RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXX BRANCH OF SERVICE: marine corps

CASE NUMBER: PD1000370 SEPARATION DATE: 20061115

BOARD DATE: 20110608

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Lance Corporal (3521, Diesel Mechanic) medically separated from the Marine Corps Reserve in 2006. The medical basis for the separation was chronic thoracic back pain (slight/chronic). While the CI was lifting plywood in Iraq, he felt a sharp pain in his back and a shooting pain sensation down his right leg, radiating down to below his knee. The CI had undergone and failed anti-inflammatory medication, extensive physical therapy (PT), and a transcutaneous electrical nerve stimulation (TENS) unit. Despite a U3 profile and several extended sick leave periods, the CI was unable to perform within his military occupational specialty (MOS) and was referred to a Medical Evaluation Board (MEB). The MEB forwarded backache, unspecified to the Physical Evaluation Board (PEB) on NAVMED 6100/1. The Informal PEB adjudicated chronic thoracic back pain (slight/constant) as unfitting rated as 5237 at 0%; with probable application of SECNAVINST 1850.4e and DoDI 1332.39. The CI was apparently erroneously/administratively notified of TDRL at 50% which was corrected to severance pay for a 0% disability rating. The CI made no appeals and was medically separated with a 0% disability rating.

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CI CONTENTION: “At first I was awarded 50% TDRL and for some reason somewhere along the way it was changed to 0% and severance…I received a VA disability rating of ten percent. I just want to know how this happened. I feel that ten percent is inadequate for the injury I received. I also received 10% for tinnitus and have a pending claim for PTSD. I would appreciate having this reviewed. I would still like to have base privileges [sic]… Going through wounded warriors they helped me change my re-enlistment code from an RE-2B to and RE-3P. I just wanna know if this was a fair rating or should I have kept my TDRL and how did it get changed? Thank you for your time and consideration.”

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RATING COMPARISON:

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| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20061004** | | | **VA (1 Mo. Pre Separation) – All Effective Date 20061116** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Chronic Thoracic Back Pain (Slight Constant) | 5237 | 0% | Dextroscoliosis of the Thoracic and Lumbar Spine, and Wedging of the Vertebrae | 5235 | \*10% | 20061002 |
| ↓No Additional MEB/PEB Entries↓ | | | Tinnitus | 6260 | 10% | 20100811 |
| 0% x 1/Not Service Connected x 2 | | | |
| **Combined: 0%** | | | **Combined: 20%** | | | |

\*Back increased to 20% based on exam 20100728 effective 20100308 (combined 30%)

ANALYSIS SUMMARY: It is noted for the record that the Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to the CI’s statements in the application regarding suspected Disability Evaluation System (DES) improprieties in the processing of his case. 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 the VA Schedule for Rating Disabilities (VASRD) standards, as well as the fairness of PEB fitness adjudications.

Back Condition. There were two goniometric range of motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation. All three exams are summarized in the chart below.

|  |  |  |  |
| --- | --- | --- | --- |
| Goniometric ROM - Thoracolumbar | PT ~ 4 Mo. Pre-Sep | MEB ~ 3 Mo. Pre-Sep | VA C&P ~ 1 Mo. Pre-Sep |
| Flex (0-90) | 100⁰ (90⁰) | | 80⁰ |
| Ext (0-30) | 16⁰ (15⁰) | | 20⁰ |
| R Lat Flex (0-30) | 41⁰ (30⁰) | | 20⁰ |
| L Lat Flex 0-30) | 48⁰ (30⁰) | | 20⁰ |
| R Rotation (0-30) | 40⁰ (30⁰) | | 20⁰ |
| L Rotation (0-30) | 49⁰ (30⁰) | | 20⁰ |
| COMBINED (240) | 225⁰ | | 180⁰ |
| Comment:  MEB used PT ROMs | Waddell’s sign + light touch; No gait deviations | Physical therapist documented Waddell’s sign + light touch; no gait deviations Pain limits ROM; Tenderness of lower T spine and L paraspinals muscles | Spin joint function limited after repetitive use by pain, fatigue, weakness,lack of endurance and pain …additionally limit by 10⁰ |
| §4.71a Rating | 10% | 10% (MEB 0%) | 10% |

The PT exam four months prior to separation indicated the CI complained of constant pain that ranged from 1/10 with ten being the worst when lying supine and 6/10 with repeatedly bending forward and walking greater than 20 minutes. The CI also complained that all active ROM caused increased pain with bilateral rotation and he had daily numbness in his right lateral thigh. The examiner documented that there was a Waddell sign of positive hyper-reaction to light touch. The MEB exam three months prior to separation indicated that the CI wore a Jewett brace for approximately two to three weeks and has a TENS unit which helped prevent muscle spasms. The CI complained of feeling that his right leg was vibrating and his average pain was 4/10, aggravated by prolonged walking, bending, running which was limited to 500 yards without pain. The physical exam indicated tenderness to the lower thoracic spine and left paraspinals muscles and the ROM was limited by pain. A magnetic resonance imaging (MRI) had findings of a mild anterior wedge deformity.

