RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXX BRANCH OF SERVICE: marine corps

CASE NUMBER: PD0900350 BOARD DATE: 20090902

SEPARATION DATE: 20080516

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SUMMARY OF CASE: This covered individual (CI) was a Marine Corps Corporal, Rifleman medically separated from the Marine Corps in 2008 after four years of service. The medical basis for the separation was status post l5 laminectomy anterior disk space fusion and pedicle screw fixation with chronic pain.

HISTORY: The CI first injured his back while in Iraq on patrol in May 2005. He fell into a ditch and landed on his feet but experienced instant pain in his back, legs, and feet along with numbness in his legs, right greater than left. Conservative therapy failed to relieve his symptoms and subsequent work-up revealed a right paramedian disc herniation at L5-S1 with right S1 nerve root mass affect. He underwent an L5-S1 laminectomy, anterior disc space fusion, and pedicle screw fixation with iliac crest bone graft on 16 December 2005. He continued to have pain at the same level as before the surgery and no treatment, including physical therapy, pain clinic, and epidural steroid injections, relieved his pain.

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 5241 Status Post L5 Laminectomy Anterior Disc Space Fusion and Pedicle Screw Fixation with Chronic Pain in Thoracolumbar Spine using the Veterans Affairs Schedule for Ratings Disabilities (VASRD) and applicable Navy and Department of Defense regulations.

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CI CONTENTION: “According to the Marine Corps General Rating formula for Diseases and Injuries of the spine, “Forward Flexion of the thoracolumbar spine 30 degrees or less should result in a 40% rating.” My forward was determined to be 15% and therefore, I should have received a 40% rating rather than the 20% rating, which is defined by the Marine Corps General Rating Formula for Diseases and Injuries of the Spine as “forward flexion of the thoracolumbar spine greater than 30 degrees, but not greater than 60 degrees.” In addition, the VA rated me at 40% for the same injury and at 50% for my total combined disability rating.”

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RATING COMPARISON:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Previous Determinations** | | | | | | | | |
| **Service** | | | | **VA** | | | | |
| **PEB Condition** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam Date** | **Effective date** |
| Status Post L5 Laminectomy Anterior Disk Space Fusion And Pedicle Screw Fixation With Chronic Pain | 5241 | 20% | 20071207 | Herniated Nucleus Pulposusl5-S I, with Right S-I  Radiculopathy | 5241 | 40% | 20080619 – 20080722 | 20080516 |
| Status Post Right L5 Paramedian Disk Herniation With S1 Mass Root Affect | CAT 2 |  |  | Not Rated |  |  |  |  |
|  |  |  |  | Peripheral Neuropathy, Right Upper Extremity | 8515 | 10% | 20080619 – 20080722 | 20080516 |
|  |  |  |  | Anxiety Disorder with Sleep Disturbance Associated With  Herniated Nucleus Pulposus,  L5-S1, with Right S-1  Radiculopathy | 9400 | 10% | 20080619 – 20080722 | 20080516 |
|  |  |  |  | Headaches | 8100 | 0% | 20080619 – 20080722 | 20080516 |
|  |  |  |  | Hearing Loss | NSC |  |  |  |
| **TOTAL Combined: 20%** | | | | **TOTAL Combined (*incl non-PEB Dxs): 50***% from 20080516 | | | | |

ANALYSIS: Using an evaluation completed six weeks after the time of separation from the Marine Corps, the Veterans Administration (VA) rated this disability as 5241 Herniated Nucleus Pulposus L5-S1, with S1 radiculopathy at 40% based on thoracolumbar flexion of 15 degrees.

The Narrative Summary (NARSUM) does not contain adequate thoracolumbar range of motion (ROM) measurements and has descriptive terms only. It appears the IPEB used this for the initial rating. There are two complete ROM exams from physical therapy (PT) in the service treatment record (STR). An AHLTA note dated 20071121 includes one of these sets of measurements and the note states the ROM exam was done for the PEB. It documents flexion of 15 degrees. The two PT ROM examinations were done six and seven months prior to separation. They are consistent with the VA ROM measurements which were done six weeks after separation. All clearly warrant a 40% rating based on thoracolumbar ROM with flexion of either 10 or 15 degrees. The IPEB apparently placed more weight on the description of range of motion in the NARSUM and an AHLTA note from an orthopedic clinic visit that stated that if the CI followed certain activity limitations he would be able to be pain free.

However, there are three complete sets of ROM exams which appear to have been done with a goniometer, were completed after the examination for the NARSUM, and have consistent measurements of flexion, 10 or 15 degrees. Two are from Navy PT and one was from the VA examination. The Board placed more weight on these exams as opposed to the NARSUM exam because they were more complete and were completed closer to the time of separation. The Board acknowledges that individuals with back pain have good days and bad days but ratings should not be based solely on the one exam that shows the least amount of limitation of ROM.

CI did appear to have radiating pain into bilateral lower extremities both before and after surgery although this was not always present. He had positive straight leg raises bilaterally and decreased pinprick sensation documented in the NARSUM. VA Ortho C&P exam documents a complaint of general numbness in both legs at the time of initial injury and of pain radiating into right leg at time of examination. VA exam showed normal and symmetric motor and sensory exams and DTRs of bilateral lower extremities. Also an EMG done at the VA on 20080801 was normal in both lower extremities. There are not objective findings to warrant a separate rating for lower extremity radiculopathy. The general rating formula for the spine is based on limited ROM with or without pain (whether or not it radiates).

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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 unanimously concluded that the CI’s condition is appropriately rated at a 40% for 5241 Status Post L5 Laminectomy Anterior Disc Space Fusion and Pedicle Screw Fixation with Chronic Pain in Thoracolumbar Spine using the VASRD general rating formula for diseases and injuries of the spine.

The rating of 40% is based on thoracolumbar flexion of 10 to 15 degrees.

The Board also examined 8100 Headaches and 9400 Anxiety, and did not find these conditions to be unfitting. The other diagnosis rated by the VA, 8515 Right Upper Extremity Radiculopathy, was not mentioned in any PEB paperwork and could not be considered by the Board.

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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 |
| Status Post L5 Laminectomy Anterior Disc Space Fusion and Pedicle Screw Fixation with Chronic Pain in Thoracolumbar Spine | 5241 | 40% |
| Combined | 40% |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090507, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

President

Physical Disability Board of Review

MEMORANDUM FOR DEPUTY COMMANDANT, MANPOWER & RESERVE

AFFAIRS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR)

RECOMMENDATION ICO XXXXXXX

Ref: (a) DoDI 6040.44

Encl: (1) PDBR ltr dtd 14 Sep 09

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

2. Mr. XXXXX’s official records are to be corrected to reflect the following disposition:

a. Separation from the naval service due to physical disability rated at 40% with placement on the Permanent Disability Retired List effective 16 May 2008.

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

Deputy Assistant Secretary of

The Navy (Civilian Human

Resources)

Performing the Duties of the

ASN (M&RA)