RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXX BRANCH OF SERVICE: Marine corps

CASE NUMBER: PD0900678 SEPARATION DATE: 20070228

BOARD DATE: 20110406

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SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty LCpl (1371, Combat Engineer) medically separated from the Marine Corps in 2007. The medical basis for the separation was left hip labral tear and healed left inferior pubic ramus and superior pubic ramus pelvic fractures. CI sustained left superior pubic ramus and inferior pubic ramus pelvis fractures on 2 October 2005 due to a HUMVEE rollover while in Iraq. He was treated with light duty, physical therapy, and medication that included percocet and lidocaine injection to his hip with temporary pain relief from the lidocaine. He did not respond adequately to treatment, was unable to perform within his military occupational specialty (MOS) or participate in a physical fitness test. He exhausted two six-month periods of limited duty (LIMDU) and underwent a Medical Evaluation Board (MEB). The MEB found “sprain of unspecified site of hip and thigh,” and “closed fracture of pubis” as interfering with duty and forwarded to the Physical Evaluation Board (PEB). The informal PEB adjudicated left hip labral tear as unfitting at 10% and healed left inferior pubic ramus and superior pubic ramus pelvic fractures as unfitting at 10%; with probable application of SECNAVINST 1850.4E. Panic disorder without agoraphobia and traumatic urethral disruption resolved status post endoscopic realignment with no sequelae were adjudicated as category III (not separately unfitting). The CI made no appeals, and was medically separated with a 20% combined disability rating.

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CI CONTENTION: The CI did not state contentions.

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RATING DECISION:

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| **Service IPEB – Dated 20070117** | **VA (~2 mos. Pre-Separation) – All Effective 20070301** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Left Hip Labral Tear | 5299-5003 | 10% | L Hip Strain, S/P L Pelvic Fx | 5299-5252 | 10%\* | 20061213 |
| Healed L Inferior Pubic Ramus and Superior Pubic Ramus Pelvic Fx  | 5299-5236 | 10% | Lumbosacral Strain | 5237 | 20% | 20061213 |
| Left lat femoral cutaneous nerve … | 8526 | 10% | 20080709 |
| Panic Disorder without Agoraphobia | Category III | Gen. Anxiety D/O & Depression NOS | 9400 | 30%\* | 20070103 |
| Traumatic Urethral Disruption Resolved … | Category III | No corresponding VA Entry |
| ↓No Additional MEB/PEB Entries↓ | GERD | 7399-7346 | 10% | 20061213 |
| 0% x 3 / Not Service Connected x 0 |
| **Combined: 20%** | **Combined: 60%** |

\*L Hip rating increased to 30% effective 20071227; 9400 increased to 50% effective 20080917 (both on 20090421)

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ANALYSIS SUMMARY:

Left Hip Labral Tear. There were two range of motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation. Both of these exams are summarized in the chart below.

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| ROM - Left Hip | MEB - ~4 Mo. Pre-Sep | VA C&P - ~ 2 Mo. Pre-Sep |
| Flexion (0-125) | “20⁰ loss of full hip flexion” (105⁰) | 80⁰ (0⁰-80⁰ w/pain) |
| Extension (0-30) | Full hip extension | 25⁰ w/pain |
| Abduction (0-45) | *Not given* | 40⁰ w/pain |
| Adduction (0-45) | *Not given* | 25⁰ |
| External Rotation | 45⁰ | 50⁰ w/pain |
| Internal Rotation | 45⁰ | 40⁰ |
| Comment: See overlap with LS exam | TTP; antalgic gait; positive FABER with restricted motion; tight hamstrings; positive SLR due to tight hamstrings | TTP; Normal gait; Pain –major functional impact, w/ fatigue, weakness, & lack of endurance |
| §4.71a Rating | 10% | 10% |