In the VA compensation and pension examination one month prior to separation, the CIcomplained of constant, stiffness and weakness in the low back which occurred with and without physical activity. The CI further described the pain as aching, sharp, sticking and cramping and he rated the pain level as 5 with 10 being the worst. The CI required narcotic medication (percocet) and a muscle relaxant (flexeril) for pain relief. The CI denied being incapacitated from his condition; however, he could not vacuum, walk, shop, perform gardening activities or push a lawn mower. The physical exam findings were tenderness, and after repetitive use, joint function was further limited by pain, weakness, lack of endurance and pain. The examiner opined that the objective factors that contributed to the CI’s disability were ROM and x-ray findings.

There was no evidence of a lower extremity motor deficit and the CI’s sensory radiculopathy did not limit duty performance. The CI’s pain symptoms and pain radiculopathy is considered under the general rating formula for diseases of the spine “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.” There were no periods of incapacitation IAW VASRD 5243 and radiographic evidence did not indicate vertebral body fracture with loss of 50% or more of the height. The PEB rated the chronic thoracic back pain (slight. constant) as 5237 (lumbosacral or cervical strain) at 0%. The VA coded the condition as 5235 (vertebral fracture or dislocation) at 10%. The PEB and the VA chose different disability coding options, but this did not impact the rating in this case as either code uses the general spine formulae criteria. There was no indication in the PEB worksheet that a combined ROM was calculated. However, if the actual exam ROM numbers were added without considering notes 2 (VA maximums) and 4 (rounding to nearest five degrees) of the general spine formulae, the erroneous combined ROM would not have met the 10% rating criteria. With application of the VASRD notes, the CI’s combined ROM was 225° for the military ROM exam.

All exams proximate to separation met the 10% rating criteria for “combined range of motion of the thoracolumbar spine greater than 120 degrees but not greater than 235 degrees.” The radiographic evidence of thoracic and lumbar scoliosis was noted as well as questionable T12-L1 compression fracture and wedging. Although the CI had localized tenderness, there is no documentation of muscle spasm or guarding severe enough to result in an abnormal gait or abnormal spinal contour for the higher rating. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends that the condition be rated 10% for the chronic thoracic back pain condition and no addition of any peripheral nerve (radiculopathy) unfitting or ratable condition.

Remaining Conditions. Tinnitus was rated 10% by the VA after additional evidence was provided and reviewed by the VA decision review officer. This condition was mentioned by the CI in the MEB history and physical (H&P). There was no documentation of this condition in the narrative summary (NARSUM), nor was the CI given a duty restriction for this condition. The tinnitus was reviewed by the action officer and considered by the Board. There was no satisfactory indication from the record that the tinnitus significantly interfered with satisfactory performance of MOS requirements. All evidence considered, there is not reasonable doubt in the CI’s favor supporting addition of tinnitus as an unfitting condition for separation rating. The CI contends for adding posttraumatic stress disorder (PTSD) as he noted he has a pending claim for PTSD and wants it reviewed. PTSD was not mentioned in the DES package and any “nervous trouble of any sort” was specifically denied on the MEB H&P. There was no indication that any mental health condition interfered with duty performance in the commander’s assessment, NARSUM, or profile. 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. No other conditions were service connected with a compensable rating by the VA within twelve months of separation. 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 pain condition, the Board unanimously recommends a rating of 10% coded 5237 IAW VASRD §4.71a. In the matter of the tinnitus 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 recommends that the CI’s prior determination be modified as follows, effective as of the date of his prior medical separation:

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| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Chronic Thoracic Back Pain (Slight/Constant) | 5237 | 10% |
| **COMBINED** | **10%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100404, 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) DoDI 6040.44

(b) PDBR ltr dtd 16 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 10 percent (increased from 0 percent) effective 15 November 2006.

3. Please ensure all necessary actions are taken to implement this decision including notification to the subject member once those actions are completed.

Assistant General Counsel

(Manpower & Reserve Affairs)