RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: xxxxx BRANCH OF SERVICE: navy

CASE NUMBER: PD1100230 SEPARATION DATE: 20071001

BOARD DATE: 20111018

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Petty Officer Third Class/E-4 (MA3, Master-at-Arms) medically separated for post-laminectomy syndrome. The CI initially complained of slipping into a snow-covered hole while marching in January 2002 and developed back pain which was diagnosed as muscle strain. In September 2004, the CI reinjured his back as a result of a motor vehicle accident and was diagnosed with a lumbar strain. The CI’s pain persisted and a magnetic resonance imaging in 2005 confirmed herniated lumbar discs. The CI underwent a lumbar hemilaminectomy and discectomy in April 2006, with complications of wound infections (requiring wound revision) and right leg radicular pain. Despite two epidural steroidal injections, Transcutaneous Electrical Nerve Stimulation (TENS) unit, medications, physical therapy, neurosurgery and several episodes of light duty and a six-month limited duty, the CI was unable to perform within his military occupational specialty or meet physical fitness standards and was referred to a Medical Evaluation Board (MEB). The MEB forwarded “lumbago and post-laminectomy syndrome of unspecified region” to the Physical Evaluation Board (PEB) on NAVMED 6100/1. The Informal PEB (IPEB) adjudicated the post-laminectomy syndrome as unfitting rated with the disability code of 8620 at 20% with probable application of SECNAVINST 1850.4e and DoDI 1332.39. The PEB adjudicated the “lumbago” as Category II (conditions that contribute to the unfitting condition). The CI requested a Reconsideration which resulted in the IPEB’s rating being upheld. The CI was medically separated with a 20% combined disability rating.

CI CONTENTION: “The laminectomy procedure that had been performed on L-5 did not resolve the pain of the lower back as well as the right leg and the numbness of the right foot. The lower back pain is an everyday issue that has hampered daily activities.”

RATING COMPARISON:

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| **Service IPEB – Dated 20070613** | **VA (3 Mo. After Separation) – All Effective 20071002** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Post Laminectomy Syndrome | 8620 | 20% | Right Leg Radiculopathy | 8520 | 10% | 20080115 |
| Lumbago | Category II | Lumbosacral Strain w/ Herniated Disc | 5237 | 10% | 20080115 |
| ↓No Additional MEB Entries↓ | Right Shoulder Strain | 5201 | 10% | 20080115 |
| 0% x 2 / NSC x 0 | 20080115 |
| **Combined: 20%** | **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. It is a fact, however, that the Disability Evaluation System (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 Board utilizes VA 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 is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Post-Laminectomy Syndrome. The CI had persistent pain in the back and radiating pain down the right leg into the right foot following L5-S1 right hemilaminectomy and wound revision. MRI indicated post-surgical central disc herniation, with moderate central canal stenosis, scar tissue surrounding the right S1 nerve root, and mild to moderate right neuro foraminal narrowing. Radicular pain in the right leg is well documented in the service treatment records. The MEB physical indicated “work associated numbness and tingling of R leg and toes.” Back pain and pain and episodic numbness into the right leg down to the foot was well documented with multiple pain therapies tried. Constant pain was 2-3/10 with multiple exacerbations up to 7-8/10 and interference with sleep. Recurrent radiating right leg pain into the right foot/toes with minimal activity was not controlled by position changes, medication (including “nerve pain” medicines) or progressive muscle relaxation. There was no evidence of fixed neurologic deficit or organic changes of the right lower extremity; however, there were episodes of right leg weakness and parasthesias. There were multiple periods of duty limitation, no emergency room visits, and only rare indications of placement on Sick in Quarters. The MEB examination seven months prior to separation indicated recurrence of repeated radiation of right leg pain on any activity beyond simple ambulation which continued through the remainder of service.

At the VA compensation and pension (C&P) examination three months after separation, there was indication of constant pain radiating to the CI’s right lower leg and great toe. The examiner further noted that sensory functions were intact throughout the right leg and motor function was normal although there were some symptoms consistent with paresthesias to the right great toe. On physical exam, there was positive straight leg raising on the right with pain radiating to the hamstring and lower back on sitting and lying down.

