RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: marine corps

CASE NUMBER: PD1000977 SEPARATION DATE: 20071231

BOARD DATE: 20120402

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty CPL/E-4 (1341, Engineer Equipment Mechanic), medically separated for a lower back condition (spondylolysis, left L4 pars interarticularis)*.* He initially injured his back in 2004 during martial arts training. There was a fracture of the pars interarticualris with conflicting consultant recommendations for surgery for poor healing (pars non-union). The CI elected non-surgical therapy and was placed on limited duty (LIMDU). He did not respond adequately to treatment and was unable to perform within his Military Occupational Specialty (MOS) or meet physical fitness standards and underwent a Medical Evaluation Board (MEB). Spondylolisthesis, congenital and unspecified closed fracture of the ankle were forwarded to the Physical Evaluation Board (PEB) IAW SECNAVINST 1850.4E. No other conditions appeared on the MEB’s submission. Other conditions included in the Disability Evaluation System (DES) packet will be discussed below. The PEB and Reconsideration PEB (request for combat related denied) adjudicated the lower back condition as unfitting, rated 10% with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: “Unable to perform duties trained for. Constant pain in lower back. Missed work in order to make appointments.” He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

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| **Service PEB (Reconsideration) – Dated 20071026** | | | **VA (7 Mo. After Separation) – All Effective Date 20080101** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Spondylolysis, Left L5 Pars Interarticularis | 5237 | 10% | Spondylolysis, Left L5 Pars Interarticularis | 5299-5239 | 10% | 20080721 |
| Closed Fracture of the Ankle | Not Service Connected | | Residuals From Right Ankle Fracture | 5271 | 0% | 20080721 |
| ↓No Additional MEB/PEB Entries↓ | | | 0% x 1/Not Service Connected x 7 | | | 20070721 |
| **Combined: 10%** | | | **Combined: 10%** | | | |

\* Limited to effective rating dates within 12 months of separation.

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-aggravated condition continues to burden him. It is a fact, however, that the DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions resulting in medical separation. This role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA). The DVA, operating under a different set of laws (Title 38, United States Code), is empowered to compensate service-connected conditions and to periodically re-evaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time. The Board utilizes DVA evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12-month interval for special consideration to post-separation evidence. The Board’s authority as defined in DoDI 6044.40, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Back (Spondylolysis, Left L5 Pars Interarticularis) Condition. There was one goniometric range-of-motion (ROM) and two other back motion evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation.

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| ROM – Thoracolumbar | MEB ~ 5 Mo. Pre-Sep  (20070719) | PT ~ 4.5 Mo. Pre-Sep  (20070808) | VA C&P ~ 6.5 Mo. After-Sep  (20080721) |
| Flex (0-90) | See comments | 45⁰ | 90⁰ |
| Ext (0-30) | 30⁰ | 10⁰ | 30⁰ |
| R Lat Flex (0-30) | See comments | 10⁰ | 30⁰ |
| L Lat Flex 0-30) | 10⁰ | 30⁰ |
| R Rotation (0-30) | ND | 30⁰ |
| L Rotation (0-30) | ND | 30⁰ |
| COMBINED (240) | UND | UND (min 75⁰; max 135⁰) | 240⁰ |
| Comment | He is 1 inch from touching his toes w/ knees straight. He can extend & rotate medially & laterally w/o any limits. He can side bend w/ his fingertips at the level of the inferior pole of the patella on both sides, left & right. DD Form 2808 TTP, edema. | Bubble inclinometer used. “Unable to assess rotation with bubble inclinometer” | Pain on motion. Able to walk on toes and heels without difficulty. Good muscle strength. Normal gait. DTRs 2+/2+ UE & LE. C/o radiation down LE (denies numbness, tingling, pins/needles.) |
| §4.71a Rating | 10% | 10% | 10% |

The CI’s history of back trauma and chronic duty-limiting back pain was well documented. Abnormal radiographs, MRI and CT confirmed pars nonunion on the left side of the lumbar spine without degenerative disks. The MEB exam on DD Form 2808 stated “L2-S5 TTP (tenderness to palpation), edema, no erythema.” The narrative summary (NARSUM indicated normal gait and normal non-goniometric description of thoracolumbar ROM. There was no comment regarding spasm or tenderness. Motor and neurologic exams were normal. The post-MEB formal ROM exam from PT was using a bubble inclinometer and did not measure rotation.

