RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXX BRANCH OF SERVICE: Marine corps

CASE NUMBER: PD200900684 SEPARATION DATE: 20070115

BOARD DATE: 20110518

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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 Sgt (6048, Flight Equipment Technician) medically separated from the Marine Corps in 2007. The medical bases for the separation were post-laminectomy syndrome and degenerative joint and disc disease of the lumbar spine. The CI underwent surgery for his condition after experiencing increasing symptoms of low back pain with radicular pain radiation. Post-operatively, he did not respond adequately to treatment and was unable to perform within his military occupational specialty or participate in a physical fitness test. He was placed on limited duty and underwent a Medical Evaluation Board (MEB). Post-laminectomy syndrome of lumbar region and degeneration of lumbar/lumbosacral intervertebral disc were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. The PEB adjudicated the post-laminectomy syndrome condition as unfitting, rated 20%; with application of SECNAVINST 1850.4E and DoDI 1332.39. Degenerative joint disease of the lumbar disc was not separately ratable as a category 2 condition, related to the primary diagnosis of post-laminectomy syndrome. The CI made no appeals and was medically separated with a 20% disability rating.

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CI CONTENTION: The CI states no contention in his request for review.

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RATING COMPARISON:

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| **Service IPEB – Dated 20061024** | **VA (4 Mo. Pre-Separation) – All Effective Date 20070116** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Post-laminectomy Syndrome | 5241 | 20% | S/P Lumbar Spine Fusion L4-S1 w/Thoracic Spine Strain and R Intravertebral Disc Syndrome | 5241 | 40% | 20060919 |
| Degenerative Joint Disease of the Lumbar Spine | Cat 2 | S/P Lumbar Spine Fusion L4/S1 w/Left Intraverterbral Disc Syndrome | 5241-8520 | 10% | 20060919 |
| ↓No Additional MEB / PEB Entries↓ | S/P Lumbar Spine Fusion w/Residual Scar | 7804 | 10% | 20060919 |
| Cervical Spine Strain | 5237 | 10% | 20060919 |
| Recurrent Bilateral Tinnitus | 6260 | 10% | 20060921 |
| 0% x 1 / Not Service Connected x 1 | 20060919 |
| **Combined: 20%** | **Combined: 60%** |

ANALYSIS SUMMARY:

Post-Laminectomy Syndrome and Degenerative Joint Disease of the Lumbar Disc. There were three goniometric range of motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation. These exams are summarized in the chart below:

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| --- | --- | --- | --- |
| Goniometric ROM - Thoracolumbar | MEB - ~ 5 Mos. Pre-Sep | MEB H&P ~ 5 Mos. Pre Sep | VA C&P - ~ 4 Mos. Pre-Sep |
| Flex (0-90) | 40⁰ | 30° | 30⁰ w/ pain |
| Ext (0-30) | 5⁰ | 10° | 5⁰ pain at 1⁰ |
| R Lat Flex (0-30) | ~15°\* | 15° | 10/⁰ pain at 8⁰ |
| L Lat Flex 0-30) | ~15°\* | 15° | 10⁰ pain at 8⁰ |
| R Rotation (0-30) |  |  | 15⁰ pain at 10⁰ |
| L Rotation (0-30) |  |  | 15⁰ pain at 10⁰ |
| COMBINED (240) |  |  | 85⁰ |
| Comment | Slight antalgic gait; TTP; left leg weakness |  | Tenderness, muscle spasm, +SLR bilat,symmetric spine, normal contour, posture normal, gait normal |
| §4.71a Rating | 20% | 40% | 40% |