Although the MEB exam did not include abduction or adduction ROMs and did not specify use of a goniometer, all ratable components for the hip condition were documented and substantially agreed with other service treatment record exams. The magnetic resonance imaging (MRI) of the left lower extremity and left hip arthrogram done four months pre-separation on 3 October 2006 showed a small tear of the superior labrum. In the narrative summary (NARSUM) four months pre-separation, the examiner documented that the CI complained of numbness to the left groin with chronic pain with squatting prolonged sitting, walking, stairs and cannot run. On physical examination, the CI was found to be overweight with an antalgic gait, positive flexion, abduction and external rotation with restricted motion despite physical therapy (PT), positive straight leg raise due to a tight hamstrings and positive tenderness to palpation over the left lumbar and sacroiliac (SI) joint. MRI showed signs of a hip labrum tear over the superior aspect of his left hip. Throughout the PT notes from January 2006 through April 2009, the therapists documented left hip passive ROM all with painful limited end range. The compensation and pension (C&P) examination on 9 July 2008, 17 months post-separation, documented that the CI had symptoms of chronic pain and, although a neurostimulator was placed for pain control on 10 March 2008, the CI still needed additional oral medication for pain relief. There was left groin tissue loss indentation (11 cm deep), instability, stiffness, and numbness to the left thigh from groin to knee. The CI was unable to cross his legs and had hip flexion to 22 degrees, with other indications of more limited ROMs than prior exams.

The PEB rated the CI’s left hip condition as left hip labral tear analogously coded to arthritis, degenerative and appeared to consider the affect of the labral tear on hip function alone for coding. The VA coding and rating 5299 analogous to 5252 (thigh, impairment of) flexion limited to 45° at 10% differed from the PEB coding of 5003 arthritis, degenerative (hypertrophic or osteoarthritic), mild at 10%; but did not impact the level of disability rating. The Board considered the dilemma of overlapping symptoms of the hip and pelvis/back and determined that the abnormal gait could be attributed to either condition (see below), and was not a required symptom to either consider the hip condition unfitting or to rate the hip condition at the 10% level. The Board adjudged that the CI’s left hip demonstrated pain on motion short of the normal VA Schedule for Rating Disabilities (VASRD) hip flexion ROM (0°-125°) and applied the tenants of VASRD §4.59 (painful motion) at the time of separation. The 17-month post-separation VA exam was considered post-separation worsening. After due deliberation, there is not reasonable doubt in the CI’s favor therefore to justify a Board recommendation for other than the 10% rating assigned by the PEB for the left hip labral tear condition.

Healed Left Inferior Pubic Ramus and Superior Pubic Ramus Pelvic Fracture. The PEB found this condition unfitting at 10% coded analogously to 5236 (SI injury and weakness) which uses the criteria of the VASRD general rating formula for diseases and injuries of the spine. The CI had two goniometric ROM evaluations in evidence, along with two service non-goniometric exams which the Board weighed in arriving at its rating recommendation. All exams are summarized in the chart below.

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|  | Separation Date: 20070228 |
| TL Spine ROM | PT – ~4 Mo. Pre-Sep | MEB - ~4 Mo. Pre-Sep  | VA C&P - ~2 Mo. Pre-Sep | VA C&P -~17 Mo. post sep) |
| Flexion (0-90⁰) | WNL except ext 50% & SB w/ pain | *Not given* | 0⁰-50⁰ (pain) | 0⁰-50⁰ |
| Combined (240⁰) | 60⁰ | 70⁰ |
| Comments: *See overlap with hip exam* | pain 5/10 | Antalgic gait; TTP L lumbar and SI jt; + SLR  | Normal gait; tenderness; - SLR; + Muscle spasm; fatigue, weakness, & lack of endurance | Antalgic gait; Neurostimulator in place |
| §4.71a Rating | 10% | 20% | 20% | 20% |

The MEB exam on 18 October 2006, four months prior to separation, indicated the CI had an antalgic gait, positive SLR, and subjective numbness to the left groin. Symptoms were chronic pain with squatting, prolonged sitting, walking, stairs and could not run. The MEB history and physical indicated lower back pain as a primary complaint. The NARSUM indicated low back and SI joint pain.