The VA Compensation and Pension (C&P) exam, completed 6 months after separation indicated complaints of intermittent pain radiating down the legs. ROMs were to the normal limits with pain on movement. Repetition indicated a short period of back fatigue with no specified additional decrease in ROM.

The Board carefully reviewed all evidentiary information available. The Board noted that both of the lower back evaluations fit the VASRD criteria for a 10% rating based on limitation of thoracolumbar motion, tenderness or painful motion. There was no evidence of incapacitating pain episodes that would warrant a higher rating under VASRD code 5243 (intervertebral disc syndrome). There was no evidence of ratable peripheral nerve impairment in this case. No exam in evidence documented an abnormal gait or spinal contour which would qualify for a §4.71a rating of 20%. The Board considered whether additional service rating could be recommended under a peripheral nerve code, for the residual sciatic radiculopathy at separation. Firm Board precedent requires a functional impairment tied to fitness to support a recommendation for addition of a peripheral nerve rating to service disability in spine cases. The pain component of a radiculopathy is subsumed under the general spine rating as specified in §4.71a. There was no sensory or motor component in this case. Since no evidence of functional impairment exists in this case, the Board cannot support a recommendation for additional service rating based on peripheral nerve impairment. Both the PEB code (5237 lumbosacral strain) and the VA code 5299-5239 analogous to spondylolisthesis or segmental instability use the same rating criteria and neither code is predominate or offers any advantage to the CI. All evidence considered, there is not reasonable doubt in the CI’s favor to justify a Board recommendation for other than the 10% rating assigned by the PEB for the back condition. After due deliberation, the Board recommends a rating of 10% for the back pain.

Other PEB Conditions. The other condition forwarded by the MEB and adjudicated as not unfitting by the PEB was unspecified closed fracture of the (right) ankle. Records indicated this right ankle injury was an acute condition and occurred 3 months prior to the NARSUM. This condition was not noted as limiting duty, was not part of a LIMDU and was not implicated in the non-medical assessment (NMA). The NARSUM indicated the CI was “unable to single-leg hop on the right as he had a previous ankle fracture.” The VA exam after separation indicated a normal exam of both ankles. The ankle condition was reviewed by the action officer and considered by the Board. There was no indication from the record that the ankle condition significantly interfered with satisfactory duty performance. After due deliberation in consideration of the preponderance of the evidence, the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the ankle condition.

Remaining Conditions. Other conditions identified in the DES file were left knee and trouble sleeping. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were significantly clinical during the MEB period, none carried attached duty limitations, and none were implicated in the NMA. 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. No other conditions were service-connected with a compensable rating by the VA within 12 months of separation or contended by the CI. 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. The Board did not surmise from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised. In the matter of the lower back (spondylolysis, Left L5 Pars Interarticularis) condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the ankle, knee, radiating leg pain, trouble sleeping, or any other conditions eligible for 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** |
| Spondylolysis, Left L5 Pars Interarticularis | 5237 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100716, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs Treatment Record

President

Physical Disability Board of Review

MEMORANDUM FOR DIRECTOR, SECRETARY OF THE NAVY COUNCIL OF REVIEW

BOARDS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATIONS

Ref: (a) DoDI 6040.44

(b) CORB letter dtd 12 Apr 12

In accordance with reference (a), I have reviewed the cases forwarded by reference (b), and, for the reasons provided in their forwarding memorandum, approve the recommendations of the PDBR the following individuals’ records not be corrected to reflect a change in either 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)