RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: NAVY

CASE NUMBER: PD0900411 BOARD DATE: 20100526

SEPARATION DATE: 20070328

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SUMMARY OF CASE: This covered individual (CI) was FC2/E-4 medically separated from the Navy in 2007 after 5 years of service. The medical basis for the separation was Mechanical Low Back Pain. The Back Pain was determined to be medically unacceptable. The Degenerative Disc Disease was determined to be medically acceptable. The CI was referred to the Physical Evaluation Board (PEB), found unfit only for the Low Back Pain condition determined unfit for continued military service and separated at 10% disability 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 states: “Medically discharged with 2 herniated discs, disc degeneration and sciatica. Doctors informed me that this is progressively getting worse, which I now have 3 herniated discs. Over the past 4 years I have dealt with severe pain which effects my civilian job, as well as civilian day-to-day living. The VA Spine Specialist informed me that she believes the injury was to the actual bone of the spine. This effects all aspects of my life/health. The member has gone from extremely active to completely limited in daily functions. This affects sleeping patterns and all activities. This has caused episodes of insomnia, which in turn causes extreme stress and fatigue. This causes loss of work and pay due to immobilization during episodes of severe pain. Now having to consider the nerves in the back ‘burned’ in order not to feel the pain. The Spine Specialist at Cleveland Veterans Hospital, Dr. Knight, believes the damage may be in the bone of the spine itself. Surgery is not an option. Living in the severe debilitating pay every day is not an option either.”

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RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Service PEB | | | | VA (2 Months after Separation) | | | | |
| Unfitting Conditions | Code | Rating | Date | Condition | Code | Rating | Exam | Effective |
| Mechanical Low Back Pain | 5242 | 10% | 20061212 | Lumbar Intervertebral Disc Syndrome and Degenerative  Disc Disease and Herniations Of L4-L5 and L5-S1 | 5243 | 10% | 20070525 | 20070329 |
| Degenerative Disc Disease |  | CAT II |  |
|  |  | Symptoms of pain documented in NARSUM | | Left Sciatica Associated with Lumbar Intervertebral  Disc Syndrome and Degenerative Disc Disease and Herniations of L4-L5 and L5-S1 | 8520 | 10% | 20070525 | 20070329 |
|  |  | Not In DES | | Adjustment Disorder with Anxiety, Chronic | 9440 | 0% | 20070524 | 20070329 |
| TOTAL Combined: 10% | | | | TOTAL Combined (*Includes Non-PEB Conditions*):  20% from 20070329 | | | | |

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ANALYSIS SUMMARY:

Mechanical Low Back Pain

The CI had a multiyear history of back pain with radiating pain that did not respond to multiple treatment modalities including a trial of stretch and strengthening exercises, rehabilitative exercises, chiropractic manipulation and manual therapy, and three epidural steroid injections. A Magnetic Resonance Imaging (MRI) completed in October 2005 did show an L5-S1 centrally located disc extrusion with mild indentation of the thecal sac but patent neural foramina and an L4-L5 mild diffuse annular bulge which did not narrow the spinal canal and the neural foramina were patent. No other disc abnormalities were present, the spinal canal of normal caliber, and all neural foramina were patent. The patient was not a surgical candidate and had reached maximum benefits of outpatient therapy prior to referral to the PEB.

The Service Treatment Record (STR) includes multiple visits for back pain with sciatica and pain radiating to various levels. However, there is no mention of subjective complaints or objective findings of decreased sensation prior to separation. There were multiple reports of positive straight leg raise test on the left side. All exams noted normal motor strength and antalgic gait was noted once on 20060706. There was not one report of abnormal sensory exam or abnormal deep tendon reflexes. No Electromyogram (EMG) was done. Navy rated 10% based on flexion of 70 degrees. However, the narrative summary (NARSUM) documented limited range-of-motion (ROM) with flexion to 70 degrees with pain at 50 degrees and flexion limited to 50 degrees warrants a 20% rating. The VA Compensation and Pension (C&P) evaluation was completed two months after the CI separated from service and documented normal ROM. Back pain does wax and wane over time and this examination may have been completed on a day when the CI’s symptoms were not as severe as on other days. Also, this examination is not documented as clearly or completely as the NARSUM examination.

