RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: xxxxxxxxxx BRANCH OF SERVICE: marine corps

CASE NUMBER: PD1100125 SEPARATION DATE: 20060115

BOARD DATE: 20111011

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty LCpl/E-3 (0331, Machine Gunner) medically separated for left thigh pain, the residual of a combat-related shrapnel injury. He did not respond adequately to therapy and was unable to perform within his military occupational specialty or meet physical fitness standards, was placed on limited duty and underwent a Medical Evaluation Board (MEB). Difficulty walking involving the pelvic joint was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable. Additional conditions supported in the Disability Evaluation System (DES) file are discussed below, but were not forwarded for PEB adjudication on the NAVMED Form 6100/1. The PEB adjudicated the pain in left thigh condition as unfitting, rated 10% IAW with the Veterans Administration Schedule for Rating Disabilities (VASRD), status post (s/p) pilonidal cyst as Category III (conditions that are not separately unfitting and do not contribute to the unfitting condition), and tobacco abuse as Category IV (conditions which do not constitute a physical disability). The CI made no appeals and was medically separated with a 10% disability rating.

CI CONTENTION: “Since being discharged I get shooting pains in my hip when it is cold outside or if I keep my leg in the same position for a long period (Sic – *of*) time. My hip will cause severe pain and makes it hard to take or deal with. I’m still not able to stand for long periods of time without my hip starting to hurt. I’m also still have (Sic – *having*) very little feeling in my upper leg. It is difficult for me to carry heavier things for a period of time before my hip starts to hurt if I am carrying the weight on that side. Also still don’t have full range of movement that I do in my right hip.” He additionally lists all of his VA conditions and ratings as per the rating chart below. A contention for their inclusion in the separation rating is therefore implied.

RATING COMPARISON:

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| **Service IPEB – Dated 20051129** | **VA (1 Wk. Pre Separation) – All Effective 20060116** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Left Thigh Pain | 5399-5312 | 10% | Left Thigh Injury | 5314 | 10% | 20060106 |
| Status Post Pilonidal Cyst | Cat III | Pilonidal Cyst Residual Scar | 7805 | 0% | 20060106 |
| Tobacco Abuse | Cat IV | No VA Entry | 20060106 |
| ↓No Additional MEB Entries↓ | Patellofemoral Pain R. Knee | 5014 | 10% | 20060106 |
| Thoracolumbar Spine Strain | 5237 | 10% | 20060526 |
| 0% x 2 | 20060106 |
| **Combined: 10%** | **Combined: 30%** |

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impact that his service-incurred conditions have had on his quality of life. However, the military services, by law, can only rate and compensate for those conditions that were found unfitting for continued military service based on the severity of the condition at the time of separation and not based on possible future changes. The VA, however, can rate and compensate all service connected conditions without regard to their impact on performance of military duties, including conditions developing after separation that are direct complications of a service connected condition. The VA can also increase or decrease ratings based on the changing severity of each condition over time. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to VASRD standards, based on severity at the time of separation. It must also judge the fairness of PEB fitness adjudications based on the fitness consequences of conditions as they existed at the time of separation. The Board’s threshold for countering DES fitness determinations is higher than the VASRD §4.3 reasonable doubt standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 “fair and equitable” standard. Furthermore, a “crystal ball” requirement is not imposed on the service PEBs by the Board and the 12-month window specified in DoDI 6040.44 is appropriate for rating comparisons, but not for new developments after separation.

