RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: marine corps

CASE NUMBER: PD1100002 SEPARATION DATE: 20050801

BOARD DATE: 20111206

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty LCpl/E3 (6114, Marine Helicopter Mechanic), medically separated for bilateral L4 pars interarticularis defect with back pain. The CI initially injured his back while working on a helicopter in July 2004. As 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 placed on eight months of limited duty (LIMDU) and underwent a Medical Evaluation Board (MEB).Unspecified congenital anomaly and lumbago were 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 bilateral L4 pars interarticularis defect condition as unfitting and the back pain symptoms as Category II (related to the unfitting diagnosis, but not separately unfitting), rated 10% IAW SECNAVINST 1850.4E. The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: “The injury limits my abilities in everyday life. I am in discomfort and pain all day. I have had hardship finding employment due to limitations of my back. When it is really aggravated. I am laid up for days which causes me to miss work. On Thursday December 03, 2010 at work my back locked up on the lower right side. Saw Dr. Hardin on December 04, 2010 which he is still running test but his prognosis as of right now is the bulged disc has bulged more and is pushing on the nerve roots. From this incident I have been stuck in a bed or recliner since mid-day December 03, 2010. That is turn I have lost money from missing work and the most discomfort I have been in since the original injury in 2004.” Under item 14, he also lists bilateral patellofemoral syndrome (PFS), spondylolysis of L4, and paresthesias of the right foot L5 distribution.

RATING COMPARISON:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Service IPEB – Dated 20050527** | | | **VA (10 Mo. After Separation) – All Effective Date 20050802** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Bilateral L4 Pars Interarticularis Defect | 5239 | 10% | Spondylosis of L4 | 5239 | 10% | 20060606 |
| Parethesis of Right Foot, Assoc w/Spondylosis | 8520 | 10% | 20060606 |
| Back Pain Symptoms | Category II | | No Separate VA Entry | | | |
| Tobacco Abuse | Category IV | | No VA Entry | | | |
| ↓No Additional MEB/PEB Entries↓ | | | Patellofemoral Syndrome, Right Knee | 5014-5260 | 10% | 20060606 |
| 0% x 2/Not Service Connected x 6 | | | 20060606 |
| **Combined: 10%** | | | **Combined: 30%** | | | |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-incurred condition continues to burden him. The Board wishes to clarify that it is subject to the same laws for Service disability entitlements as those under which the DES operates. 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. That role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA), operating under a different set of laws (Title 38, United States Code). The Board evaluates VA evidence proximal to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness decisions and rating determinations for disability at the time of separation. The Board also acknowledges the CI’s contention suggesting that Service ratings should have been conferred for other conditions documented at the time of separation. While the 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. The VA, however, is empowered to compensate all service connected conditions and to periodically re-evaluate said conditions for the purpose of adjusting the veteran’s disability rating should his degree of impairment vary over time.

Unfitting Conditions: Bilateral L4 Pars Interarticularis Defect with Related Back Pain. Three sets of goniometric range-of-motion (ROM) measurements proximate to separation are available for review and charted below.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Goniometric ROM –Thoracolumbar | Neurosurgery Consult 6 Mo. Pre-Sep 20050203 | MEB ~5 Mo. Pre-Sep  20050301 | MEB ~4 Mo. Pre-Sep  20050330 | VA C&P ~10 Mo. After-Sep  20060606 |
| Flexion (0-90) | \*40⁰ | ROM decreased 20% voluntarily in flexion, extension, side bending and twisting. This is the equivalent of flexion 72⁰, extension 24⁰, lateral flexion 24⁰ (right and left), rotation 24⁰ (right and left), and combined of 192⁰ | 40⁰ | 75(74)⁰ w/ pain |
| extension (0-30) | 5⁰ | 5⁰ | 30(32)⁰ w/ pain |
| R Lat Flex (0-30) | 10⁰ | 10⁰ | 30(29)⁰ w/o pain |
| L Lat Flex (0-30) | 10⁰ | 10⁰ | 30(32)⁰ w/o pain |
| R Rotation (0-30) | Not documented | 20⁰ | 30(32)⁰ w/ pain |
| L Rotation (0-30) | Not documented | 20⁰ | 35⁰ w/o pain |
| Combined (240) |  | 105⁰ | 225⁰ |
| Comment | Tender, no muscle spasm |  | Antalgic gait | DeLuca negative |
| §4.71a Rating | \* | 10% | 20% | 10% |

\*Civilian neurosurgeon’s ROM stated to be of lumbar spine, not thoracolumbar spine.

