List effective 16 June 2003.

3. Please ensure all necessary actions are taken to implement this decision, including the recoupment of previously paid funds if appropriate, and the member is notified once those actions are completed.

Assistant General Counsel

(Manpower & Reserve Affairs)

Performing the Duties of the

ASN(M&RA)