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| --- | --- | --- | --- |
| Movement  Thoracolumbar | Normal ROM | ROM Mil  20061013  (pain) | ROM VA  20070525 |
| Flex | 0-90 | 70 (50) | 90 |
| Ext | 0-30 | 30 | 30 |
| R Lat flex | 0-30 | 30 | 30 |
| L lat flex | 0-30 | 30 | 30 |
| R rotation | 0-30 | 30 | 30 |
| L rotation | 0-30 | 30 | 30 |
| COMBINED | 240 | 200 | 240 |
| Notes: |  | 5/5 strength in all Lower extremities; Normal sensation to light touch and pinprick in all dermatomes; DTR 2+ symmetric; SLR positive on left at 80 degrees, negative on right | Motor 5/5 bilateral lower extremities; lumbosacral sensory deficits over L4.; decreased sensory over the left lateral thigh and S1; decreased sensory over the posterior left thigh; DTR 2+ bilateral lower extremities; positive SLR on left, negative on right |

Left Sciatica

While the VA C&P examination did document sensory abnormalities, no Navy examination including the NARSUM, Military Evaluation Board (MEB) History and Physical, and multiple outpatient visits documented any complaints of altered sensation or findings of abnormal sensation. The NAVY MEB NARSUM specifically states that sensation was intact in all dermatomes to light touch and pinprick. The VA C&P examination was less thoroughly documented in that the examiner did not describe what type of sensory examination was performed, i.e. light touch, pinprick, etc. The general descriptions of ‘lumbosacral sensory deficits over L4’, ‘decreased sensory over the left lateral thigh and S1’, and ‘decreased sensory over the posterior left thigh’ do not fully explain the examination that was performed. It is not clear if these are subjective reports or objective findings. There is no EMG testing to confirm a neurologic deficit and the MRI is not consistent with damage to any of the nerve roots. The MRI is from October 2005 and it is possible the herniated disc at L5-S1 that was not encroaching on any nerves at that time could have expanded prior to the time of separation but there is no mention of any complaint of or objective finding of a sensory deficit prior to separation from service.

Not in Disability Evaluation System (DES) package: Adjustment Disorder with Anxiety

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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 is most appropriately rated as 20% for 5243 Back Pain with Intervertebral Disc Syndrome using the VASRD General Rating Formula for Diseases and Injuries of the Spine.

The CI was not able to flex his thoracolumbar spine more than 70 degrees and he experienced pain at 50 degrees of flexion. The VASRD recognizes painful motion as productive of disability and functional limitations of spinal diseases and injuries are rated based on range-of-motion limitations due to pain as well as mechanical limitations. Thoracolumbar flexion limited to 50 degrees warrants a 20% rating under the VASRD General Rating Formula for Diseases and Injuries of the Spine.

The Board also considered the condition of Sciatica and unanimously determined that as the CI only had radiating pain and no motor or sensory deficits, no rating may be applied. In accordance with the General Rating Formula for Diseases and Injuries of the Spine pain, whether or not it radiates, is included in the rating based on limitation of thoracolumbar spine range of motion. A separate rating for radiculopathy under VASRD 8520 is not applied unless a neurologic abnormality other than pain is present.

The other diagnosis rated by the VA (Adjustment Disorder with Anxiety, Chronic) was not mentioned in the Disability Evaluation System 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 this condition 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.

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| UNFITTING CONDITION | VASRD CODE | RATING |
| Back Pain with Intervertebral Disc Syndrome | 5243 | 20% |
| COMBINED | 20% |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090601, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

President

Physical Disability Board of Review

MEMORANDUM FOR COMMAND, NAVY PERSONNEL COMMAND

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

Ref: (a) DoDI 6040.44

Encl: (1) PDBR ltr dtd 11 Jun 10

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

a. Separation from the naval service due to physical disability rated at 20 percent (increased from 10 percent) effective 28 March 2007.

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)