On 7 July 2004, the CI injured his back at work and developed back pain which radiated down the right leg with numbness in the feet. The radicular symptoms largely resolved, but back pain persisted with occasional radiation to the right leg with numbness. Conservative management including medications, physical therapy, chiropractic therapy and epidural steroid injections were inadequate. Imaging showed a L4 pars defect with minimal spondylolisthesis. A magnetic resonance imaging revealed minimal L5-S1 central protrusion and increased T2 intensity of the right L-5 facet joint. A ccomputed tomography myelogram showed bilateral L4 pars defect and mild disc bulges at L3-4 and L4-5 as well as L5-S1 mild degenerative changes. Compression of a nerve root was not shown. A spinal fusion procedure was recommended, but declined by the CI. At the time of the 3 February neurosurgery examination, six months before separation, strength and reflexes were intact, although tingling of the right medial foot was noted. There was no muscle spasm noted. The neurosurgeon recorded “lumbar” spine range of motion, and it is not clear if this was in accordance with American Medical Association guidelines which specify reporting of lumbar range of motion separate from thoracic spine ROM. A 7 February 2005 clinic encounter documented paraspinal muscle spasm and abnormal gait. The MEB narrative summary (NARSUM) exam was on 1 March 2005, five months prior to separation. It noted that the spinal motion was limited voluntarily on examination, with flexion/extension, side bending and twisting “limited by 20%,” indicating a 20% reduction from normal range of motion (equivalent degrees representing a 20% reduction is detailed in the range of motion chart). The neurologic exam was intact. Bilateral reflexes are intact, no extensor hallucis longus muscle weakness was present and straight leg raise (SLR) reproduced back pain, but did not illicit evidence of nerve root irritation or radicular symptoms. The NARSUM examiner did not comment regarding muscle spasm or gait. The MEB history and physical examination performed 30 March 2005 recorded “decreased” spine ROM with tenderness and an antalgic gait without mention of muscle spasm. The examining Navy physician completed a range of motion form dated the same date as the examination. The examiner’s thoracolumbar range of motion values are copied in the ROM chart above. The VA compensation and pension (C&P) examination, 6 June 2006, ten months after separation, recorded similar complaints of back pain than radiated to the right buttock and thigh with flares. He reported one incapacitating episode in the prior year requiring bed rest for two days. The physical examination documented improved ROM compared to examinations prior to separation, with normal gait, and no muscle spasm. There was diminished sensation noted over the plantar surface of the first metatarso-phalangeal joint and the surfaces of toes 2-5 of the right foot. However, deep tendon reflexes and the motor exam were normal and there was no nerve root irritation with provocative maneuver. The IPEB and VA both coded the back condition as 5239, spondylolisthesis, and rated it at 10%. The VA’s 10% rating was consistent with the ROM documented in the C&P examination, while the ROMs available to the PEB supported either a 10% or 20% rating. Due to the significant differences between the documented ROM’s, the Board carefully considered the whole record in order to develop a consistent picture of the CI’s back condition. The Board noted the improvement in the thoracolumbar range of motion 10 months after separation but also considered the detailed MEB ROM and pre-separation examinations that included presence of muscle spasm and antalgic gait. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a separation rating of 20% for the back condition. The Board considered a rating using the VASRD formula based on incapacitating episodes due to intervertebral disc syndrome (as the CI was shown to have disc disease). 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 Board also considered if additional disability rating was justified for peripheral nerve impairment due to radiculopathy. 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 and no motor impairment noted. Since no evidence of functional impairment exists in this case, the Board cannot support a recommendation for additional rating based on peripheral nerve impairment. After due deliberation, in consideration of the totality of evidence, and IAW §4.3 (reasonable doubt) the Board concluded the 20% rating most nearly approximated the consistent picture of the disability at the time of separation.