 \*side bending – “4cm proximal to superior pole of patella” approximates 15°

The CI experienced a few years of chronic low back pain leading up to lumbar spine surgery in September 2005. He experienced increasing pain with radiation into both legs to the feet, left greater than right, which limited activity and performance of duties. Initial neurosurgical evaluation documented weakness of left ankle plantar flexion and dorsiflexsion (suggestive of L5 and S1 radiculopathy). A magnetic resonance imaging (MRI) in January 2005 demonstrated a degenerative and protruding discs at L4-L5 (central) and L5-S1 (left sided) with compression of the left L5 nerve root (and likely the left S1 root as well). Following surgery (two level discectomy with fusion), the leg pain was recorded to have resolved. A physical therapy note November 2005 two months after surgery recorded normal strength. Subsequent examinations leading up to the MEB narrative summary (NARSUM) and compensation and pension (C&P) examination documented normal strength of the lower extremities. Physical therapy notes mid-year recorded “normal” ROM without detail and minimal pain (1/10). A clinic entry one day after a motor vehicle crash in July 2006 recorded increased low back with normal gait and motor examination. At the time of the NARSUM in August 2006, the CI reported he was able to run 2.5 miles (but not three miles) and perform squats. He compensated for his decreased back motion by squatting at work. The commander’s statement indicated the CI was limited in lifting over 60 pounds and climbing on aircraft. On examination, there was weakness of the left lower extremity not previously documented that was not explained by any new injury or evidence of progression. There were some muscle strength findings that were inconsistent with his known pathology and conflicting findings at known levels of spine involvement. Two weeks after the MEB NARSUM examination, the MEB history and physical examination documented worsened flexion that was unexplained by any intervening event. There was no mention of weakness at this examination. The C&P examination a month after the NARSUM demonstrated worsened ROM and left leg weakness in a different pattern than that documented in the NARSUM and documented involvement of knee extension that is inconsistent with the ability to perform squats and the known spinal involvement. The normal gait documented by the C&P examiner is also inconsistent with the results of the muscle testing. Muscle spasm was recorded as present but findings of normal spine contour and symmetry, posture and gait argue against significant spasm. Straight leg testing was said to be positive but the examiner did not indicate for which symptoms. Sensory examination was not documented but reflexes were intact and symmetric, as in previous examinations. The Board discussed the worsened ROM at the time of the examinations and the differences between the examinations. The Board noted that the CI was involved in a motor vehicle crash that followed the physical therapy notes, documenting normal ROM and minimal pain. The CI reported persistent increased back pain following that crash. Board members discussed the relative probative value of the ROM examinations at the time of disability evaluation as well as the post-separation C&P examination. Note was made that the PEB did not address the MEB physical examination performed after the NARSUM showing flexion of 30°. The majority of members concluded it was just as likely as not that the CI’s back worsened during the time following the crash and leading into the time of the evaluation and that the probative value of ROM examinations noted in the chart was roughly equal. After due deliberation, considering all of the evidence and mindful of VA Schedule for Rating Disabilities (VASRD) §4.3 (reasonable doubt), the Board concluded that the CI’s back condition most nearly approximated the 40% rating IAW the VASRD general rating formula for spine diseases, thoracolumbar flexion 30° or less. The Board also considered a rating using the VASRD formula based on incapacitating episodes due to intervertebral disc syndrome. The criteria are based on the number of incapacitating episodes in the prior 12 months requiring bed rest prescribed by a physician. No service treatment records were identified that documented physician-directed bed rest (convalescent leave following a surgery is not the same as bed rest prescribed by a physician). The Board concluded the preponderance of evidence did not support a higher rating using this alternate formula providing no additional benefit to the CI. The VA provided a separate rating for left-sided radiculopathy (sciatic nerve, 8520). The Board discussed the CI’s ability to run 2.5 miles, squat without difficulty, the normal reflexes and normal strength testing prior to the NARSUM and C&P discussed above. While the sensory changes reported were consistent with the CI’s condition, they were not impairing of functioning and would not be considered unfitting. The VA also provided a rating for the surgical scar; however, the scar did not interfere with performance of duties and is not considered unfitting. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a finding of unfit for lumbar radiculopathy or for the surgical scar. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a separation rating of 40% for the lumbar degenerative disk disease status post discectomy and fusion (5241).

Remaining Conditions. No other conditions were noted in the NARSUM, identified by the CI on the MEB physical, or found elsewhere in the Disability Evaluation System (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. The Board thus has no basis for recommending any additional unfitting conditions for separation rating. Additionally, cervical strain, tinnitus, hearing loss, and tinea pedis 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 lumbar degenerative disc disease and IAW VASRD §4.71a and §4.7, the Board recommends, by a vote of 2:1, a rating of 40%, coded 5241. The single voter for dissent (who recommended no modification of the PEB adjudication) did not elect to submit a minority opinion. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as additionally unfitting for rating at separation.

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** |
| Post-Laminectomy Syndrome | 5241 | 40% |
| **COMBINED** | **40%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20091021, 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 XXXXX, FORMER USMC, XXX XX XXXX

Ref: (a) PDBR ltr of 26 Mar 11

 (b) DoDI 6040.44

1. I have reviewed reference (a) pursuant to 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 40 percent (increased from 20 percent) with placement on the Permanent Disability Retired List effective

1 January 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.

 Assistant General Counsel

 (Manpower & Reserve Affairs)