RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: navy

CASE NUMBER: PD1100484 SEPARATION DATE: 20041231

BOARD DATE: 20120313

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty MM1/E-6 (4295/Machinist’s Mate), medically separated for a thoracolumbar spine condition. Despite surgery and conservative treatment the CI did not respond adequately to meet the physical demands within his Military Occupation Specialty (MOS) or meet physical fitness standards. He was placed on an eight month limited duty (LIMDU) and underwent a Medical Evaluation Board (MEB). The MEB forwarded “DDD on multiple levels, status post-operative; congenital stenosis; and degenerative stenosis” on NAVMED 6100/1 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 PEB adjudicated the degenerative disk disease (DDD) on multiple levels, status post-operative nerve root decompression condition as unfitting, rated 20%; IAW Veterans Administration Schedule for Rating Disabilities (VASRD). The PEB also adjudicated “degenerative stenosis, congenital stenosis, and DDD on multiple levels” as category II (“conditions that contribute to the unfitting condition”). The CI made no appeals, and was medically separated with a 20% combined disability rating.

CI CONTENTION: “Rating was 20% based upon congenital stenosis. Not considered in decision was entrance physical with no defects or scoliosis; the fact that US Naval radiologist, in 2004, showed scoliosis as direct result of Naval service and injuries; and the VA having rated at a 30% disability. I feel with this information considered, I may have merited 30% from the US Navy MEB and PDRB. I request that my case be reviewed based upon these items and if found, that I would be awarded said retirement based upon my nearly dozen years of faithful service and the injuries incurred during this service during the Gulf War and Global War on Terror years of service. Thank you.”

RATING COMPARISON:

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| **Service PEB – Dated 20041122** | **VA (2 Mos. After Separation) – All Effective Date 20050101** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| DDD, Status Post Operative | 5242 | 20% | DDD, Lumbar Spine | 5242 | 20%\* | 20050319 |
| Degenerative Stenosis | Cat II |
| Congenital Stenosis | Cat II |
| DDD, on Multiple Levels | Cat II |
| ↓No Additional MEB/PEB Entries↓ | 0% x 2/Not Service Connected x 4 | 20050319 |
| **Combined: 20%** | **Combined: 20%\*\*** |

\*Changed from 10% on 20081030 VARD (Original).

\*\*Overall combined rating changed to 30% effective 20091008 for increased left ankle sprain at 10%.

ANALYSIS SUMMARY: The Board acknowledges the CI’s opinion that a service medical error was responsible for his disability, with the implication that the service disability rating should provide for remedy. It must be noted for the record that the Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to allegations regarding suspected service improprieties or faulty medical care. The Board’s role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB disability ratings and fitness determinations as elaborated above. The Board agreed to recognize that the service did consider four conditions associated with the thoracolumbar condition, not merely the congenital stenosis.

Thoracolumbar spine condition. In June 1993 the CI suffered a lifting injury resulting in mid thoracic back pain and received conservative treatment with medications, physical therapy, epidural steroidal injections and temporary limitations of duty for over seven years. Three radiographs from 1994-2004 demonstrated a moderate dextroconvex thoracic scoliosis. He was consistently diagnosed with mid-thoracic back pain with spasm. In August 2000 he suffered another lifting injury resulting in lumbar low back pain with left leg radiculopathy for which he received conservative treatment with medications, chiropractic care and physical therapy. MRI’s revealed disc herniation which radiographically worsened by November 2003 demonstrating significant impingement on the neural foramina at L5-S1 and DDD at L3-L4, L4-L5 as well as a large Schmorl’s node at the superior endplates of L4. He underwent definitive surgical L5-S1 discetomy treatment in December 2003 which resulted in a 95% relief of symptoms 6 weeks post-operatively; however the CI had a resurgence of his mid thoracic pain. In April 2004 the CI was placed on LIMDU for lumbar spondylosis and scoliosis with limitations of no heavy lifting, no overseas duty, no deployments and no prolonged sitting or standing. The NMA corroborated the LIMDU diagnosis, restrictions and in addition noted his inability to perform the duties within his rating in a sea duty assignment. There were two goniometric range-of-motion (ROM) evaluations and one non goniometric ROM evaluation 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~3 Mo. Pre-Sep(20040915) | PT~1 Mo. Pre-Sep(20041116) | VA C&P~2Mo. After-Sep(20050319) |
| Flex (0-90) | Not measured | 55⁰ | 85⁰(80⁰ Deluca)  |
| Ext (0-30) | Not measured | 15⁰ | 25⁰  |
| R Lat Flex (0-30) | Not measured | 35⁰ | 25⁰ |
| L Lat Flex 0-30) | Not measured | 40⁰ | 25⁰ |
| R Rotation (0-30) | Not measured | 15⁰ | 25⁰ |
| L Rotation (0-30) | Not measured | 20⁰ | 25⁰ |
| COMBINED (240) | Not measured | 180⁰ | 210⁰ |
|  | Decreased ROM in all areas, especially flexion; Frequent back pain; motor/sensory intact |  | Pain on motion; slight curve in thoracic spine; minimal ; mild/moderate scoliosis thoracic spine rotoscoliosis; Lumbar scoliosis; straight leg raise 30 degrees; guarding and resistance; motor/sensory intact |
| §4.71a Rating | 10% | 20% | 20% |