Other PEB Conditions. The other condition forwarded by the MEB and adjudicated as not unfitting by the PEB was tobacco abuse. This is a Category IV condition and not eligible for consideration for a disability rating. All evidence considered, there is not reasonable doubt in the CI’s favor supporting re-characterization of the PEB fitness adjudication for this condition.

Other Contended Conditions. The CI also listed bilateral patellofemoral syndrome, spondylolysis of L4, and paresthesias of the right foot L5 distribution. The latter two conditions were considered with the back condition, above. The knee conditions were reviewed by the action officer and considered by the Board. There was no evidence for concluding that these the conditions interfered with duty performance to a degree that could be argued as unfitting. The Board determined therefore that neither was subject to service disability rating.

Remaining Conditions. Other conditions identified in the DES file were hemoptysis associated with gastric ulcer (medicine induced), resolved, bronchitis, right shoulder pain, osteoarthritis in toes, and frequent heartburn. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were clinically or occupationally significant during the MEB period, none were the basis for limited duty and none were implicated in the non-medical assessment. 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, bilateral hearing loss, neck pain, and a Mallory-Weiss tear as well as several other non-acute conditions 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. 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, the Board unanimously recommends a disability rating of 20%, coded 5239 IAW VASRD §4.71a. In the matter of the tobacco abuse, the Board unanimously recommends no change from the PEB adjudications as Category IV, not a physical disability. In the matter of the bilateral patellofemoral syndrome, hemoptysis associated with gastric ulcer (medicine induced), resolved, bronchitis, right shoulder pain, osteoarthritis in toes, and frequent heartburn or any other condition 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:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Bilateral L4 pars interarticularis defect with back pain symptoms | 5239 | 20% |
| **COMBINED** | **20%** |

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The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20101205, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

President

Physical Disability Board of Review

MEMORANDUM FOR DEPUTY COMMANDANT, MANPOWER & RESERVE AFFAIRS

COMMANDER, NAVY PERSONNEL COMMAND

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATIONS

Ref: (a) DoDI 6040.44

(b) PDBR ltr dtd 12 Jan 12 ICO xxxxxxxxxxxxxxx

(c) PDBR ltr dtd 4 Jan 12 ICO xxxxxxxxxxxxxxx

(d) PDBR ltr dtd 22 Dec 11 ICO xxxxxxxxxxxxxxx

(e) PDBR ltr dtd 19 Jan 12 ICO xxxxxxxxxxxxxxx

(f) PDBR ltr dtd 12 Jan 12 ICO xxxxxxxxxxxxxxx

1. Pursuant to reference (a) I approve the recommendations of the Physical Disability Board of Review set forth in references (b) through (f).

2. The official records of the following individuals are to be corrected to reflect the stated disposition:

a. XXX XX 3238: Assignment to the Temporary Disability Retired List with a 60 percent disability rating for the period 31 October 2007 through 30 April 2008 and placement on the Permanent Disability Retired List with a 30 percent rating effective 1 May 2008.

b. XXX-XX-0919: Placement on the Permanent Disability Retired List with a 30 percent disability rating 5 January 2006.

c. XXX XX 3246: Placement on the Permanent Disability Retired List at 30 percent effective 15 October 2006.

d. XXX XX 1973: Placement on the Permanent Disability Retired List with a 50 percent disability rating effective 31 Aug 2011.

e. XXX XX 2573: Separation from the Naval service due to physical disability rated at 20 percent (increased from 10 percent) effective 1 August 2005.

3. Please ensure all necessary actions are taken to implement these decisions, including the recoupment of disability severance pay, if warranted, and notification to the subject members once those actions are completed.

Assistant General Counsel

(Manpower & Reserve Affairs)