RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXX BRANCH OF SERVICE: Marine corps

CASE NUMBER: PD0900664 SEPARATION DATE: 20080815

BOARD DATE: 20110602

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Cpl (6092, Metalsmith) medically separated for L1 and L2 compression fractures. The CI sustained these injuries while moving 200 pounds of sheet metal during a deployment to Iraq in September 2007. He did not respond adequately to treatment, and was unable to perform within his military occupational specialty (MOS), or to meet physical fitness standards. He was placed on extended limited duty and underwent a Medical Evaluation Board (MEB). L1 and L2 compression fractures were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW NAVPERS 18068F. The PEB adjudicated the lumbar compression fractures as unfitting, rated 10%, with application of SECNAVINST 1850.4E, DoDI 1332.39 and the VA Schedule for Rating Disabilities (VASRD), respectively. The CI made no appeals, and was separated with a 10% disability rating.

CI’s CONTENTION: “My back condition has progressively worsened since my separation from the Marine Corps. I have also been diagnosed with PTSD as well as TBI, neither condition of which was considered by my MEB/PEB. A few months after I was released from active duty, I was offered a job from my father doing office work. I worked for him for 6 months but he had to let me go because I couldn't do the work he hired me to do. In addition to not being able fulfill my family's needs financially, I have a poor quality of life because of the constant back pain and headaches I have on a daily basis. In addition, this injury has caused a major financial, emotional, and mental burden to my family.”

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 200080609** | | | **VA (3 Wk. Pre Separation) – All Effective Date 20080816** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| L1 and L2 Compression Fx | 5235 | 10% | L1 and L2 Compression Fx | 5235 | 40% | 20080722 |
| ↓No Additional MEB Entries↓ | | | Tinnitus | 6260 | 10% | 20080709 |
| 0% X 3 / Not service connected X 5 | | | 20080722 & 09 |
| **Final Combined: 10%** | | | **Total Combined: 50%** | | | |

ANALYSIS SUMMARY:

The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impact that his service-incurred condition has had on his current quality of life. It is a fact, however, that the Disability Evaluation System (DES) has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions resulting in medical separation. This role and authority is granted by Congress to the Veterans Administration. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations compared to the VASRD standards, as well as the fairness of PEB fitness adjudications at the time of separation.

Back Condition. After the injury, X-rays and a computed tomography (CT) scan showed L1 and L2 compression fractures. The CI had no neurological abnormalities and his motor strength was intact. The CI was treated with a thoracolumbar sacral orthosis (TLSO) brace, and was medically evacuated back to San Diego. A magnetic resonance imaging (MRI) in October 2007 showed intact disc spaces, no evidence of cord compression or myelomalacia. The fractures appeared stable and surgery was not indicated. A bone scan completed in January 2008 showed no abnormal uptake in the lumbar spine and repeat x-rays of the lumbar spine completed in February 2008 showed stable, healing L1/L2 vertebral body fractures. No other surgical options were recommended. Despite intensive pain clinic management the CI had not improved enough to perform the duties of his MOS or take the physical fitness test.

At the neurologic MEB exam on 14 April 2008, four months pre-separation, the CI still reported pain in his back. There was no bowel or bladder dysfunction, no lower extremity weakness/numbness or any gait abnormalities. In addition to back pain he reported right leg pain radiating down his anterior thigh to his toes. On exam, the CI had sensation intact bilaterally (L1 to S1 dermatomes) and 5/5 strength of his lower extremities. X-rays showed a 17% loss of height at the L1 vertebrae, a 21% loss of height at L2 and were essentially unchanged from prior radiographs and felt to be stable. A repeat bone scan on 11 April 2008 again showed no abnormal uptake. The CI requested to be seen by the same examiner two weeks later for an addendum to the previous exam. The CI wanted to add subjective numbness to his right buttock and into the toes of his right foot and mentioned that due to his pain he walks with a limp. The examiner again found no evidence of cord compression. The final diagnosis was stable L1/L2 compression fractures, and it was felt that the CI had reached maximum medical benefit and his condition had stabilized. At a follow up exam in June 2008 the CI still complained of pain. The examiner noted that at this appointment the CI had an antalgic gate. The CI continued to be followed by the pain management clinic, and there was concern about the inability to wean him off opioid pain medications.

At the VA compensation and pension (C&P) exam on 22 July 2008 three weeks prior to separation, the CI reported that he had daily pain associated with weakness and marked limitation of motion. He stated that the pain radiated to his right hip and right thigh. He stated that he was only able to walk for about ten minutes at a slow pace and that physical therapy made the pain worse. The CI reported that he still required a muscle relaxant and morphine for the pain, and could only sit for 30 minutes at a time. The CI walked with slight flexion at the waist and had a slight antalgic gait. On exam it was noted that he had point tenderness of the upper lumbar vertebrae bilaterally and the right side had more muscle spasm than the left side. He had good dorsal and plantar flexion strength of the ankles and his deep tendon reflexes were 2+ at the knees and ankles. The CI was unable to perform repetitive motions due to his level of pain. The ROM measurements are summarized in the chart below.