The VA C&P exam on 13 December 2006 two months prior to separation indicated the CI had constant pain (“aching, sticking, oppressing, cramping and sharp”) related to the pelvic fractures which involved the thoracolumbar spine which radiated to the lower back and leg. The examiner documented findings of muscle spasm, tenderness, fatigue, weakness and lack of endurance. The CI rated the pain severity at 5-6/10, elicited by physical activity, relieved by narcotic pain medication and rest. The VA C&P examination post-separation documented that the CI had numbness of the medial aspect of the left thigh from the groin to the knee and weakness of the left inferior gluteal maximus, quadriceps, tibialis anterior, gastrocnemius and soleus muscles. The CI had complained of chronic pain and although a neurostimulator was placed for pain control, the CI still needed additional oral medication for pain relief. The VA added a rating of 8526 (nerve radiculopathy) at 10% effective back to 1 March 2007, based on this exam and documented earlier subjective complaints.

The PEB and the VA chose different coding options; however, this was not significant as both coding options used the same VASRD general rating formula for diseases and injuries of the spine criteria as noted above. The MEB and 17-month post-separation exams met the 20% spine criteria for muscle spasm or guarding severe enough to result in an abnormal gait. The VA’s 2-month pre-separation and 17-month post-separation exams met the 20% spine criteria for combined ROM of the thoracolumbar spine not greater than 120 degrees. There was no formal electrophysiological (EMG/NCV) testing indicated in any exam and the CI’s numbness to the left groin was not indicated as impairing any function or interfering with duty at the time of PEB or projected to his separation. Any pain radiculopathy is considered under the general spine criteria (“with or without symptoms such as pain (whether or not it radiates), stiffness, or aching in the area of the spine affected by residuals of injury or disease”). The Board considered that lumbosacral ROMs are impacted by hip flexion, the level and nature of the CI’s injuries in the pelvis, and the CI’s overall disability picture at separation, absent post-separation worsening. Deliberations focused on attribution of symptoms of antalgic gait to either the hip or pelvic fracture conditions. The Board majority opined that the antalgic gait noted at the MEB and sporadically through the service treatment record was as likely as not attributed to the pelvic condition, and not solely due to the hip condition. The hip condition retained sufficient disability, absent the antalgic gait, to still be considered unfitting and meet the 10% criteria. Although the VA exam did not document antalgic gait, it met the ROM criteria for a 20% evaluation and the Board could not reasonably consider different portions of different exams for a less favorable rating. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a separation rating of 20% for the pelvic condition coded analogously to 5236 (SI injury and weakness). At the time of separation, even with consideration of all reasonable doubt, there was not sufficient evidence to consider any non-pain radiculopathy as separately unfitting.

Remaining PEB Conditions. The PEB’s traumatic urethral disruption resolved status post (s/p) endoscopic realignment with no sequelae was confirmed by the record and post-separation exams. This condition was resolved without residual disability and did and was appropriately indicated as not unfitting (category III) by the PEB. The panic disorder without agoraphobia was discussed with consideration of pre- and post-separation exams and VA ratings. The PEB psychiatrist documented that the condition “did not exist prior to entrance, not unfitting for duty.” The panic disorder is a condition not constituting a physical disability and is not compensable or ratable, and was appropriately indicated as category III by the PEB. Additionally, panic disorder is a condition not constituting a physical disability and is not compensable or ratable; it was therefore appropriately indicated as not unfitting and not ratable by the PEB. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for the traumatic urethral disruption resolved or panic disorder conditions.

Other Conditions: Gastroesophageal reflux disease (GERD) was mentioned in the Disability Evaluation System (DES) package. There was no LIMDU or commander’s comment or any other indication of interference with duty from this condition. The VA exam indicated symptoms consistent with GERD, but without impairment of health and rated this condition at 30%. All evidence considered, there is not reasonable doubt in the CI’s favor supporting addition of any condition as an unfitting condition for separation rating.

