RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXX BRANCH OF SERVICE: marine corps

CASE NUMBER: PD1000995 SEPARATION DATE: 20070930

BOARD DATE: 20110614

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty E-3 \ LCpl (0311, Rifleman) medically separated for a back condition (mechanical low back pain and degenerative disk disease by MRI). 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 issued a permanent L3 profile and underwent a Medical Evaluation Board (MEB). Lumbago was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable 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 Informal PEB (IPEB) adjudicated the back condition as unfitting, rated 10%; with application of the SECNAVINST 1850.4E. The CI made no appeals, and was then medically separated with a 10% disability rating.

CI CONTENTION: He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions.

RATING COMPARISON:

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| --- | --- |
| **Service IPEB – Dated 20070727** | **VA (19 days After Separation) – All Effective 20071001** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| LBP and DDD… | 5243 | 10% | DDD L-Spine w/Radiculopathy… | 5242 | 20% | 20071019 |
| No Additional MEB/PEB Entry | Not Service Connected x 1 | 20071019 |
| **Combined: 10%** | **Combined: 20%** |

ANALYSIS SUMMARY:

Mechanical Low Back Pain and Degenerative Disc Disease: There were two 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:

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| Goniometric ROM - Thoracolumbar | NARSUM ~3 Mo. Pre-Sep(20070620) | VA C&P 19 days After-Sep(20071019) |
| Flex (0-90) | 80⁰ | 45⁰ |
| Ext (0-30) | “full extension” | 20⁰ |
| R Lat Flex (0-30) | Not measured | 25⁰ |
| L Lat Flex 0-30) | Not measured | 25⁰ |
| R Rotation (0-30) | Not measured | 30⁰ |
| L Rotation (0-30) | Not measured | 30⁰ |
| COMBINED (240) | Unknown | 155⁰ |
| Comment | Pain with motion; Normal gait, strength, reflexes, sensation. | Pain at 45° flexion; guarding, right leg weakness with ½ inch circumference decrease c/w atrophy; normal gait, normal spine contour |
| §4.71a Rating | 10%  | 20% |

CI had chronic low back pain for approximately two years and was placed on LIMDU beginning February 2006. MRI scanning April 2006 demonstrated degenerative disc disease at L3 through S1 with disc protrusions at L3-4 and L4-5. The NARSUM, three months before separation, recorded infrequent (“seldom”) pain shooting into the left leg (MRI did show a left paracentral disc extrusion at L4-5 but without evidence of nerve root compression). On examination, the patient's motor exam was intact with normal heel and toe walk, normal gait, intact reflexes, and normal sensory exam. Examination tests for nerve root irritation were negative. The recorded flexion of 80° was the same as that recorded the year previously reflective of a stable course. At the time of the C&P examination, three weeks after separation, the flexion was significantly decreased compared to the NARSUM and the examiner recorded CI report of right leg pain radiation (service treatment records document left leg pain, not right). On examination there was marked weakness of the right lower extremity not present prior to separation, however the gait was recorded as normal despite the indicated right lower extremity weakness. The reflexes and sensory examination of the lower extremities were recorded as normal, and test for nerve root irritation were negative arguing against a radiculopathy.

The Board noted the apparent worsening of the CI’s back condition at the time of the post separation C&P examination and the inconsistent examination findings. In its assignment of probative value to the disparate exams, the Board must acknowledge that VA C&P spine examinations may predispose 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, and strength testing is dependent on examinee effort, with scant ability by the examiner to objectively confirm it. If the marked weakness were due to radiculopathy, the expected concomitant changes in reflexes or sensory examination and root irritation signs were absent. If leg weakness of this degree were due to guarding from pain, the normal gait and normal spine contour were also incongruent. The degree of weakness indicated by the examiner would be expected to manifest in the gait. There was no report of incident that would have caused worsening prior to separation, and the C&P examination records CI report that his back condition was stable and that he was able to walk one to three miles. Upon deliberation the majority of the Board agreed in this case that the MEB physical examination was more consistent with outpatient notes, more reflective of the anticipated severity suggested by the clinical pathology and less vulnerable to the undue influence just elaborated. The Board discussed the fact that the NARSUM examination only recorded flexion in degrees, stating extension was “full”, and did not provide range of motion in the four other planes that were provided by the C&P examiner. The Board noted however that the NARSUM examiner was well qualified in sports medicine and would be able to provide an accurate measurement of flexion. Even though other planes of motion were not provided, the values in these other planes provided by the C&P examination did not support the higher rating. Only flexion in this case was pivotal in determining a 10% versus 20% rating. The NARSUM examiner otherwise provided a complete examination. The Board therefore relied primarily on the MEB evidence and does not find adequate reasonable doubt in the CI’s favor for recommending a higher rating for the CI’s intervertebral disc syndrome condition (5243).

