RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXX BRANCH OF SERVICE: marine corps

CASE NUMBER: PD1000657 SEPARATION DATE: 20030630

BOARD DATE: 20110218

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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 LCpl (0300, Infantry) medically separated from the Marine Corps in June 2003. The medical basis for separation was L1 burst fracture with kyphotic deformity, as a result of injuries sustained in a motor vehicle accident (MVA). The CI also injured his left hand, including an open injury to the proximal inter-phalangeal (PIP) joint of his left fourth finger (ring finger). The left hand injuries were treated with surgery and occupational therapy, and healed uneventfully. The L1 burst fracture was treated with bracing, medication, and physical therapy (PT). The vertebral fracture healed, but he continued to have back pain. After six months of limited duty, the CI was still unable to perform within his military occupational specialty (MOS). He underwent a Medical Evaluation Board (MEB) in February 2003. The left ring finger injury and the L1 burst fracture were addressed in the narrative summary (NARSUM) and forwarded to the Physical Evaluation Board (PEB). The PEB adjudicated the L1 burst fracture as the only unfitting condition and rated it at 10%. The CI accepted the PEB findings, and was separated with 10% disability using the Veterans Administration Schedule for Rating Disabilities (VASRD) and applicable Navy and DoD regulations.

CI CONTENTION: The CI states, “The VA also gave me 10% for right knee problems, which are in my Marine Corps medical records.”

RATING COMPARISON:

|  |  |
| --- | --- |
| **Navy PEB – dated 20030423** | **VA (1 yr. after Separation) – All Effective 20030701**  |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| L1 Burst Fracture  | 5285-5292 | 10% | L1 Burst Fracture  | 5242 | 10% | 20040708 |
| Finger Injury  | Not Unfitting  | Finger Injury  | 5299-5227 | 0% | 20040708 |
| No PEB entry  | Right Knee Pain | 5099-5003 | 10% | 20040708 |
| **TOTAL Combined: 10%** | **TOTAL Combined (*Includes Non-PEB Conditions*): 20%** |

ANALYSIS SUMMARY:

Back pain. This Marine sustained a burst fracture of L1 in a MVA on 5 July 2002. The fracture compressed approximately 60% of the vertebral height and had a large fragment retropulsed into the spinal canal. There was no neurological compromise, and the fracture healed with bracing. There was mild residual kyphosis (forward angulation) at the L1 segment which led to a prominent L1 spinous process, palpable on examination but without visible deformity. Back pain persisted and interfered with the performance of military duties. His restrictions at the time of the MEB included; no running, no extensive walking, no lifting greater than 10 pounds, no marching, and no carrying a pack. At the MEB exam in February 2003 (four months prior to separation), the CI had palpable deformity of the L1 spinous process, and some tenderness to palpation of the paraspinous region of L1. His neurological exam was normal. No range of motion (ROM) measurements were given. Magnetic resonance imaging (MRI) showed diffuse degenerative changes of the lumbar spine. The PEB adjudicated the L1 burst fracture condition as unfitting at 10%, coded 5285-5292. The CI reported that he had pain “24/7” at the VA compensation and pension (C&P) exam on 8 July 2004 (one-year post-separation). He was avoiding heavy lifting and strenuous activity, he took no medication, and he did not use a brace. Examination of the back revealed full active and passive ROM, with general discomfort across the lower back. No deformity, spasms or tenderness. No posture abnormalities were noted. Based on this examination the VA assigned a 10% disability rating (coded 5242), for degenerative arthritis of the spine with painful motion.

The July 2002 VASRD was in effect at the time of separation. The July 2002 VASRD states that IAW §4.71a, cases involving residual pain from vertebral fracture should be rated in accordance with definite limited motion or muscle spasm, adding 10% for demonstrable deformity of vertebral body. There is no evidence of definite limited motion because no goniometric ROM evaluations were in evidence for the Board to weigh in arriving at its rating recommendation. However, the Board noted that a 10% rating is warranted for painful motion of the lumbar spine IAW §4.59. The Board then added 10% for demonstrable deformity of the vertebral body, resulting in a total rating of 20%. After considerable discussion and due deliberation, the Board recommends by majority decision (2:1 vote) a permanent rating of 20% for chronic back pain resulting from a healed burst fracture of L1.

Left Fourth Finger Injury. The CI injured his left hand in the MVA on 5 July 2002. His injuries included an open fourth finger PIP joint injury, with disruption of the central slip of the extensor tendon. His finger injury was surgically repaired and the CI underwent occupational therapy. The MEB examiner noted “surgical and traumatic scars are well healed. He has full range of motion with slight extensor lag of the left ring finger.” The CI had no duty restrictions because of his hand injuries. The PEB adjudicated the left ring finger as Category III (not separately unfitting and did not contribute to the unfitting condition). At the VA C&P exam, the examiner noted a 17 degree loss of active extension, but full passive extension. There was no tenderness, no pain on repetitive motion, and no loss of strength. Based on that examination the VA assigned a 0% rating for “PIP injury without function limitation.” The left ring finger injury was discussed and considered by the Board. The Board determined that there was no clearly documented evidence that this condition caused a significant adverse effect on the performance of required military duties. There were no permanent duty restrictions as a result of the ring finger injury, and it was not implicated in the commander’s statement. All evidence considered, there is not reasonable doubt in the CI’s favor supporting reversal of the PEB fitness adjudication for the left ring finger condition.

Other Conditions. The Board also discussed his right knee pain. The CI did have some knee pain in training, but he was able to pass his PT and graduate from boot camp. Furthermore, the CI denied knee trouble on the DD Form 2807-1 (block 12) dated 7 March 2003. Physical examination of the right knee (documented on DD Form 2808) was normal. The Board determined that there was no clearly documented evidence that this condition caused a significant adverse effect on the performance of required military duties. There were no permanent duty restrictions as a result of right knee pain, and it was not implicated in the commander’s statement. All evidence considered, there is not reasonable doubt in the CI’s favor supporting right knee pain as an additional unfitting condition.

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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 L1 burst fracture, the Board recommends by majority decision (2:1 vote) a disability separation rating of 20% (coded 5285) IAW VASRD §4.71a. The single voter for dissent (who recommended a 10% separation rating) did not elect to submit a minority opinion. In the matter of the left fourth finger injury, right knee pain, and 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 therefore 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 back pain, status post burst fracture of L1 (healed) | 5285 | 20% |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100603, 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 15 Apr 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 June 2003.

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)