|  |  |  |  |
| --- | --- | --- | --- |
| Thoracolumbar | Separation Date: 20080815 | | |
| Goniometric ROM | MEB – 4 Mo. Pre Sep  (20080414) | VA C&P – 3 weeks Pre Sep  (20080722) | VA Exam – 5 Mo. Post Sep  (20090116) |
| Flexion (90⁰normal) | 90⁰ | 25⁰ | 40⁰ |
| Combined (240⁰) | 220⁰ | 59⁰ | 155⁰ |
| Comments | No mention of pain with motion | Painful motion worse with extension; antalgic gait, walks flexed at the waist | No mention of pain with motion |
| Current §4.71a Rating for ROM | 10% | 40% | 20% |

The final C&P diagnosis was; compression fracture L1 and L2, with dysfunction for occupation, recreation, or domestic activity. The CI had a VA follow-up examination on 16 January 2009 five months after separation where he reported worsening back pain no longer relieved with morphine. The back pain had been radiating down his right leg, but had switched to his left leg and he now complained of left leg weakness. The ROM measurements from that visit are in the above chart. An MRI ordered at that appointment showed an old fracture deformity of L2 with narrowing of the L1-L2 disc space posteriorly and no significant neuroforaminal or central stenosis. There was no objective evidence from the MEB or C&P exam that a peripheral neuropathy was present or that if one were present that it was separately unfitting.

For assignment of probative value to such disparate exams, the Board must acknowledge that VA spine examinations may predispose a lowered pain threshold since the examinee is generally quite aware that their pain tolerance on ROM is directly correlated with the resulting rating and financial gain. There were multiple entries in the medical records as to the clinical findings not being commensurate with the subjective complaints. Upon deliberation the Board agreed in this case that the MEB examination was more consistent with outpatient notes, more reflective of the anticipated severity suggested by the clinical pathology and less vulnerable to the undue influence just elaborated. The Board is therefore relying more heavily on the MEB measurements and service treatment records (STRs) prior to separation. It was noted in the STRs on 11 June 2008 that the CI had an antalgic gait due to his back pain two months prior to separation. Although the CI’s subjective pain complaints may have increased from the time of the MEB exam until separation, there was no evidence of any aggravating event or clinical correlation with a worsening condition of the healed lumbar fractures. Although the CI had subjective right leg/foot complaints, there was no evidence that these radicular symptoms were separately unfitting from the back condition which prevented the CI from performing the duties of his MOS at the time of separation. All evidence considered, the Board cannot find sufficient evidence to support recommending lumbar radiculopathy as additionally unfitting for separation. With the presence of an abnormal gait the Board felt the CI met the criteria for a 20% rating at the time of separation IAW §4.71a.

Mental Health Conditions. The CI’s application asserts that compensable ratings should be considered for posttraumatic stress disorder (PTSD) and traumatic brain injury (TBI). Both of these conditions were reviewed by the action officer and considered by the Board. There was no evidence of these conditions in the STRs or DES file, and the CI denied any psychological or cognitive complaints during his MEB exam. The VA evaluated the CI for PTSD on 8 July 2008. They found no evidence in the STRs for any psychiatric condition, but due to his new complaints they diagnosed him with PTSD (mild, global assessment of functioning score = 70) and gave him a 0% rating because the symptoms were not severe enough to interfere with occupational or social functioning. A history for TBI or related symptoms was not present during the original C&P exams, and a TBI claim was denied by the VA in March 2010 due to lack of evidence. There was no mention of psychiatric or cognitive symptoms in the non medical assessment or any evidence that PTSD or TBI symptoms affected his job performance. After careful deliberation, the Board unanimously agrees that these conditions were not unfitting at the time of separation from service and are not relevant for disability rating.

Remaining Conditions. Other conditions identified in the DES file were a history of sinusitis with sinus headaches, shin splints and healed left fifth finger injury. None of these conditions were clinically active during the MEB period, carried attached profiles, or were implicated in the commander’s statement. These conditions were reviewed by the action officer and considered by the Board. It was determined that none could be argued as unfitting and subject to separation rating. Additionally, several other non-acute conditions were noted in the VA rating decision proximal to separation, but were not documented in the DES file. The Board does not have the authority under DoDI 6040.44 to render fitness or rating recommendations for any conditions not considered by the DES.

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. In the matter of the back condition (coded 5235), the Board unanimously recommends a permanent rating of 20% at separation, IAW §4.71a. In the matter of the PTSD and TBI conditions, the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation. In the matter of the sinusitis with sinus headaches, shin splints and healed left fifth finger injury, or any other medical conditions eligible for Board consideration, the Board unanimously agrees that it cannot recommend any findings of unfit for additional rating at separation.

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** |
| L1 and L2 Compression Fractures | 5235 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20091030, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

Deputy Director

Physical Disability Board of Review

MEMORANDUM FOR DEPUTY COMMANDANT, MANPOWER & RESERVE AFFAIRS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

ICO XXXXXXXX, FORMER USMC, XXX XX XXXX

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 15 Jun 11

1. I have reviewed the subject case pursuant to reference (a) and approve the recommendation of the PDBR (reference (b)).

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 0 percent) effective 15 August 2008.

3. Please ensure all necessary actions are taken to implement this decision including notification to the subject member once those actions are completed.

Assistant General Counsel

(Manpower & Reserve Affairs)