RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXX BRANCH OF SERVICE: Marine Corps

CASE NUMBER: PD1000523 SEPARATION DATE: 20081206

BOARD DATE: 20110722

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a Marine Corps Reserve Sgt/E-5 (1345, Engine Equipment Operator) medically separated for grade I spondylolisthesis*.*  The CI was unable to return to full duty and was referred to a Medical Evaluation Board (MEB). The MEB forwarded acquired spondylolisthesis; lumbago; and neuralgia, neuritis, and radiculitis, unspecified to the Physical Evaluation Board (PEB) as medically unacceptable. The PEB adjudicated grade I spondylolisthesis condition as unfitting, rated 20%, with application of the IAW SECNAVINST 1850.4E and DoDI 1332.39. The PEB adjudicated both radiculopathy and lower back pain as category II (conditions that contribute to the unfitting condition). The CI made no appeals and was medically separated with a 20% disability rating.

CI CONTENTION: “Worse than 20% and got worse.” He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

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| **Service IPEB – Dated 20081008** | **VA (5 Mo. After Separation) – All Effective Date 20060606** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Grade I spondylolisthesis | 5239 | 20% | Chronic LBP w/ Radiculopathy | 5237 | 20%\* | 20090316 |
| Radiculopathy | Cat II |
| Lower Back Pain (LBP) | Cat II |
| ↓No Additional MEB/PEB Entries↓ | Chin Scar | 7803 | 10%\*\* | 20070403 |
| 0% x 1/Not Service Connected x 0 | 20080923 |
| **Combined: 20%** | **Combined: 20%** |

\*Chronic LBP was 10% since 2006, increased by DRO effective 20090316 \*\*Chin Scar was increased to 10% by DRO from 20090316

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application, i.e., that there should be additional disability assigned for his other conditions and for the gravity of his condition and predictable consequences which merit consideration for a higher separation rating. While the Disability Evaluation System (DES) considers all of the service member's medical conditions, compensation can only be offered for those medical conditions that cut short a service member's career, and then only to the degree of severity present at the time of final disposition. However, the Department of Veterans Affairs, operating under a different set of laws (Title 38, United States Code), is empowered to periodically re-evaluate veterans for the purpose of adjusting the disability rating should his degree of impairment vary over time.

Back Condition. The CI developed low back pain while deployed to Iraq, but did not seek medical care while there, but checked the box as to having back pain upon re-deployment. He complained of low back pain with lifting of any weight. The CI was given an L4 profile and was placed on limited duty which included no lifting or carrying objects greater than fifteen pounds. Despite extensive physical therapy and limited duty, the CI was unable to return to full duty. 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. In addition, the CI underwent an electromyelogram (EMG) four months prior to separation which showed mild chronic denervation of the L5 nerve root distribution bilaterally. This is consistent with the spondylolisthesis and the irritation of the nerve roots bilaterally.

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| Goniometric ROM - Thoracolumbar | MEB ~ 4 Mo Pre-Sep(20080828) | VA C&P ~ 3 Mo Pre Sep(20080923) | VA C&P ~ 3 Mo Post Sep(20090316) |
| Flex (0-90) | 75⁰ | 70⁰ | 50⁰ |
| Ext (0-30) | 15⁰ | 20⁰ | 10⁰ |
| R Lat Flex (0-30) | 25⁰ | 20⁰ | 25⁰ |
| L Lat Flex 0-30) | 25⁰ | 25⁰ | 25⁰ |
| R Rotation (0-30) | 45⁰ (30° max) | 20⁰ | 20⁰ |
| L Rotation (0-30) | 45⁰ (30° max) | 15⁰ | 20⁰ |
| COMBINED (240) | 200⁰ | 170⁰ | 150⁰ |
| Comment | Pain on ROM, normal gait, normal straight leg raise bilateral | Pain on ROM, muscle spasm, localized tenderness guarding severe enough to cause abn gait |  Straight leg raising positive 45⁰ R equivocal, L straight leg raising positive 30⁰  |
|  §4.71a Rating | 10%(MEB 20%) | 20%(VA 10% then 20%) | 20% |

At the MEB examination four months prior to separationthe CI complained ofpain in his lower back with lifting any weight, intermittent bilateral posterior leg pain and numbness, intermittent left sided foot drop and pain worse in extension rather than flexion. The CI denied that any specific injury led to this condition and he felt that this was an over use condition. The examiner documented that the CI did not walk with a foot drop or antalgic gait. The physical exam findings were pain on ROM; however, motor exam, sensory exam, and deep tendon reflex exams were all normal. Although the EMG demonstrated signs of a radiculopathy, the CI did not have a positive straight leg raise on either side and there were no signs of a radiculopathy on exam that day.

