RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXX BRANCH OF SERVICE: NAVY

CASE NUMBER: PD0900409 BOARD DATE: 20100804

SEPARATION DATE: 20040808

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SUMMARY OF CASE: This covered individual (CI) was an active duty E-5 (IT2735/Information Systems Administrator) medically separated from the Navy in 2004 after more than six years of service. The medical basis for the separation was mechanical low back pain with degenerative disk disease and sacroiliac dysfunction. Appropriate therapy failed to alleviate this condition and the CI was referred to the Physical Evaluation Board (PEB). The PEB determined he was unfit for continued Naval service and he was separated with a 10% disability rating 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: ‘The Navy only rated me at 10%, where a few months later the VA rated me at 60%. I do not see how this is possible. The Navy told me it was a good deal because I was getting severance pay, and the VA would take care of medical needs. They did not say I would have to pay every last cent of the severance pay back to the VA, lowering my benefits anymore. I want and deserve military retirement!!’

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RATING COMPARISON:

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| --- | --- |
| **Service PEB – Dated 20040414** | **VA (1 Month Prior to Separation) – All Effective 20040809** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Mechanical Low Back Pain with Degenerative Disk Disease and Sacroiliac Dysfunction | 5243 | 10% | Degenerative Disk Disease with Intervertebral Disk Syndrome and Degenerative Changes at L3-4, L4-5 and S1 | 5243 | 20% | 20040719 |
| Migraine without Aura | CAT III | Migraine Headaches | 8100 | 30% | 20040719 |
|  | Not in DES | Cervical Sprain | 5237 | 10% | 20040719 |
|  | MEB H&P 20040220 | Bilateral Plantar Fasciitis | 5299-5276 | 10% | 20040719 |
|  | MEB H&P20040220 | Right Wrist Sprain | 5215 | 0% | 20040719 |
|  | Not in DES | Chronic Ankle Sprain, Left | 5271 | 0% | 20040719 |
|  | Not in DES | Chronic Ankle Sprain, Right | 5271 | 0% | 20040719 |
|  | NSC X 3 |  |
| **TOTAL Combined: 10%** | **TOTAL Combined (*Includes Non-PEB Conditions*): 60%**   |

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ANALYSIS SUMMARY

Low Back Pain

The CI originally underwent a Medical Board (MEB) for back pain in August 2003. He had a gradual onset of low back pain over the previous two or three years. He had constant pain with occasional exacerbations. His pain was worse with lifting and activities throughout the day. There was no radiation to his leg. He had received physical therapy and chiropractic manipulation but his symptoms continued. On exam he had full range of motion (ROM) and lower extremities had 5/5 strength, normal sensation to deep touch and pinprick, and deep tendon reflexes were symmetrical and equal. X-rays were normal and magnetic resonance imaging (MRI) showed mild degenerative disk disease at L3-4, L4-5, and S1 with a small central prolapse at L5-S1 that did not cause any neural compromise. The MEB determined he was fit for limited duty. As he had not yet reached maximal medical benefit, a period of eight months of limited duty was recommended. He was to modify his activity with no prolonged standing, walking, running, lifting, or physical readiness tests. He was to repeat his manual chiropractic therapy and receive instruction in stretching and strengthening muscles. It was thought that upon completion of this limited duty he would be fit to return to full duty. During this period of limited duty he also received epidural steroid injections and had some relief after the first injection but no pain relief with any later injections. He had some response to physical therapy and chiropractic manipulation but was still unable to stand for prolonged periods of time, run, or lift. At the time of the second NARSUM 20040224 he had constant low back pain with intermittent periods of spasm and radiation down the left leg. He had no bowel or bladder complaints. On examination there was no spasm but he was tender to palpation over his left sacroiliac joint. Motor exam was 5/5 in all lower extremity muscles tested and sensory exam was intact to light touch and pinprick in all dermatomes. Straight leg test was symmetrical bilaterally to 80 degrees, limited by tight hamstrings. Patrick’s and Gaenslen’s tests were positive on the right and negative on the left. It was felt that he had now reached the maximum medical benefit of outpatient therapy and it was not clear that he was a surgical candidate. His duty limitations of no prolonged standing, walking, lifting, or running was continued and he was referred to the PEB.