The Board also considered a rating using the VASRD formula based on incapacitating episodes due to intervertebral disc syndrome. 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. The CI had pain radiating into the left lower extremity suggestive of radiculopathy, however there were no examination findings of sensory loss, reflex changes or weakness. Although the post separation C&P examination documented right lower extremity weakness suggestive of radiculopathy, the remainder of the examination was not consistent with radiculopathy. 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. The next higher rating of 20% for the CI’s back condition would not result in any change in his military disability separation benefits. The Board concludes that the preponderance of evidence overcomes reasonable doubt in the CI’s favor supporting a change from the PEB’s 10% rating decision for the CI’s back condition (coded 5243).

Remaining Conditions: Another condition identified in the DES file was poor sleep attributed to chronic low back pain. This condition was not clinically or occupationally significant during the MEB period, it was not the basis for limited duty and was not implicated in the non-medical assessment. This condition were reviewed by the action officer and considered by the Board. It was determined that it could not be argued as unfitting and subject to separation rating. No other conditions were service connected with a compensable rating by the VA within twelve 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. In the matter of the back condition (chronic mechanical low back pain with degenerative disc disease) and IAW VASRD §4.71a, the Board, by a 2:1 vote, recommends no change in the PEB adjudication. The single voter for dissent (who recommended a 20% rating) submitted the addended minority opinion.

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 Mechanical Low Back Pain and Degenerative Disc Dz | 5243 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20100831, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

 Deputy Director

 Physical Disability Board of Review

MINORITY OPINION. The AO strongly supports a 20% rating in this case. There was no goniometric ROM in service and the MEB exam failed to address thoracolumbar lateral flexions, rotations or any DeLuca criteria (additional functional loss due to pain, flare-ups, deformity, tenderness, arthritis, loss of motion on repetitive use, weakened movement, excess fatigability or incoordination). The combined thoracolumbar ROM was unknown and is a ratable parameter for the CI’s condition. With consideration of VASRD §4.2, Interpretation of examination reports, the exam did not contain sufficient detail and would be considered as inadequate for evaluation purposes.

The VA C&P exam was closer to the date of separation (19 days post-separation), provided a complete goniometric ROM, and addressed the DeLuca criteria. The exam documented guarding which did not interfere with gait, but may have led to “unbelievable” 2/5 leg muscle testing which the Board majority believed decreased the probative value of the exam, despite objective evidence (decreased girth calf and thigh) of at least some muscle atrophy. There were no Waddell’s signs or other indicators of non-physiologic findings to indicate symptom exaggeration. There was no evidence of any non-pain radiculopathy.

The record indicated the CI had a history of back spasms and it is typical for back conditions to demonstrate some variability with good days and bad days. Given the objective evidence of muscle atrophy, an exam closer to separation that was complete and ratable, the provisions of VASRD §4.3 (reasonable doubt) and §4.7 (higher of two evaluations) the CI’s thoracolumbar condition should be rated at 20%.

MO RECOMMENDATION: The AO, 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 Mechanical Low Back Pain and Degenerative Disc Dz | 5243 | 20% |
| **COMBINED** | **20%** |

MEMORANDUM FOR DIRECTOR, SECRETARY OF THE NAVY COUNCIL OF REVIEW

 BOARDS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

 ICO XXXXXX, FORMER USMC

Ref: (a) DoDI 6040.44

 (b) PDBR ltr dtd 24 Jun 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 PDBR 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)