The PEB coded the post-laminectomy syndrome condition at 8620 sciatic nerve neuritis and rated at 20% (moderate) and the VA coded the condition 8520 (sciatic nerve paralysis of, mild) rated at 10%. The provisions of §4.123, neuritis provide that sciatic nerve neuritis, not characterized by organic changes, may have a maximum rating of moderately severe, incomplete paralysis (40%).

The Board did not find sufficient evidence of motor involvement, organic changes, or interference in activities of daily living, or other disability to justify a moderately severe level of impairment. Independent rating of the evidence would best support the 10% (mild) criteria for 6260 sciatic nerve neuritis; however, by precedence, the Board cannot decrease a PEB rating determination. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the post-laminectomy syndrome condition coded as 8620 sciatic nerve neuritis and rated at 20% (moderate).

Lumbago Condition. The PEB found the lumbago condition as a Category II condition. The Board deliberated if lumbago were a separately unfitting and ratable condition or if the lumbago symptoms were combined with the PEB’s peripheral nerve coding for the CI’s primary unfitting post-laminectomy syndrome. The CI frequently demonstrated painful and pain-limited lumbar spine motion and had episodic treatment notes demonstrating tenderness to palpation with and without radiating right leg/foot pain and parasthesias. Lower back pain was a principle compliant from the CI with exacerbations due to activity and lifting and could not be separated from the disability picture of the post-laminectomy syndrome.

There was one goniometric range of motion (ROM) evaluation in evidence and two non goniometric evaluations in evidence which the Board weighed in arriving at its rating recommendation. The exams are summarized in the chart below.

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| Goniometric ROM - Thoracolumbar | MEB ~ 7 Mo. Pre-Sep | STR ~4 Mo. Pre-Sep | VA C&P ~ 7Mo. After-Sep |
| Flex (0-90) | No gonio | No gonio | 90⁰ (80⁰)\* |
| Ext (0-30) | No gonio | No gonio | 30⁰(20⁰)\* |
| R Lat Flex (0-30) | No gonio | No gonio | 30⁰ |
| L Lat Flex 0-30) | No gonio | No gonio | 30⁰ |
| R Rotation (0-30) | No gonio | No gonio | 30⁰ |
| L Rotation (0-30) | No gonio | No gonio | 30⁰ |
| COMBINED (240) | - | - | 240⁰(220⁰) |
| Comment | No muscle spasm; straight leg raising test neg; sensory, motor wnl; balance nml; \*see text above for radicular symptoms | Tenderness to palpation; pain in area over laminectomy; muscle spasms, step deformity(an sign of a displacement of the vertebral column); abnormal spine motion; abnormal gait | \*Deluca factor “loss of 10⁰” after repetitive motion x3 due to pain; straight leg raising test positive radiating to hamstring and lower back sitting and lying down; motor intact; Rt leg sensory intact but paresthesias to right great toe; X-ray “straightening of lumbar lordosis, which may be related to muscle spasm:  |
| §4.71a Rating (Spine) | 10% | 20% | 10% |
| §4.124a Rating (Nerve) | 20% (PEB 20%)) | - | 10% |

In June 2006, the CI was advised to wear the TENS unit continuously due to constant back spasms; not to lift greater than 25 pounds; no repetitive lifting; and no frequent position changes. The MEB exam seven months prior to separation noted that the CI still experienced low back pain radiating to his hips, primarily right-sided, worse with immobility and occasionally resolved with rest. The constant pain was rated at 4/10 as “moderate” pain. The non medical assessment in April 2007 noted that the CI missed six hours per week of work due to his back condition. The service treatment record four months prior to separation indicated that there was tender to palpation, muscle spasms, step deformity abnormal lumbar motion, pain and an abnormal gait due to pain. At the VA Compensation and Pension exam seven months after separation, there was documentation that the CI had constant pressure and sharp pain rated 1-7/10, along with weakness, stiffness, swelling heat, redness instability, locking, fatigue and lack of endurance from lifting, prolonged standing, bending, pushing and pulling. The CI utilized the TENS unit, ice heat and massage and medications to relieve the pain. The examiner noted a period of incapacitation where according to the CI; he was placed on bed rest with a “sick in quarter’s status” for 24-72 hours during the last 12 months of his military service. It was also noted that the CI had pain radiating to his lower leg and an occasional tingling sensation to his great toe. The examiner further noted that sensory functions were intact throughout the right leg and motor function was normal, although there were some symptoms consistent with paresthesias to the right great toe.

