RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: marine corps

CASE NUMBER: PD1000033 SEPARATION DATE: 20060731

BOARD DATE: 20110607

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Cpl (6112, Helicopter Mechanic) medically separated for chronic back pain status post (s/p) left hemilaminectomy L4-5 and L5-S1. He did not respond adequately to treatment and was unable to perform within his military occupational specialty (MOS) or meet physical fitness standards. He was placed on limited duty and underwent a Medical Evaluation Board (MEB). Chronic back pain and pain in soft tissues of limb were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. The Informal PEB (IPEB) adjudicated the chronic back pain s/p left hemilaminectomy L4-5 and L5-S1 as unfitting, rated 10%, with application of the SECNAVINST 1850.4E and DoDI 1332.39 and Veterans’ Administration Schedule for Rating Disabilities (VASRD). Leg pain, post op, was considered a category II condition related to the primary condition that was not separately ratable. The CI appealed to the Formal PEB (FPEB), and was medically separated with a 20% disability rating for the back condition.

CI CONTENTION: “Respectfully request re-evaluation of disability rating due to the differences from the Marine Corps separation and VA findings on the same package.” He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

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| --- | --- |
| **Service FPEB – Dated 20060601** | **VA (7 Mo. Post Separation) – All Effective Date 20060801** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Back Pain S/P Hemilaminectomy L4-5 and L5-S1  | 5237 | 20% | DD and JD, Lumbosacral Spine Post Op | 5243-5242 | 30%\* | 20070307 |
| Leg Pain, Post Op | Related Category II |
| Nicotine Dependence | Category IV (by FPEB) | No VA Entry |
| ↓No Additional MEB/PEB Entries↓ | Right Hip Strain | 5252-5019 | 10% | 20070307 |
| Left Hip Strain | 5252-5019 | 10% | 20070307 |
| PFS, Right Knee | 5261-5024 | 10% | 20070307 |
| 0% x 0/Not Service Connected x 3 | 20070307 |
| **Combined: 20%** | **Combined: 50%** |

\* See analysis summary.

ANALYSIS SUMMARY: The PEB and VA did not rate the CI’s unfitting back condition based on the same package. The PEB did not have the evidence of the VA compensation and pension (C&P) examination performed seven months after separation. The VA based its rating of the CI’s back condition based on the post-separation C&P examination (40%), and used service records in determining a rating deduction (10%) for existing prior to service impairment for their 30% rating.

Chronic Back Pain S/P Left Hemilaminectomy L4-5 and L5-S1. Evidence of the available records indicate the CI developed symptoms of herniated discs beginning in April 2004. His symptoms resolved and he deployed with his unit. In October 2004, while deployed, he experienced recurrent symptoms due to worsening of his herniated discs and subsequently underwent surgery in March 2005, partial left hemilaminectomy and discectomy at L4-5 and L5-S1. Although improved, persistent symptoms prevented performance of military duties. Repeat magnetic resonance imaging (MRI) in December 2005 showed expected post-operative changes without evidence of complication or neural structure impingement. At the time of the last neurosurgery appointment in December 2005 and the narrative summary (NARSUM) on January 2, 2006, his intense pain was resolved but he had persistent chronic pain aggravated by activity. There was mild intermittent numbness on the left leg and intermittent tingling in the left greater than right foot. He rarely took medication for pain (apparently due to a combination of side effects and limited benefit according to post-separation VA compensation and pension examination). Examination did not document range of motion (ROM). Strength was normal, sensation was intact, though the CI experienced “very subtle” tingling in the left posterolateral thigh, lateral calf, and top and lateral aspect of the left foot and toes. The left ankle reflex was depressed consistent with his history of nerve root impingement due to the surgically removed herniated disc. Physical examination testing for nerve root irritation was negative. Gait was normal and he could heel and toe walk (reflecting intact strength of the distal lower extremities). The CI appealed the 10% rating adjudicated by the IPEB and submitted ROM results obtained after the IPEB that showed severe loss of ROM (flexion 12°, extension 7°, left lateral flexion 8° and right lateral flexion 20°). The FPEB concluded the ROM results were inconsistent with the clinical history and known condition based on medical principles and rated the CI’s back condition 20%.