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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. In the matter of the left hip condition, the Board unanimously agrees that it recommends no change in the PEB adjudication. In the matter of the pelvic fracture condition the Board by a vote of 2:1 recommends rating of 5299-5236 at 20%. The single voter for dissent (who recommended 5299-5236 at 10% [no recharacterization]) submitted the addended minority opinion. In the matter of traumatic urethral disruption resolved s/p endoscopic realignment with no sequelae and panic disorder without agoraphobia conditions, the Board unanimously recommends no recharacterization of the PEB adjudications as not unfitting (category III). In the matter of the GERD condition, 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.

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RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows and that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of his prior medical separation.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Left Hip Labral Tear | 5299-5003 | 10% |
| Healed L Inferior Pubic Ramus and Superior Pubic Ramus Pelvic Fx After MVA in Iraq | 5299-5236 | 20% |
| **COMBINED** | **30%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20091022, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

 Deputy Director

 Physical Disability Board of Review

Minority Opinion:

In my opinion, the CI’s hip issue is appropriately rated at 10%, and the pubic ramus fracture is appropriately coded using an analogous 5236 code and rated according to the general rating formula for diseases and injuries of the spine. Under this coding formula, the presence of “abnormal gait” is justification for increasing the rating to 20%. However, the CI’s gait history is inconsistent (shown by chart below), and should not be used as a basis for increasing the rating. It was mentioned once at the MEB, and once on a 9 July 2008 C&P exam which also contradicted itself later by saying “gait normal.” All other exams or PT sessions called his gait normal or slow. The other Board members felt that the MEB’s mentioning of “antalgic gait” was a basis for increasing the rating from 10% to 20%, but I do not agree that it fits the VASRD description of 20%, based on “muscle spasm or guarding severe enough to result in an *abnormal gait.*” To conclude that there was spasm severe enough to compromise gait requires speculation. The standard for basing a rating on speculation should be the same one as that applied by the VA, i.e., “more likely than not.” That standard was not met for ascribing antalgic gait to pelvic, rather than hip, impairment. More likely than not, the finding of antalgic gait on an individual known to have a painful hip was *not* a ratable consequence of the pelvic condition.

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| **Date/event** | **Gait** |
| 20060531/ Physical Therapy | normal gait |
| 20060707/ Physical Therapy | slow gait |
| 20060721/Physical Therapy | slow gait |
| 20061018/MEB Exam | antalgic gait |
| 20061213/C&P Exam | gait normal |
| 20080709/C&P Exam | gait antalgic  |
| gait normal (contradicting above finding on same exam) |
| 20080728/ Primary Care Nursing Note | gait normal |
| 20080910/ Primary Care Physician Note | gait normal |

In the matter of the left hip condition, I agree with no change in the PEB adjudication. In the matter of the pelvic fracture condition, I do not believe that the total disability of the CI’s pelvic fracture at the time of separation is accurately rated at 20%. I recommend no change in the characterization of the CI’s separation rating of 5299-5236 at 10%, as shown on the chart below.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Left Hip Labral Tear | 5299-5003 | 10% |
| Healed L Inferior Pubic Ramus and Superior Pubic Ramus Pelvic Fx After MVA in Iraq | 5299-5236 | 10% |
| **COMBINED** | **20%** |

MEMORANDUM FOR DIRECTOR, SECRETARY OF THE NAVY COUNCIL OF REVIEW

 BOARDS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

 ICO XXXXX, FORMER USMC, XXX XX XXXX

Ref: (a) DoDI 6040.44

 (b) PDBR ltr dtd 21 Jun 11

 I have reviewed the subject case pursuant to reference (a) and non-concur with the recommendation of the PDBR as set forth in reference (b). Therefore, Mr. XXXXX’s records will 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)