The VA considered the CI’s back injury and rated this condition based on spinal flexion. The VA coded the condition as 5237 lumbosacral or cervical strain, “forward flexion of the thoracolumbar spine greater than 60 degrees but not greater than 85 degrees,” and rated 10%. The Board considered the tenants of §4.14, avoidance of pyramiding, and considered that the radicular sciatic pain was distinctly separate from the back stiffness and painful lumbar motion. The preponderance of the service treatment record indicated painful or pain-limited lumbar flexion without an abnormal gait and the treatment record note four months prior to separation, which demonstrated lumbar spasm and abnormal gait (20% criteria) was considered an outlier and not indicative of the level of the CI’s disability. After due deliberation, the Board majority agreed that the preponderance of the evidence with regard to the functional impairment of the lumbago condition favors its recommendation as an additionally unfitting condition for separation rating. It is appropriately coded 5237 and meets the VASRD §4.71a criteria for a 10% rating.

Remaining Conditions. Other conditions identified in the DES file were right shoulder strain (VA 10%) and hyperlipidemia. Several additional non-acute conditions were also documented. None of these conditions were significantly clinically or occupationally active during the MEB period, none carried duty limitations, 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. The one condition (right shoulder strain) as identified by the VA proximal to separation was 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 thus has no 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 post-laminectomy syndrome condition and IAW VASRD §4.124a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the lumbago condition, the Board, by a vote of 2:1, recommends that the lumbago condition be added as an additionally unfitting condition for separation rating coded 5237 and rated 10%. The single voter for dissent (who recommended keeping the PEB rating of Category II) submitted the addended minority opinion. In the matter of the right shoulder strain and hyperlipidemia or 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.

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows and that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of his prior medical separation.

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| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| Post-Laminectomy Syndrome | 8620 | 20% |
| Lumbago | 5237 | 10% |
|  | **COMBINED** | **30%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110321, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans' Affairs Treatment Record.

 President

 Physical Disability Board of Review

MINORITY OPINION:

In my opinion, the CI’s total disability picture is most fairly and accurately characterized as 20%, with post-laminectomy *syndrome* as the primary unfitting condition; and with lumbago as a condition that contributes to the unfitting condition (Category II). It is logical to conclude that the PEB applied the preponderant disability to achieve the “moderate” 20% rating under the sciatic nerve code; thereby leaving an unratable residual for the lumbago itself, hence the Category II designation for the latter and the *syndrome* nomenclature for the former. The VA approach achieved the same overall rating by equally dividing the disability between sciatic and spine codes, hence its “mild” 10% rating under the sciatic code. The majority recommendation which achieves separate ratings while still defending the higher 20% sciatic rating, in effect assigns the unfitting pain to defend the sciatic rating as a *neuritis* in justification of the higher rating. That leaves the majority to conclude that the intrinsic spinal pain and minimal ROM limitation attributable to the lumbago itself remains separately unfitting and separately ratable. I disagree with this latter premise of the majority recommendation. The documentation in evidence does not achieve a reasonable threshold for overturning the IPEB’s adjudication, and 20% is an accurate and fair representation of the CIs s*ervice* disability picture at the time of separation.

RECOMMENDATION: The minority voter respectfully 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** |
| Post-Laminectomy Syndrome | 8620 | 20% |
| Lumbago | Category II  |
|  | **COMBINED** | **20%** |

MEMORANDUM FOR DIRECTOR, SECRETARY OF THE NAVY COUNCIL OF REVIEW

 BOARDS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATION

 ICO xxxxxxxxxxxxx

Ref: (a) DoDI 6040.44

 (b) PDBR ltr dtd 4 Jan 12

 I have reviewed the subject case pursuant to reference (a) and non-concur with the recommendation of the PDBR as set forth in reference (b). In making my decision, I concurred with the PDBR minority opinion for the reasons stated therein. Therefore,XXXXXXXX records will 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.

 Principal Deputy

 Assistant Secretary of the Navy

 (Manpower & Reserve Affairs)