At the time of a March 7, 2007 VA C&P examination seven months after separation, the CI reported persistent pain with numbness of the left leg with flare ups approximately twice per month, lasting one to two days but without incapacitating episodes. He was employed as retail store manager, and was generally able to walk a mile. On examination, gait and posture were normal, there was no difficulty observed with sitting, and there were no strength deficits of the extremities. The thoracolumbar ROM was: flexion 50° with pain at 30°, extension 30° with no pain on motion, right lateral flexion 10° with pain on motion, left lateral flexion 20° with pain on motion, right rotation 30° without pain, and left rotation 30° with no pain. The examiner indicated forward flexion was limited to 30° due to fatigue (DeLuca). The VA rated this exam at 40% (for 30° of flexion), but deducted 10% for back pain prior to service for a final 30% back rating. A C&P examination in November 2009 three years after separation showed stable findings including intact strength, reflexes, and sensation with normal gait and posture. ROM testing was also stable with pain on motion (flexion 48°, extension 30°, right lateral flexion 16°, left lateral flexion 15°, right rotation 30°, and left rotation 30°). Although this exam would rate 20%, the VA made no rating change based on “preponderance of evidence shows you have continued to experience chronic daily back pain and functional limitation most consistent with the 40% rating criteria.”

The Board agreed with the FPEB regarding the probative value of the ROM results submitted at the time of the FPEB. Although seven months after separation, the results of the C&P examination were more consistent with the known pathology than the ROMs submitted at the time of the FPEB. Further, the slightly improved ROMs and of the C&P examination two years later supports this conclusion. However, the Board must acknowledge that VA C&P spine examinations may predispose to a lowered pain threshold or increased symptom reporting since the examinee is generally quite aware that the severity of symptoms and pain tolerance on ROM and other testing is directly correlated with the resulting rating and financial gain. The measurement of ROM reflecting pain with motion is dependent on the examinee’s reported pain with scant ability by the examiner to objectively confirm it. Based on the C&P examination seven months after separation, the Board concluded that the CI’s back condition most nearly approximated the 20% rating IAW the VASRD general rating formula for spine diseases and §4.159 (painful motion), lumbar flexion greater than 30° but not greater than 60°. Since the CI had intervertebral disc disease leading to surgery, the Board also considered a rating using the VASRD formula based on incapacitating episodes due to intervertebral disc syndrome (5243). 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. While the reported mild sensory changes and decreased Achilles tendon reflex were consistent with the CI’s L5 radiculopathy, they were not impairing of functioning and would not be considered separately unfitting. Motor strength testing was consistently normal and evidence of the record reflects that pain was the 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. After due deliberation, considering all of the evidence, the Board recommends no change to the separation rating of 20% adjudicated by the FPEB for the CI’s back condition (chronic back pain s/p left hemilaminectomy at L4-5 and L5-S1).

Remaining Conditions. Other conditions identified in the Disability Evaluation System (DES) file were bilateral hip pain, right knee pain and a history of fractured elbow in childhood. At the time of the MEB history and physical examination the CI reported right knee pain off and on for three months and bilateral hip pain characterized as soreness and achy feeling. A service treatment record entry dated January 26, 2006 noted tenderness about the right knee cap (consistent with patellofemoral pain syndrome), and listed diagnosis of hip bursitis (trochanteric bursitis) and tight iliotibial band tightness. The CI was referred to physical therapy. At a March 23, 2006 clinic encounter for back pain, there was no complaint of hip or knee pain recorded. None of these conditions were clinically or occupationally significant 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. 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 back condition (chronic back pain s/p left hemilaminectomy L4-5 and L5-S1) and IAW VASRD §4.71a, the Board unanimously recommends no change in the FPEB adjudication. In the matter of 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, as follows:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Back Pain S/P Hemilaminectomy L4-5 and L5-S1 | 5237 | 20% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100119, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

DEPARTMENT OF THE NAVY OFFICE OF THE ASSISTANT SECRETARY
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MEMORANDUM FOR DIRECTOR, SECRETARY OF THE NAVY COUNCIL OF REVIEW BOARDS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION ICO

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 22 Jun 11

I have reviewed the subject case pursuant to reference (a) and, for the reasons set forth in reference (b), approve the recommendation o fthe PDBR 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.