RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXX BRANCH OF SERVICE: USMC

CASE NUMBER: PD0900496 BOARD DATE: 20100616

SEPARATION DATE: 20090530

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SUMMARY OF CASE: This covered individual (CI) was 2LT/O-1, Basic Officer/8001 Marine Officer medically separated from the Marine Corps in 2009 after 11 years of service. The medical basis for the separation was Status Post L5-S1 Fusion.

The Status Post L5-S1 Fusion condition was determined to be medically unacceptable. The Partial Hemilaminectomy with Diskectomy (x2) was classified as a Category II condition related to the primary condition and determined to be medically acceptable. The CI was referred to the PEB, determined unfit for the condition, and separated at 20% disability using the Veterans Affairs Schedule for Ratings Disabilities (VASRD) and applicable Navy, Marine Corps and Department of Defense regulations.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

CI CONTENTION: The CI states: “I have personal knowledge of two other Lieutenants that were separated for the exact same surgery that was conducted on me in November 2007, (which was a partial discectomy of L5/S1) were separated with higher disability ratings. Both were members of my command who had been diagnosed with the same condition that I had, and went through the medical evaluation just prior to my own (within a year). Neither Marine had more than one medical procedure conducted, whereas I had two more surgeries with the last being a total disc fusion. I conducted rigorous physical rehabilitation in an attempt to remain on active duty, before I was told by the physical therapist that I was most likely doing more damage by attempting to return to The Basic School for training. Prior to the back injury, my left knee was injured from conducting MCMAP, and should have weighed in on the boards decision also (neither of the two other Lieutenants had secondary injuries or surgery, to the best of my knowledge). This information was shared to me by Second Lieutenants J--- P---, and R--- W--- who were separated with disability ratings of 40% and 30% respectively. It is for this reason that I believe my rating was unfairly rated lower than it should have been, and I respectfully request a secondary review of my case”.

The CI also submitted two letters with his application.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

RATING COMPARISON:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Service PEB | | | | VA (4 Months Prior to Separation) | | | | |
| Condition | Code | Rating | Date | Condition | Code | Rating | Exam | Effective |
| Status Post L5-S1 Fusion | 5241 | 20% | 20090304 | Intervertebral Disc Syndrome, Lumbar Spine | 5243 | 40% | 20090115 | 20090531 |
| Partial Hemilaminectomy with Diskectomy Times Two | CAT II |  |  |  |  |  |  |  |
|  |  | MEB H&P  20081216 | | Neuritis, Left Lower Extremity Associated with Intervertebral Disc Syndrome, Lumbar Spine | 8620 | 10% | 20090115 | 20090531 |
|  |  | Surgery in NARSUM Scar in MEB H&P 20081216 | | Scar, Status Post L5-S1 Discectomy and Fusion | 7804 | 0% | 20090115 | 20090531 |
|  |  | Not in DES | | Intervertebral Disc Syndrome, Cervical Spine | 5243 | 0% | 20090115 | 29900531 |
|  |  | Not in DES | | Neuropathy, Left Upper Extremity Associated with Intervertebral Disc Syndrome, Cervical Spine | 8519 | 10% | 20090115 | 29900531 |
|  |  | Not in DES | | Neuropathy, Right Upper Extremity Associated with Intervertebral Disc Syndrome, Cervical Spine | 8519 | 10% | 20090115 | 29900531 |
|  |  | MEB H&P  20081216 | | Left Knee Strain | 5024-5257 | 10% | 20090115 | 29900531 |
|  |  |  | | Plantar Wart Removal | NSC |  |  |  |
| TOTAL Combined: 20% | | | | TOTAL Combined (*Includes Non-PEB Conditions*):  60% from 20090531 | | | | |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ANALYSIS SUMMARY

Back

The CI had a long history of back pain, approximately eight years. Over time he would suffer an acute exacerbation after an event such as lifting, training, physical training, and playing with his daughter. The acute event would resolve with conservative therapy. However, he soon began to have increased symptoms that did not respond to conservative treatment and he eventually required three back surgeries. He had an L5-S1 nerve root decompression in September 2007, a revision of this surgery in April 2008, and a spinal fusion of L5-S1 in October 2008. He would initially do well after surgery and was very compliant with all treatment modalities to include physical therapy. However, after each surgery his symptoms of severe pain in his back and legs, stiffness, numbness, loss of bladder control, limited bending and walking, and inability to sit or stand for prolonged periods or lift more than 10 pounds, would return as he attempted to resume normal activities. After the third surgery, neurosurgery did not believe any further surgery would be helpful. The CI did not respond to any other treatment methods and he was referred to the PEB.

The narrative summary (NARSUM) did not include range-of-motion (ROM) measurements but two are available in the military treatment record: one from November 2008, one month after surgery, and one from December 2008, two months after surgery. The November exam showed a greater range of motion but no neurologic exam was documented. The December exam documented decreased flexion of the thoracolumbar spine as well as an abnormal gait and decreased sensation to pinwheel in the left lower extremity. The VA Compensation and Pension (C&P) exam was done one month later (four months prior to separation from service) and documented pain and increased pain with repeated motion. It also documented decreased sensation of the left lower extremity and an abnormal gait.