The MEB examination historically documented frequent back pain which caused him difficulty performing his MOS requirements but he was able to live and do most things that he would like and noted the medication to control his pain made him drowsy. Pertinent exam findings included normal motor strength, no atrophy or fasciculation, able to toe and heel walk, and able to squat and rise without difficulty. There was no comment on spasm or spinal contour. Both plain and MRI radiographs revealed L4 Schmorl node, congenital superimposed on degenerative stenosis, multiple degenerative changes throughout the lumbar spine with no significant disc herniation or compression. The examiner diagnosed four thoracolumbar conditions as referenced in the rating chart above, recommended a fitness evaluation and placed the CI on another LIMDU with similar duty restrictions as previously given, in addition, added no standing in formation, no wearing of load-bearing equipment or Kevlar armor and to work only a eight hour day. The Department of Veterans’ Affairs (DVA) Compensation and Pension (C&P) examination historically documented that the CI had sciatic pain weekly, aggravated by prolonged sitting and standing, improved with stretching and changing positions and did not require back braces. Pertinent exam findings included painful motion with flexion and extension with Deluca positive for flexion to 80 degree, normal motor and sensory exam, and normal posture with a slight curve in the thoracic spine. Plain radiographs revealed mild rotoscoliosis in his thoracic spine and decreased disc height at the L5-S1, possibly old L4 compression fracture with minimal rotoscoliosis. The examiner diagnosed two conditions; DDD lumbar spine limiting his ability to lift and do repetitive activities and scoliosis mild to moderate of the thoracic spine more likely than not congenital in nature and is less likely than not related to any service-connected condition.

The PEB and the VA chose the same coding for the DDD, status post-operative condition 5242 (degenerative arthritis of the spine). The PEB rated the condition at 20% IAW 4.71 based on the PT ROM’s specifically requested for the PEB. The VA initially rated the condition at 10%, but in 30 October 2008, after a lengthy appeals process, the VA increased the rating to 20% retro effective to 1 January 2005. The decision review officer based the increase on forward flexion of the spine greater than 30 degrees but not greater than 60 degrees citing evidence used from a VA decision in 10-10-08 which was not in evidence for review. The VA, additionally, granted service-connection for scoliosis of the thoracolumbar spine at 0% coded 5299-5237 but subsequently recognized their error and withdrew this rating notating “the combined evaluation of degenerative disc disease with scoliosis of the thoracolumbar spine (claimed as multilevel DJD, and degenerative stenosis) is continued.” Although the CI had a sensory radiculopathy with pain, there was no significant motor component to the 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. Since no evidence of functional impairment exists in this case, the Board cannot support a recommendation for additional rating based on peripheral nerve impairment. The Board agreed there was no additional rating to consider for the thoracic scoliosis as this was subsumed in the general rating formula for diseases and injuries of the spine and IAW VASRD §4.14 the evaluation of the same disability under various diagnoses is to be avoided. The Board also agreed there was no evidence for incapacitating episodes for rating intervertebral disc syndrome and noted that in fact the CI had 95% improvement of his lumbar radicular pain after surgery which continued to improve at the time of his VA exam. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the thoracolumbar spine condition.

Other PEB Conditions. The PEB adjudicated degenerative stenosis, congenital stenosis and degenerative disc disease on multiple levels as a category II (“conditions that contribute to the unfitting condition”). These conditions were discussed under the thoracolumbar spine condition. All evidence considered, there is not reasonable doubt in the CI’s favor supporting recharacterization of the PEB fitness adjudication for any of the stated conditions.

Remaining Conditions. Other conditions identified in the DES file were pilonidal cyst s/p removal, left ankle sprain, chronic right knee pain, and recurrent hemorrhoids. Several additional non-acute conditions or medical complaints were also documented. None of these conditions were significantly clinically or occupationally active during the MEB period, none carried attached duty limitations, and none were implicated in the non-medical assessment (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. In the matter of the DDD, status post operative condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication at separation or permanently. In the matter of the degenerative stenosis and degenerative disc disease on multiple levels conditions, the Board unanimously recommends no change from the PEB adjudications as not unfitting. In the matter of the pilonidal cyst s/p removal, left ankle sprain, chronic right knee pain, and recurrent hemorrhoids conditions 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, 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** |
| DDD, Status Post Operative | 5242 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110711, 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 ltr dtd 2 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)