The VA compensation and pension (C&P) examination three months prior to separation documented that the CI complained of numbness and paresthesias, moderate daily pain in the lumbar spine that radiated a burning pain down the left leg. On physical exam, the examiner documented pain and tenderness with motion. The examiner noted that the muscle spasm was severe enough to be responsible for an abnormal gait. The Board determined that the presence of an abnormal gait is consistent with a rating of 20%.

The VA C&P examination three months post separation documented that the CI complained of sharp pain in the mid back 8/10. At the time of his pain, the CI would lie down to reduce the pain. The CI was given a trial of tramadol, but he felt that it made him “feel loopy” so he stopped it and stated that he was taking excedrin instead. The physical exam findings were limited ROM throughout along with positive straight leg raising on both sides. The limitation of flexion to 50 degrees is consistent with a 20% rating.

The PEB rated the grade I spondylolisthesis as 5239 spondylolisthesis or segmental instability at 20% with the radiculopathy and LBP as category II conditions. The VA rated the condition as chronic LBP with radiculopathy and coded the condition as 5237 lumbosacral strain rated 20%. The CI requested a separate rating for a sciatic condition, but this was denied by the VA disability review officer. The CI did have abnormalities noted on electrodiagnostic studies. Review of the service treatment record by the Board indicates that the CI had LIMDU for the low back pain with bilateral pars defect; however, neither the non medical assessment (NMA) nor the narrative summary (NARSUM) indicated that the CI’s radiculopathy was directly responsible for interfering with his duty performance. The low back pain was profiled, but not the radiculopathy. In the NARSUM, the examiner documented that the motor and sensory exams were normal. Board precedent is that a functional impairment tied to fitness is required to support a recommendation for addition of a peripheral nerve rating at separation. The pain component of a radiculopathy is subsumed under the general spine rating as specified in §4.71a. The sensory component in this case has no functional implications. The motor impairment was either intermittent or relatively minor and cannot be linked to significant physical impairment. Since no evidence of functional impairment exists in this case, the Board cannot support a recommendation for additional rating on that basis. There was no evidence of ratable peripheral nerve impairment in this case.

The PEB and the VA chose different coding options, both of which are subject to rating the lumbosacral spine for ROM. The MEB examination four months prior to separation documented that the forward flexion was 70 degrees, consistent with a VASRD rating of 10%, i.e. forward flexion of the thoracolumbar spine greater than 60 degrees, but not greater than 85 degrees. The joint disability evaluation tracking system worksheet noted that physical exam met the 20% criteria on loss of ROM. However, it is not clear how the PEB came to award a 20% rating for that examination. Of the three goniometric examinations of the spine, the Board determined that the two VA examinations had the highest probative value based upon their proximity to the time of separation. As discussed above both of these examinations were consistent with VASRD ratings of 20%. In the matter of the grade I spondylolisthesis condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication.

Remaining Conditions. Other conditions identified in the DES file were Bell’s palsy, hypertrigliceridemia, and mild pes planus. None of these conditions were clinically active during the MEB period; none carried attached profiles; and none 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 chin scar, and one other non-acute condition 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 grade I spondylolisthesis condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the radiculopathy and low back pain condition, the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation. In the matter of the Bell’s palsy, hypertrigliceridemia, pes planus, 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, as follows:

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Grade I Spondylolisthesis | 5239 | 20% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100419, 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 XXXX, FORMER USMC, XXX XX XXXX

Ref: (a) DoDI 6040.44

 (b) PDBR ltr dtd 16 Aug 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’s 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)