(Separation Date: 20090530)

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Movement  Thoracolumbar | Normal ROM | ROM Military PT  20081117 | NARSUM 20081202 | ROM Military  20081215  (Active Motion) | ROM VA (PAIN)  20090115 |
| Flex | 0-90 | 105 (90) |  | 60 | 90 |
| Ext | 0-30 | NE |  | 35 (30) | 30 |
| R Lat flex | 0-30 | 25 |  | 25 | 30 |
| L lat flex | 0-30 | 30 |  | 25 | 30 |
| R rotation | 0-30 | 60 (30) |  | 40 (30) | 30 |
| L rotation | 0-30 | 60 (30) |  | 40 (30) | 30 |
| COMBINED | 240 | 200-235 |  | 200 | 240 |
| Notes: |  | DTR’s equal; All Waddells negative; no mention of neurologic exam | Neurologically intact; normal DTRs; motor 5/5; sensory intact | Limping; DTR equal bilaterally; motor 5/5 bilaterally; decreased sensation to Wartenburg pinwheel in left thigh, leg, and foot | Limping; Pain increased with repeated motion; Loss of sensation in Left lower leg and foot medially (measured with a feather); No motor abnormality |

The VA rated the back condition using periods of incapacitation. The C&P exam reported two thirty day periods of incapacitating episodes, one in April 2008 and one in October 2008. Both of these occurred after a surgery. The exam also reports a period of two days of incapacitation in May 2008 and three days in July 2008. However, there is no evidence in the service treatment record (STR) of any incapacitating episodes. A discharge note dated 20081003 stated ‘no strenuous exercise or heavy lifting for at least 4 wks’. There is no subsequent note describing any more stringent restrictions or any intervening event that might have caused a period of incapacitation. There is no evidence of incapacitation in May or July 2008 in the STR. Therefore the back condition should be rated based on the limited range of motion (ROM).

The military exam from 20081117 was approximately one month after surgery and does not include information about the degree of movement where pain occurred or if the motion was active or passive. Extension was not measured as the neurosurgeon had restricted this type of movement. The military exam from December 2008 is documented as active motion but again does not include information about pain on motion. The VA exam documented full ROM but stated pain was present at the extent of normal ROM and pain increased with repeated motion. However, there was no decreased ROM with repeated motion, only increased pain.

Neuritis

Both military and VA exams document abnormal sensory exams with normal strength and Deep Tendon Reflex (DTR). The November 2008 military exam has no mention of sensory or motor exams but documented DTRs equal bilaterally. The NARSUM exam states neurologically intact and sensory intact but does not describe how sensation was tested. It also documents motor function as 5/5 throughout and no reflex alterations. The December 2008 military exam and the VA C&P of January 2009 both describe how sensation was measured and both document abnormal sensory exams. One was done with a pinwheel and one with a feather. The sensory deficits are consistent with the documented medical problems of a herniated disc at L5-S1 and the three back surgeries. The exams that documented how sensation was measured are considered more complete.

Other Conditions

Neuritis, Left Lower Extremity Associated with Intervertebral Disc Syndrome, Lumbar Spine; Scar, Status Post L5-S1 Discectomy and Fusion; and Left Knee Strain

Neuritis See above

Scar and left knee strain

No evidence either one was unfitting. No duty restrictions related to these conditions. No evidence either interfered with ability to perform required duties.

Other Conditions Not in the Disability Evaluation System (DES)

Intervertebral Disc Syndrome, Cervical Spine; Neuropathy, Left Upper Extremity Associated with Intervertebral Disc Syndrome, Cervical Spine; and Neuropathy, Right Upper Extremity Associated with Intervertebral Disc Syndrome, Cervical Spine

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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 determined by simple majority that the CI’s back condition is most appropriately rated at 20% for Status Post L5-S1 Fusion IAW the VASRD General Rating Formula for Diseases and Injuries of the Spine.

The CI’s thoracolumbar spine motion was limited by pain to 60 degrees of flexion and the CI had an antalgic gait. These findings warrant a 20% rating. The CI also had a left lower extremity neuritis with decreased sensation but normal muscle strength and deep tendon reflexes. The majority of the Board determined this sensory neuritis did not contribute any additional functional disability and therefore no rating should be applied. The VA rated the back condition based on incapacitating episodes. However, there was no evidence of any period of physician prescribed bed rest in the STR and therefore the Board could not rate on incapacitating episodes. The CI referenced other veterans with similar medical conditions who received higher ratings. The Board reviews all available information for each CI and has no authority to review cases of individuals who have not applied for review. The Board acknowledges that individuals with the same condition and or surgical procedures may have widely variable clinical and functional outcomes and determinations for each CI are based on his or her individual level of functional disability and the VASRD.

The single voter for dissent (who recommended an additional rating [IAW Note 1 of the VASRD General Rating Formula for Diseases and Injuries of the Spine] of 10% for 5241-8620 Neuritis, Left Lower Extremity considered mild for a combined rating of 30%) did not elect to submit a minority opinion.

The Board also considered the conditions of Scar, Status Post L5-S1 Discectomy and Fusion and Left Knee Strain and unanimously determined that these conditions were not unfitting at the time of separation from service. These conditions did not prevent the CI from performing his required duties in a satisfactory manner and no duty restrictions can be attributed to these conditions.

The other diagnoses rated by the VA (Intervertebral Disc Syndrome, Cervical Spine; Neuropathy, Left Upper Extremity; and Neuropathy, Right Upper Extremity) 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.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

RECOMMENDATION: The Board therefore recommends that there be no recharacterization of the CI’s disability and separation determination.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20090814, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

Deputy Directory

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 XXXXXXX

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 24 Jun 10

I have reviewed subject case pursuant to reference (a) and approve the recommendation of the Physical Disability Board of Review (reference (b)) that Mr. XXXXX’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)