RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXX BRANCH OF SERVICE: navy

CASE NUMBER: PD1100879 SEPARATION DATE: 20011009

BOARD DATE: 20120501

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Naval Reserve Lieutenant/O-3 (1305/formerly qualified Naval Aviator or Naval Flight Officer whose rating was terminated for medical reasons, who was performing duties as a Division Officer), medically separated for multilevel degenerative disk disease (DDD) of the lumbar spine. He failed to respond adequately to treatment and was unable to perform within his Designator or meet physical fitness standards. He was placed on limited duty and underwent a Medical Evaluation Board (MEB). Multilevel DDD of the lumbar spine and skin test positive PPD 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 PEB adjudicated the multilevel DDD of the lumbar spine condition as unfitting, rated 20%, with probable application of SECNAVINST 1850.4E, DoDI 1332.39 and the Veterans Administration Schedule for Rating Disabilities (VASRD). The Board additionally adjudicated the history involving lumbar spine pain condition as category II (conditions that contribute to the unfitting condition), and the skin test positive PPD condition as category III (conditions that are not separately unfitting and do not contribute to the unfitting condition). The CI made no appeals, and was medically separated with a 20% combined disability rating.

CI CONTENTION: “Because my conditions are painfully permanent and debillitating (sic) causing the involuntary end of a promising Naval career I worked hard to achieve (sic). Despite my desire to continue to serve my country as a commissioned officer the fact that my disability is permanent and debillitating (sic) has made that impossible even in a non-combat role. This became obvious when I recently contacted the Air National Guard and was told that because the VA rated me at 50% I was ineligible to join them in any capacity. It didn’t matter that the Navy incorrectly rated me at 20%. They felt the VA rating was more accurate.” He elaborates no specific contentions regarding rating or coding and mentions no additionally contended conditions. He provides a copy of his 25 June 2002 VA Rating Decision in support of his application and a contention for inclusion of his VA conditions and ratings as per the rating decision is therefore implied.

RATING COMPARISON:

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| --- | --- |
| **Service PEB – Dated 20010814** | **VA (5 Mo. Pre Separation) – All Effective Date 20011010** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Multi-Level Lumbar DDD | 5293 | 20% | DDD of the Lumbar Spine  | 5293 | 40% | 20010515 |
| Hx Lumbar Spine Pain  | Category II |
| Positive PPD Skin Test | Category III | No Corresponding VA Entry |
| ↓No Additional MEB/PEB Entries↓ | Lt Ankle Sprain | 5271 | 10% | 20010515 |
| Lt Hip, Thigh, Groin Pain . . .  | 5019 | 10% | 20010515 |
| 0% x 5/Not Service-Connected x 5 | 20010515 |
| **Combined: 20%** | **Combined: 50%** |

ANALYSIS SUMMARY: The DES is responsible for maintaining a fit and vital fighting force. 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. However the Department of Veterans’ Affairs, operating under a different set of laws (Title 38, United States Code), is empowered to compensate service-connected conditions and to periodically re-evaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time. The Board notes that the VASRD standards for the spine, which were in effect at the time of separation, were changed to the current §4.71a rating standards in 2004. The Board is required to review the rating based on the VASRD standards in effect at the time of separation.

The 2001 standards for rating based on range-of-motion (ROM) impairment were subject to the rater’s opinion regarding degree of severity, whereas the current standards specify rating thresholds in degrees of ROM impairment. When older cases have goniometric measurements in evidence and when the VASRD 2002 code 5292 (for limitation of motion, lumbar spine) is applicable, the Board reconciles (to the extent possible) its opinion regarding degree of severity for 5292 with the objective thresholds specified in the current §4.71a general rating formula for the spine. This promotes uniformity of its recommendations for different cases from the same period and more conformity across dates of separation, without sacrificing compliance with the DoDI 6040.44 requirement for rating IAW the VASRD in effect at the time of separation.

Multilevel Degenerative Disc Disease of the Lumbar Spine Condition. The CI had a 3 year history of chronic back pain and was placed on two 6 month periods of LIMDU with physical therapy without significant improvement. The onset of back pain was not associated with any trauma and initially began after jogging. Lumbar spine imaging done 30 July 1998 revealed early degenerative facet joint disease involving lumbar spine at L5- S1. However, lumbar spine series dated 23 March 1999 and 01 November 1999 were both read as normal. A bone scan accomplished on 9 July 1998 was noted to be negative. He was managed conservatively with good results. However, he was unable to tolerate prolonged sitting due to back pain and subsequently removed from aviation duties. He again presented with LBP in early 2001 which did not respond adequately to conservative management and he was again referred to an MEB. The MEB examination was accomplished 22 March 2001, a little over 6 months prior to separation. He was noted to have mid to lower back pain with occasional complaint of radiating pain without neurological symptoms. On examination, the lumbar spine had normal contour and palpation was tender in the bilateral lumbar spine beginning in the region of L1 and extending bilaterally down to the sacrum involving the sacroiliac joint. Sensation and motor strength examinations were normal as were deep tendon reflexes. Straight-leg raise was negative both seated and supine. MRI of the lumbar spine showed mild multilevel degenerative disc disease (DDD) at L3-4, L4-5 and L5-S1 (desiccation or loss of water in the disk as well as mild collapse) and also a small protrusion posteriorly without impingement on any neural structures (thecal sac or nerve roots).

