RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: USMC

CASE NUMBER: PD0900367 BOARD DATE: 20100106

SEPARATION DATE: 20020331

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SUMMARY OF CASE: This covered individual (CI) was a Sergeant Helicopter Mechanic medically separated from the Marine Corps in 2002 after 9 years of service. The medical basis for the separation was Lower Back Pain. The CI was referred to the PEB, found unfit for the Lower Back condition, determined unfit for continued military 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: “In July of 2000, I was injured while playing as a member of the All-Marine Baseball Team in San Diego. The injury first manifest itself as groin and hip pain on my left side. I have included the first document I could find in my records, showing treatment for the injury and dated 2 Aug 00. The condition failed to resolve with physical therapy or pain medication (Atch H). By 7 Mar 01, I began to experience significant pain in my lower back leading to an initial diagnosis of spondylolisthesis and some bulging disks (Atch G). My back pain began a slow steady increase which failed to respond to physical therapy, oral medication, or steroid injections. By 19 Oct 01, I began evaluation to determine my fitness for continued military service. The doctor rendered his opinion that I would be unable to return for duties of my rate and rank and referred my case to a Physical Evaluation Board. The Board summarized its finding on 4 Feb 02 with recommended disposition "To Be Separated from Active Duty with severance pay" with combined disability rating of 10% for "PERSISTENT LOW BACK PAIN" (Atch F). On 6 Feb 02, I was notified that I had been scheduled for a VA physical on 20 Feb 02 (Atch E). I also received the Board's finding on 6 Feb 02, and I accepted the preliminary findings on 19 Feb 02 (Atch D). On 31 Mar 02, I medically separated from military service (Atch C) while awaiting the results of the VA physical. On 20 Feb 02, I received a complete physical from the VA, while still a serving member of the Marine Corps; and on 18 Jun 02, the VA declared my combined disability rating at 40%; 20% based on left hip/groin condition begun in service, and 20% Low back condition, also begun in service (Atch B). The same VA diagnostic codes were applied with significantly different and more detailed results by the VA. The total elapsed time between the military doctor's physical (the basis of the PEB granting only 10% and recognizing only a portion of my lower back issues) and the VA physical was 127 days, all while on active duty and marked by neither additional incident with or treatment to my hip or back. “

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RATING COMPARISON:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Service PEB** | | | | **VA (1 Mo. Pre- Separation)** | | | | |
| **Unfitting Conditions** | **Code** | **Rating** | **Date** | **Condition** | **Code** | **Rating** | **Exam** | **Effective** |
| Persistent Low Back Pain | 5295 | 10% | 20020204 | Lumbar Spine DDD | 5295 | 20% | 20020220 | 20020401 |
| Grade I Spondylolisthesis | Cat II | Conditions that contribute to the unfitting condition | |
| Spondylolysis | Cat II |
|  |  |  | | Lumbar spine DDD with IVDS and S/P Laminectomy with Scar (Formerly Rated as Lumbar Spine DDD under VASRD 5295) | 5243 | 20%  40%  100%  40%  100%  40% | 20060417  20070724 | 20020401  20060110  20061220  20070301  20070828  20071101 |
|  |  |  | | Sensory Deficit LLE assoc with Lumbar Spine DDD and S/P Laminectomy | 8720 | 10 | 20060417 | 20060110 |
|  |  |  | | Sensory Deficit RLE assoc with Lumbar Spine DDD and S/P Laminectomy | 8720 | 10 | 20060417 | 20060110 |
| Chronic Left Inguinal Groin Pain | Cat III | Conditions that are not separately unfitting and do not contribute to the unfitting condition | | Left Hip/Groin Strain | 5299-5252 | 20% | 20020220 | 20020401 |
| Not addressed by MEB or PEB | | | | Migraine Headaches | 8100 | 0% | 20020220 | 20020401 |
| **TOTAL Combined: 10%** | | | | **TOTAL Combined (*Includes Non-PEB Conditions*): 40% from 20020401**  **60% from 20060110 (with BF 3.5 for 5252, 8720, 8720 and periods of 100% for back surgeries)** | | | | |

Prior Appeals: BCNR August 2008 upheld IPEB findings: hip condition not unfitting, back appropriately rated at 10%.

Missing records: Original VA C&P exam is missing all the even numbered pages. However, the original VA rating decision is quite detailed and it contains all the relevant details.

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ANALYSIS SUMMARY:

Condition 1: Low Back Pain

The original VA C&P exam is missing all the even numbered pages but the original VA rating decision provides the relevant details from this exam. The Navy exam did not include a complete range of motion (ROM) exam but VA C&P exam did provide complete examination one month prior to separation. This exam warrants a 20% rating for back pain using both the VASRD in effect at the time and the later VASRD ratings based on ROM. Neither the NARSUM nor the VA exam document any sensory or neurologic abnormalities but a separation physical and multiple progress notes (all written by the same primary care provider) in the STR document abnormal gait with mild weakness and decreased sensation in right lower extremity. No EMGs were done. The original VA evaluation did document motor strength of 5-/5 in the left lower extremity due to pain and 5/5 in the right lower extremity and an antalgic gait but attributed these findings to the left hip/groin strain condition. These findings appear to be minimal and intermittent and these characteristics, along with the contradictory examinations, are not sufficient to support a finding of a radiculopathy in either lower extremity at the time of separation from service.