Left Thigh Condition. The condition began in May 2005 when he sustained a combat-related shrapnel injury to the proximal, anterior left thigh while deployed to Iraq. Surgical debridement, foreign body removal and wound closure were performed (“washout” and delayed closure two days later). Although the wound was deep requiring debridement, there was no shattering of bone, prolonged infection, sloughing of muscle or soft tissue, or intermuscular scarring. The CI continued to experience ongoing post-operative pain that did not respond adequately to aggressive physical therapy. The CI continued to complain of upper thigh numbness, tingling and left hip pain while standing, and he was unable to run, jump or lift heavy objects. The narrative summary examiner reported normal posture, gait and stance. There was no thigh atrophy, although paresthesia, mild hip weakness and evidence of tight left hip muscles were noted (flexed to 110⁰). There was no weakness of muscle action about the knee. The compensation and pension examiner one week before separation reported that the CI could grocery shop, take out trash cans, mow the lawn, do gardening and climb stairs. Examination revealed normal posture and gait, with no need for assistive devices. A 9 cm disfiguring scar, which was not functionally limiting, was present on the anterior proximal left thigh. There was no muscle atrophy. “Evidence of superficial femoral nerve damage was present,” but sensation was otherwise recorded as intact. Pain-limited left hip motion was present (flexion 90⁰, extension 30⁰, abduction 30⁰, adduction 25⁰, external rotation 60⁰), but muscle strength was normal. X-rays of the left hip were normal. The PEB and VA chose different coding options for the condition, but did not result in a different rating. The PEB’s reliance on §4.73 (muscle injuries) was appropriate, but its 5399-5312 coding choice (Group XII muscle injuries - foot and leg) was not consistent with the CI’s thigh injury. Under the most appropriate code 5314 (Group XIV, anterior thigh group), loss of function of a moderate degree justifies the 10% rating. A moderately severe loss would be required to justify the next higher rating of 30%. The Board members agreed that the functional loss evidenced by the data just presented does not support the 30% rating. The Board also considered alternate pathways to a higher rating. While a 10% rating is also supported under §4.40 (functional loss) or §4.59 (painful motion), this provides no additional benefit to the member. The mild limitation of hip motion in evidence did not reach the minimum compensable levels under §4.71a. The Board also considered rating under diagnostic code 5255, impairment of femur due to fracture or malunion, but there was no evidence of femur injury in this case. After due deliberation in consideration of the totality of the evidence, the Board concluded that there was insufficient cause to recommend a change from the PEB adjudication for the left thigh condition.

The Board deliberated if additional disability rating was justified for peripheral nerve impairment in this case due to thigh tingling and numbness. There was, however, no evidence of loss of lower extremity strength or of diminished tendon reflexes. The presence of functional impairment with a direct impact on fitness is the key determinant in the Board’s decision to recommend any condition for rating as additionally unfitting. There is no evidence in this case of functional impairment attributable to peripheral neuropathy. The Board therefore concludes that additional disability rating was not justified on this basis.

Other PEB Conditions. The other condition adjudicated as not unfitting by the PEB was s/p pilonidal cyst in the coccyx area. This condition was not profiled, implicated in the non-medical assessment or noted as failing retention standards. It was reviewed by the action officer and considered by the Board. There was no indication from the record that it significantly interfered with satisfactory duty performance. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for the stated condition. Tobacco abuse is a condition not constituting a physical disability IAW DoDI 1332.38. The Board therefore has no reasonable basis for recommending this condition as an additional unfitting condition for separation rating.

Remaining Conditions. Other conditions identified in the DES file were headache, loss of consciousness during shrapnel injury, and a history of a broken arm. None of these conditions were clinically or occupationally significant during the MEB period, and none carried an attached limited duty or 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 patellofemoral pain syndrome and residual thoracolumbar spine strain s/p contusion 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. 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 left thigh pain condition and IAW VASRD §4.73, the Board unanimously recommends no change in the PEB adjudication. In the matter of the pilonidal cyst condition, the Board unanimously recommends no change from the PEB adjudication as not unfitting. The Board unanimously agrees that there were no other conditions eligible for Board consideration which could be recommended as additionally unfitting for rating at separation.

RECOMMENDATION: TheBoard therefore recommends that there be no recharacterization of the CI’s disability rating and separation determination.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Left Thigh Pain | 5399-5312 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110224, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

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 President

 Physical Disability Board of Review

