RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXX BRANCH OF SERVICE: marine Corps

CASE NUMBER: PD0900699 SEPARATION DATE: 20080608

BOARD DATE: 20110330

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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 SSgt (3529, Motor Transport Maintenance Chief) medically separated from the Marine Corps in 2008 after 18 years of combined service. The medical bases for the separation were chronic low back pain, herniated L4-5 disc, and chronic left L-5 radiculopathy. CI had a history of a herniated lumber intervertebral disc, successfully treated with surgery in 2002, with eventual return to full activity in 2003. CI experienced recurrent symptoms of low back pain with radiation of pain into the left leg in April 2005. Evaluation with imaging and electrodiagnostic testing (EMG) confirmed recurrent herniated disc with left leg radiculopathy. He did not respond adequately to perform within his military occupational specialty or participate in a physical fitness test, was placed on an extensive limited duty status, and underwent a Medical Evaluation Board (MEB). The chronic low back pain, herniated L4-5 disc, and chronic left L5 radiculopathy were addressed in the narrative summary (NARSUM) and addendums, and lumbago was forwarded to the Physical Evaluation Board (PEB). The PEB adjudicated herniated L4-5 disc condition unfitting rated at 10%, and chronic left L5 radiculopathy as unfitting rated 10%. The CI made no appeals, and was medically separated with a 20% combined disability rating.

CI CONTENTION: The CI states: ‘’Because I am limited to what I can do at work and at home. I can only lift so much, stand so long and sit so long before my left leg goes numb or my back starts to hurt. Right now I take three different types of medication three times a day for the pain and now my left thumb/hand is in pain when I try to squeeze things, since I broke it while on active duty on the Marine Corps”.

RATING COMPARISON:

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| --- | --- |
| **Service IPEB – Dated 20080221** | **VA (5 Mo. Post-Separation) – All Effective 20080609** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Herniated L4-L5 Disc | 5237 | 10% | DDD Lumbar Spine w/ Chronic LBP | 5243 | 10% | 20081126 |
| Recurr. disc Hern. L4-5 w/ root imping | Not unfitting | No VA Entry |
| Chronic (L) L5 Radiculopathy | 8620 | 10% | Lumbar Radiculopathy | 8521 | 10% | 20081126 |
| ↓No Additional MEB/PEB Entries↓ | (L) Thumb Fracture | 5228 | 10% | 20081126 |
| Hypothyroidism | 7903 | 10% | 20081126 |
| **0% x 2 / NSC x 8** |
| **Final Combined: 20%** | **TOTAL Combined (*Includes Non-PEB Conditions*): 30%** |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impact that his service-incurred conditions have had on his quality of life. However, the military services, by law, can only rate and compensate for those conditions that were found unfitting for continued military service based on the severity of the condition at the time of separation and not based on possible future changes. The VA, however, can rate and compensate all service connected conditions without regard to their impact on performance of military duties, including conditions developing after separation that are direct complications of a service connected condition. The VA can also increase or decrease ratings based on the changing severity of each condition over time. 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 VA Schedule for Rating Disabilities (VASRD) standards, as well as the fairness of PEB fitness adjudications. The Board’s threshold for countering Disability Evaluation System (DES) fitness determinations is higher than the VASRD §4.3 reasonable doubt standard used for its rating recommendations but remains adherent to the DoDI 6040.44 “fair and equitable” standard.

Chronic Low Back Pain Associated with Herniated L4-L5 disc / Chronic Left L5 Radiculopathy. At the time of the MEB NARSUM, approximately six months prior to separation, examination demonstrated normal gait, non-tender back (no muscle spasm inferred), forward bending with the hands reaching to the distal tibia consistent with flexion greater than 60°, and normal side bending. Objective clinical examination findings of radiculopathy were absent with normal strength, sensation, and reflexes of the lower extremities. Repeat examinations in January 2008 by orthopedics and February 2008 by neurology, approximately five months before separation, documented normal lower extremity strength, normal reflexes (slightly decreased at the ankles but symmetric bilaterally and within normal limits), no sensory deficits, and normal gait. The CI reported pain limiting function, but no weakness. VA records in the months following separation reflected stable findings. VA primary care clinic encounters in July 2008 reflected acute exacerbation of pain. On October 23, 2008, four months after discharge, a VA clinic encounter recorded that the CI’s back pain was stable and that he was not using pain medications or muscle relaxants. Examination documented no spinal tenderness. A VA compensation and pension (C&P) examination in November 2008, five months following discharge documented complaint of activity limiting back pain with pain radiating into the left leg. On examination, the gait was normal and reflexes were intact. A goniometric range of motion examination demonstrated flexion to 85° (normal 90°) limited by pain and combined 191° (normal 240⁰) limited by pain. The Board concluded that the CI’s back condition most nearly approximated the 10% rating IAW the VASRD general rating formula for spine diseases and §4.59 (painful motion); lumbar flexion greater than 60° but not greater than 85°. 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. The commander’s non-medical assessment reported CI was working in his specialty and had not missed work. 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 Board noted that while the CI’s spine condition was more accurately coded 5243, intervertebral disc syndrome, no change in the rating would result under this code. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s 10% rating decision for the chronic low back pain condition, coded 5237.

The Board next turned its attention to rating the lumbar radiculopathy. While EMG testing confirmed the presence of radiculopathy, no examinations documented objective clinical evidence of sensory loss, muscle weakness or reflex changes. Board members agreed that the lumbar radiculopathy was best coded using 8720 for neuralgia of the sciatic nerve, most accurately fitting the CI’s symptoms and documented pathology. However, the Board noted that while the CI’s radiculopathy condition was ideally coded as 8720 versus the Service-applied 8620, rating using either code was acceptable and resulted in no change in rating. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s 10% rating decision for the lumbar radiculopathy condition, although coding under code 8720 may be more accurate.

Remaining Conditions. Other conditions identified in the DES file were left thumb pain, history of fractured thumb, left knee pain, and history of bilateral lower extremity stress fracture. Several additional non-acute conditions or medical complaints were also documented. 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, hypothyroidism, sleep apnea, stress fracture of 3rd metatarsal (right foot), and ganglion cyst right hand, and several other non-acute conditions were noted in the VA rating decision following 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. The Board therefore has no reasonable basis for recommending any additional unfitting conditions for separation rating.

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 chronic low back pain associated with herniated L4-5 disc and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the chronic left L5 radiculopathy and IAW VASRD §4.124a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the left thumb 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.

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

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic low back pain assoc. herniated L4-L5 disc | 5237 | 10% |
| Chronic (L) L5 radiculopathy | 8620 | 10% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20091130, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

 Deputy Director

 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 XXXXXX, FORMER USMC

Ref: (a) DoDI 6040.44

 (b) PDBR ltr dtd 15 Apr 11

 I have reviewed the subject case pursuant to reference (a) and, for the reasons set forth in reference (b), approve the recommendation of the Physical Disability Board of Review Mr. XXXX’ 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.

 Assistant General Counsel

 (Manpower & Reserve Affairs)