The VA examination documented painful motion and tenderness to palpation of the lumbar paraspinal area. There was no muscle spasm or weakness and straight-leg raising test was negative bilaterally. MRI done 20010411 showed grade I spondylolisthesis of L5 on S1 secondary to spondylolysis; small broad based bulge at L2-3, L3-4 and L5-S1; and small right paracentral disc extrusion at L4-5 without contacting the thecal sac.

At a later examination done after the new VASRD rating criteria based on ROM were in effect, the VA documented a more limited ROM along with sensory deficits in bilateral lower extremities. The VASRD code was changed to 5243 Intervertebral disc disease with an increased rating of 40% and bilateral 8720 ratings of 10% each were added for sensory deficits associated with degenerative disc disease. These changes were effective as of 20060110, the date of a claim for increased evaluation. These increased and additional ratings were warranted because of a worsening of the CI’s symptoms over time.

**ROM:**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Movement  Thoracolumbar | Normal ROM | ROM Mil  20011023 | ROM VA  20020220 | ROM VA  20060417 | ROM VA  20070724 |
| Flex | 0-90 | “lacks 12 inches to the floor” | 50 | Unable to perform | 10 |
| Ext | 0-30 |  | 20 |  | 10 |
| R Lat flex | 0-30 | WNL | 25 |  | 10 |
| L lat flex | 0-30 | WNL | 25 |  | 10 |
| R rotation | 0-30 | WNL | 25 |  | 10 |
| L rotation | 0-30 | WNL | 25 |  | 10 |
| COMBINED | 240 |  |  |  | 60 |
| Notes: |  |  | 20% for evidence of lumbar spine narrowing at L4-5 and painful moderately limited range of motion of the lumbar spine. (Would also be 20% under later VASRD for flexion greater than 30 but not greater than 60 degrees) | Changed code to 5243 and increased to 40%; also added bilateral LE sensory deficit 8720 | 40% for flexion of 30 degrees or less; effective from 20060110, date of claim for increase |

Condition 2: Left Hip/Groin Strain; Adductor Magnus and Iliopsoas Strain

Condition not considered unfitting by Navy IPEB and therefore not rated. The BCNR also determined this condition was not unfitting.

Multiple studies, including X-rays, bone scan, and MRI, were all normal as documented in the NARSUM. The NARSUM examination reported full ROM of both hips in flexion, extension, abduction, adduction, and internal and external rotation. There was no tenderness to palpation over the greater trochanter. There was some tenderness to deep palpation over the origin and insertion of the iliopsoas and adductor magnus areas but this was considered broad based and nonspecific by the examiner.

The Commander’s Letter states the CI is unable to perform his required duties because of his back condition. No hip condition is mentioned and it is not clear that this condition alone would have made the CI unfit for Naval service.

The VA evaluation documented ROM limited by pain one month prior to separation. These limitations did not reach the compensable level but the VA rated this` pain-limited ROM analogously. Minimally decreased strength (5-/5) of the left lower extremity was attributed to pain and not a neurologic problem.

|  |  |  |  |
| --- | --- | --- | --- |
| Movement  Hip | Normal | ROM Mil  20011023 | Left Hip VA 20020220 |
| Flex | 0-125 | He has a full range of motion of his hips with flexion and extension, abduction, internal and external  rotation, and adduction. | 110 |
| Ext | 0 | 20 |
| Adduction |  | 20 |
| Abduction | 45 | 30 |
| Ext rotation |  | 40 |
| Int rotation |  | 30 |
| COMBINED |  |  |  |
| Notes: |  |  |  |

3. Migraine Headaches

Migraine headaches were not mentioned in the Disability Evaluation System (DES) package and are therefore outside the scope of the Board.

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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 concluded that the CI’s condition is most appropriately rated at 20% for 5295 Degenerative Disc Disease with Persistent Low Back Pain.

Painful moderately limited ROM and joint space narrowing at L4-5 warrant a rating of 20% under 5295 IAW the VASRD in effect at the time of separation from service. The VA later refined the rating criteria for back conditions in order to more accurately describe functional limitations. If these later criteria were applied, the same rating of 20% would result.

The Board examined the left hip/groin strain and did not find sufficient evidence to consider this condition unfitting.

Migraine headaches and bilateral lower extremity sensory deficits were rated by the VA but were not mentioned in the Disability Evaluation System (DES) package and are 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 recommends that the CI’s prior determination be modified as follows, effective as of the date of his prior medical separation.

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Degenerative Disc Disease with Persistent Low Back Pain | 5295 | 20% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090529, 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

Ref: (a) DoDI 6040.44

Encl: (1) PDBR ltr dtd 13 Jan 10

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

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

a. Separation from the naval service due to a physical disability rated at 20% effective 31 March 2002 with entitlement to disability severance pay.

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

Principal Deputy

Assistant Secretary of the Navy

(Manpower & Reserve Affairs)