RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXX BRANCH OF SERVICE: mARINE CORPS

CASE NUMBER: PD200900730 SEPARATION DATE: 20090130

BOARD DATE: 20110601

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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 Cpl (2676/Linguist) medically separated from the Marine Corps in 2009. The medical basis for the separation was degenerative disk disease (DDD), L4/L5 and L5/S1. 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). DDD L4/L5 and L5/S1 was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. The Informal PEB (IPEB) determined the CI was fit for continued service. The CI appealed to the Formal PEB (FPEB) contending his back condition was unfitting and warranted a rating of 20%. The FPEB adjudicated the DDD L4/L5 and L5/S1 condition as unfitting, rated 10%. The CI was then medically separated with 10% disability rating.

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CI CONTENTION: The CI elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

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RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service FPEB – Dated 20080925** | | | **VA (3 Mos. Prior to Separation) – All Effective Date 20090131** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| DDD L4-S1 | 5243 | 10% | DDD L5-S1 | 5237-5243 | 10% | 20081018 |
| ↓No Additional MEB / PEB Entries↓ | | | L Superficial Peroneal Nerve Involvement | 8522 | 10% | 20091018 |
| L Shoulder Strain | 5201-5019 | 10% | 20081018 |
| R Knee Patellofemoral Syndrome | 5099-5019 | 10% | 20081018 |
| L Knee Patellofemoral Syndrome | 5099-5019 | 10% | 20081018 |
| L Elbow Strain | 5299-5206 | 10% | 20081018 |
| Tinnitus | 6260 | 10% | 20081015 |
| 0% x 2 / Not Service Connected x 2 | | | |
| **Combined: 10%** | | | **Combined: 50%** | | | |

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ANALYSIS SUMMARY:

Degenerative Disc Disease, L4/5 and L5/S1. There were five goniometric range of motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation. These exams are summarized in the following chart.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Goniometric ROM Thoracolumbar | MEB - ~ 9 Mo. Pre-Sep. | IPEB Recon ~ 6 Mo. Pre-Sep | FPEB/MD ~ 4 Mo. Pre-Sep | FPEB/PT ~ 4 Mo. Pre-Sep | VA C&P - ~ 3 Mo. Pre-Sep |
| Flex (0-90) | 60⁰ | 40⁰ | 45⁰ | 40⁰ | 90⁰\* |
| Ext (0-30) | 5⁰ | 10⁰ | 5⁰ | 30⁰ | 30⁰ |
| R Lat Flex (0-30) | 20⁰ | 10⁰ | 15⁰ | 30⁰ | 30⁰ |
| L Lat Flex 0-30) | 20⁰ | 8⁰ | 15⁰ | 30⁰ | 30⁰ |
| R Rotation (0-30) | 30⁰ | 40⁰ | 30⁰ |  | 30⁰ |
| L Rotation (0-30) | 30⁰ | 40⁰ | 30⁰ |  | 30⁰ |
| COMBINED (240) | 165⁰ | 130⁰ | 140⁰ |  | 240⁰ |
| Comments |  |  |  |  | Pain at 30° flexion\* |
| §4.71a Rating | 20% | 20% | 20% | 20% | 10%\* |

\*“There is increasing pain, fatigue, weakness, lack of endurance, and incoordination with repetitive motion of lumbar spine with repetitive motion, especially to the point where he cannot use lumbar spine at all after prolonged repetitive use.”

In June 2007, the CI presented for care of a six-month history of back pain radiating into his legs. Magnetic resonance imaging disclosed DDD at L3-4, L4-5, and L5-S1, with disc protrusions at each level including a moderate disc protrusion at L4-5; the latter finding most likely associated with his symptoms of pain radiating into the legs, predominantly the left leg. Evaluation by neurosurgery in September and October 2007 confirmed the impression of a “variable left lumbar radiculitis” due to lumbar disc disease, and advised non-operative treatment. The CI was placed on limited duty in October 2007. Orthopedic evaluation in February 2008 reflected stable symptoms, and examination demonstrated normal gait, intact muscle strength, reflexes and sensation (neurosurgery previously reported variable tingling of the left foot). There was tenderness on palpation and decreased forward flexion. The orthopedic surgeon advised separation from the military rather than surgery. The IPEB, initially, and upon reconsideration found the CI fit and returned him to duty. The CI appealed to the FPEB contending his back condition was unfitting and warranted a rating of 20% (according to the FPEB rationale). The FPEB found him unfit for his back condition (5243, intervertebral disc syndrome) and rated his back condition 10%, although the ROM examinations cited by the FPEB would support a 20% rating. The Board noted the improvement in ROM at the time of the VA compensation and pension (C&P) examination, and the VA rating of 10% based on painful motion due to pain with flexion at 30°. As with service examinations, gait, reflexes and strength were normal. There was decreased sensation of the left foot on the dorsal and lateral aspects consistent with radiculopathy.

While the VA C&P documented normal ROM, the C&P examiner noted pain with motion and “increasing pain, fatigue, and lack of endurance and incoordination with repetitive motion of lumbar spine with repetitive motion, especially to the point where he cannot use lumbar spine at all after prolonged repetitive use.” The service medical evidence consistently reflected loss of ROM in flexion. The Board concluded that the preponderance evidence was most consistent with a rating of 20% for the back condition IAW the VA Schedule for Rating Disabilities (VASRD) general rating formula for spine diseases, lumbar flexion greater than 30° but not greater than 60°. After due deliberation, considering all evidence and mindful of VASRD §4.3 (reasonable doubt), DeLuca, and §4.7 (higher of two ratings), the Board recommends a separation rating of 20% for the lumbar DDD (5243).

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 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 granted a service connected rating of 10% for radiculopathy based on the sensory changes, coded as peroneal neuropathy (8522). The Board considered whether the CI’s radicular symptoms were separately unfitting, warranting a disability rating at the time of separation. While the reported mild sensory changes were consistent with radiculopathy, they were not impairing of functioning and would not be considered unfitting. Motor strength testing, reflexes, and gait were consistently normal, and evidence of the record reflects that pain was reason the CI was unable to perform all the functions of his military specialty. VASRD rating criteria under the general rating formula for diseases and injuries of the spine takes into account pain, whether it radiates or not. All evidence considered, there is not reasonable doubt in the CI’s favor supporting addition of lumbar radiculopathy as an unfitting condition for separation rating.

Remaining Conditions. Other conditions identified in the Disability Evaluation System (DES) file were shoulder trouble, knee trouble, blood clot right calf (2006), and head injury with loss of consciousness (2000). Several additional non-acute conditions or medical complaints were also documented in the medical records. None of these conditions were significantly, clinically or occupationally active during the MEB period, were the basis for limited duty, or were implicated in the commander’s assessment. 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, left and right knee patellofemoral syndrome, left and right shin splints, left shoulder strain, left elbow strain, and tinnitus 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. The Board therefore has no reasonable basis for recommending any additional unfitting conditions 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 back condition (DDD L4-5 and L5-S1) and IAW VASRD §4.71a, the Board unanimously recommends a separation rating of 20% (5243). In the matter of lumbar radiculopathy 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, effective as of the date of his prior medical separation.

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Degenerative Disc Disease, L4-L5 and L5-S1 | 5243 | 20% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20091120, 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 XXXXXX, 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 10 percent) effective 30 January 2009.

3. Please ensure all necessary actions are taken to implement this decision and the subject member is notified once those actions are completed.

Assistant General Counsel

(Manpower & Reserve Affairs)