The CI underwent three VA Compensation and Pension (C&P) examinations on 15 May 2001, a little less than 5 months prior to separation. The general medical examination was first, and the examiner recorded an examination of the lumbar spine that documented flexion of 90 degrees with pain, extension of 15 degrees with pain, right and left lateral bending of 20 degrees, right rotation of 35 degrees and left rotation of 30 degrees. Deep tendon reflexes were normal and the CI was able to squat and walk on his toes and heels without difficulty. The neurology C&P examination documented a normal neurological examination including strength, reflexes, and sensation. Straight leg raising was negative. Gait was normal including walking on toes and heels. Finally, the joint and back C&P examination noted a history of constant low back pain for which he took Motrin, limited by gastric distress. Thoracolumbar ROM was limited by pain to 60 degrees of flexion, 10 degrees of extension, 10 degrees of left lateral flexion, and 20 degrees of right lateral flexion (rotation was not reported). Supine straight leg raising caused back pain at 70 and degrees but did not cause any radicular symptoms. Sitting straight leg raising was negative to 90 degrees. X-rays of the lumbosacral spine and pelvis were normal. The examiner characterized the back condition as a “severe strain” based on his examination. At an ER visit on 26 June 2001, 3 months prior to separation, flexion and deep tendon reflexes were both noted to be normal. The CI was placed on quarters for 24 hours; this is the only documented placement on quarters for LBP found in the service treatment record (STR). The PEB and VA both rated the back condition under code 5293, intervertebral disc syndrome. The PEB rated the condition 20% (moderate, recurrent attacks) based on the NARSUM and STR. The VA rated the condition 40% (severe, recurring attacks with intermittent relief) based solely on the single joint and back C&P examination. Due to the significant differences between the ratings adjudicated by the PEB and VA under the 5293 code, the Board carefully considered the whole record in order to develop a consistent picture of the CI’s back condition.

The Board notes that the VA awarded 40% based on the report of the CI of significant functional impairment and limitations in lifting, bending, twisting, running and jumping. The CI was restricted from running, marching, prolonged standing or sitting and heavy lifting, and his commander noted that even though he had been observed to be in pain, he functioned well in shore based duties including standing watch in port. The Board also noted that although there was radiographic DDD, there was no neural impingement and no objective examination findings of radiculopathy. MRI findings of DDD are not uncommon in his age group and that these correlate poorly with symptoms. The Board also notes that although activities were restricted, he was able to continue with his duties and placed on quarters one time for 24 hours. Based on the evidence of the NARSUM and STR, Board members concluded that when rating using the 5293 code the CI’s condition did not more nearly approach the 40% rating than the 20% rating assigned by the PEB. The Board considered rating using the 5292 code for limitation of motion and noted the significantly different C&P ROM examination results obtained on the same day. The Board also noted the normal gait, ability to squat without difficulty, and the range of straight leg raising that was more consistent with the examination results from the general C&P examiner as well as physical therapy treatment records and the known pathology.

The Board also noted the flexion was normal when seen in the ER over a month later for an exacerbation of pain, and that there was no reverse lordosis was noted on imaging or examination. Taken together, the ROM examinations, including the C&P examinations and STR, most nearly approximate the 20% rating under the 5292 code, for moderate limitation of motion, rather than the higher rating. The Board also noted that under the new spine rating guidelines not in effect at that time, the range of motion corresponds with the 20% rating. The Board also considered rating under the VASRD diagnostic code 5295, lumbosacral strain; however, the members agreed that the preponderance of evidence did not support the 40% rating. All evidence considered, there is not reasonable doubt in the CI’s favor supporting a change from the PEB’s rating decision for the low back pain secondary to the DDD condition.

Other PEB Conditions. Lumbar pain was considered above. A positive PPD was determined to be a category III condition, one which is not separately unfitting or contributes to the unfitting condition. The CI was appropriately treated with isoniazide. No sequelae were noted nor further follow-up required. 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 either of the stated conditions.

Remaining Conditions. Other conditions identified in the DES file were headaches, a finger fracture, left sided hip pain of the greater trochanter, knee pain, ankle pain, fracture of his toe, pes planovalgus, eye twitching, frequent indigestion/gastritis, and sleep disturbance. 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 carried attached 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. Additionally pseudofolliculitis barbae and several other non-acute conditions were noted in the VA proximal to separation 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. As discussed above, PEB likely reliance on SECNAVINST 1850.4E and DoDI 1332.39 for rating multilevel DDD of the lumbar spine was apparently operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the chronic LBP condition, the Board unanimously recommends no change from the PEB adjudication. In the matter of the skin test positive PPD, finger fracture, left sided hip pain of the greater trochanter, knee pain, ankle pain, fracture of his toe, pes planovalgus, eye twitch, gastritis, and sleep disturbance 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, 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** |
| Multilevel DDD of the Lumbar Spine | 5293 | 20% |
| **COMBINED** | **20%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110829, 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 16 May 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:

 - XXXXXXXXXXXX XXX XX 4593

 - XXXXXXXXXXXX XXX XX 9519

 - XXXXXXXXXXXX XXX-XX-2098

 - XXXXXXXXXXXX XXX XX 6408

 - XXXXXXXXXXXX XXX-XX-6333

 Assistant General Counsel

 (Manpower & Reserve Affairs