No ROM exam was measured in either NARSUM although the initial one stated full ROM. The VA Compensation and Pension (C&P) examination of 20040719 (one month prior to separation from service) did include a complete ROM examination. It also reported no radiation of pain, muscle spasm, or tenderness, negative straight leg raise, and no bowel, bladder, or erectile dysfunction. The lower extremities had normal motor and sensory and deep tendon reflexes of 2+ bilaterally. A rating of 20% was assigned with 10% for limited range of motion of the thoracolumbar spine and an additional 10% for pain. The 10% rating was applied in error and was not in accordance with the VASRD. A second VA C&P examination was done 20060408 after a motor vehicle accident 20060107 with whiplash injury and aggravation of low back pain. He missed a considerable amount of work and was receiving Workers Compensation. A 20% rating was assigned based on incapacitating episodes of at least two weeks but less than four weeks during the previous twelve months.

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| --- | --- | --- | --- |
| Thoracolumbar | Normal | VA C&P 20040719 | VA C&P 20060408 |
| Flexion | 90 | 75 | 65 |
| Extension | 30 | 30 | 20 |
| Right Lateral Flexion | 30 | 30 | 25 |
| Left Lateral Flexion | 30 | 25 | 25 |
| Right Rotation | 30 | 30 | 25 |
| Left Rotation | 30 | 30 | 25 |
| Total | 240 | 220 | 185 |
|  |  | Additionally limited by pain with repeated motion |  |

Migraine

The CI was first seen in the Headache Clinic in January 2003 with a report of headaches two to three times per week for three years. The headaches were accompanied by nausea, photophobia, phonophobia, and fatigue. At the time of the Neurology Addendum to the NARSUM 20040303 he was taking Depakote ER as prophylaxis and was having one to two headaches per week. He also had taken Imitrex and then Zomig. He had previously taken Pamelor as prophylactic medication. Neurologic examination was normal. There are multiple visits for headache in the service treatment record (STR) but no mention of bedrest or periods of incapacitation is present. Each outpatient visit included the disposition of released without limitations. He was admitted 19991012 with a headache that had been present for six days and accompanied by nausea and vomiting for the last three days. He had been seen in the emergency room (ER) on 19991007 and had a lumbar puncture done. Neurologic examination was normal as were all the labs performed on his cerebrospinal fluid, including cultures. He was treated with IV DHE which was very effective. He was also released from the ER 20031102 after being seen for a headache. The initial VA C&P examination 20040719 stated he could not drive or concentrate during a migraine and that he lost time from work about one time a month due to migraines. Neurologic examination, including mental status, was normal.

There is no evidence this condition interfered with performance of any required duties and no duty restrictions can be attributed to this condition.

Other Conditions: Bilateral plantar fasciitis and right wrist sprain. No evidence either was unfitting at time of separation. The CI had a previous MEB LIMDU for feet (19990204) but was found fit for full duty 19990713. The Informal PEB 20040414 did not address feet.

Other Conditions, not in the Disability Evaluation System (DES):

Cervical Sprain; Chronic Ankle Sprain, Left; and Chronic Ankle Sprain, Right

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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 back condition is appropriately rated as 5243 Mechanical Low Back Pain with Degenerative Disk Disease and Sacroiliac Dysfunction at 10% disability IAW the VASRD General Rating Formula for Diseases and Injuries of the Spine. The 10% disability rating is based on thoracolumbar flexion limited to 65 degrees. The VASRD General Rating Formula for Diseases and Injuries of the Spine in §4.71a Schedule of ratings musculoskeletal system states that pain, whether or not it radiates is included in the rating based on limited ROM. No additional rating for pain is authorized. Thoracolumbar flexion limited to 65 degrees warrants a 10%. The Board also considered Migraine Headaches, Bilateral Plantar Fasciitis, and Right Wrist Sprain and unanimously determined that none of these conditions were unfitting at the time of separation from service and therefore no disability rating is applied. None of these conditions interfered with satisfactory performance of required duties. The other diagnoses rated by the VA (Cervical Sprain, Chronic Ankle Sprain, Left and Chronic Ankle Sprain, Right) were not mentioned in the Disability Evaluation System 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 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 20090610, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

 Deputy Director

 Physical Disability Board of Review

MEMORANDUM FOR DIRECTOR, SECRETARY OF THE NAVY COUNCIL

 OF REVIEW BOARDS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

 ICO XXXXXX

Ref: (a) DoDI 6040.44

 (b) PDBR ltr dtd 10 Aug 10

 I have reviewed the subject case pursuant to reference (a) and approve the recommendation of the PDBR (reference (b)) that Mr. XXXX’s records not be corrected to reflect a change in either his characterization of separation or in the disability rating previously assigned by the Department of the Navy’s Physical Evaluation Board.

 Principal Deputy

 Assistant Secretary of the Navy

 (Manpower & Reserve Affairs)