RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: xxxxxxxxxxxxxxxxxxxx BRANCH OF SERVICE: MARINE CORPS

CASE NUMBER: PD1100977 SEPARATION DATE: 20040731

BOARD DATE: 20120626

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (3043/Supply Administration Clerk), medically separated for degenerative spondylolysis of the lumbar spine. He presented for evaluation of chronic low back pain (LBP) in December 2003; however the pain began while running approximately 5 years previously. He was not a surgical candidate and did not respond adequately to conservative management to perform within his Military Occupational Specialty (MOS) or meet physical fitness standards, and underwent a Medical Evaluation Board (MEB). “Degenerative spondylolysis of the lumbar spine and mechanical LBP” were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. No other conditions appeared on the MEB’s submission. The PEB adjudicated the spine condition as unfitting, rated 10% and additionally mechanical low back pain condition rated category II (related to unfitting condition) with application of the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% combined disability rating.

CI CONTENTION: “I was evaluated and medically discharged from the United States Marine Corps due to Degenerative Spondylosis of the Lumbar Spine (mechanical low back pain). Upon a medical review as well as a medical records review, the VA also awarded a disability rating due to cervical strain superimposed on early degenerative joint disease. It is my belief that these conditions are inter-related and should have also been awarded from the PEB Board.”

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in DoDI 6040.44, Enclosure 3, paragraph 5.e.(2) is limited to those conditions which were determined by the PEB to be specifically unfitting for continued military service; or, when requested by the CI, those condition(s) “identified but not determined to be unfitting by the PEB.” The ratings for unfitting conditions will be reviewed in all cases. The requested conditions of cervical strain and sprained right ankle are not within the Board’s purview. Any conditions or contention not requested in this application, or otherwise outside the Board’s defined scope of review, remain eligible for future consideration by the Board for Correction of Naval Records (BCNR).

RATING COMPARISON:

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| **Service PEB – Dated 20040430** | | | **VA (5 Mos. After Separation) – All Effective 20040801** | | | |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| Degenerative Spondylolysis of the Lumbar Spine | 5242 | 10% | Degenerative Spondylosis, Lumbar Spine with Mechanical Low Back Pain | 5239 | 10% | 20050104 |
| Mechanical Low Back Pain | Cat 2 | |
| ↓ No Additional MEB/PEB Entries ↓ | | | Cervical Strain Superimposed on Early Degenerative Joint Disease | 5242-5237 | 20% | 20050104 |
| Sprained Right Ankle with Small Calcaneal Spur | 5271 | 20% | 20050104 |
| 0% x 1/Not Service-Connected x 5 | | | |
| **Combined: 10%** | | | **Combined: 40%** | | | |

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 acknowledges the CI’s contention that suggests service ratings should have been conferred for other conditions documented at the time of separation. The Board wishes to clarify that it is subject to the same laws for service disability entitlements as those under which the Disability Evaluation System (DES) operates. 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 (DVA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions and to periodically reevaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time. The Board utilizes DVA 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 6040.44, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation and is limited to conditions adjudicated by the PEB as either unfitting or not unfitting. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Degenerative Spondylolysis of the Lumbar Spine Condition. The CI had a 5 year history of back pain that had a sudden onset while he was running and was described as sharp and stabbing. The pain caused him to stop running. He had no previous back injury or pain prior to that incident. At the time of his MEB evaluation, he reported pain that was constant but manageable with Tylenol and muscle relaxants. The date is not included on the MEB narrative summary (NARSUM). However, the automated medical board report cover sheet includes the date of 29 March 2004 and the Board assumes the NARSUM was completed proximate to this date. An X-ray from 31 December 2003 was normal except for mild degenerative changes with mild disc space narrowing from L1 through L3 and mild narrowing of the facets at L5-S1. An MRI completed on 13 January 2004 documented mild facet degenerative changes on the left at the L4-5 level, with more advanced degenerative changes and hypertrophy on the right. Similar facet degenerative changes were present in L5-S1, also asymmetric and more pronounced on the right. The CI’s symptoms failed to respond to outpatient therapy with extensive physical therapy and rehabilitation. Additionally corticosteroid injections did not provide any significant relief and surgery was not recommended. The VA Compensation and Pension (C&P) examination performed on 4 January 2005 noted a similar clinical history. Additionally it noted the CI currently had pain on a daily basis and had morning stiffness. Repetitive movement tended to aggravate his LBP and flare-ups depended on activity, especially walking. He would occasionally require narcotic pain medication. During a flare-up he would have additional motion loss and muscular spasms. The examiner opined this additional loss would be 10 to 15 degrees of forward flexion and moderate muscular weakness due to spasm in the lumbar area. No brace, cane or crutch was used and there were no periods of incapacitation.

There were three goniometric ROM evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation.

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| Goniometric ROM - Thoracolumbar | MEB NARSUM ~4 Months  Pre-Separation  (20040329) | MEB H&P ~4 Months  Pre-separation  (20040405) | VA C&P ~ 6 Months  Post-Separation  (20050104) |
| Flex (0-90) | 90⁰ | “Full” | 90⁰ |
| Ext (0-30) | 20⁰ (Discomfort) | <5° | 0⁰ (Pain) |
| R Lat Flex (0-30) | 10⁰ (Discomfort) | 15° | 20⁰ |
| L Lat Flex 0-30) | 10⁰ (Discomfort) | 10° | 20⁰ |
| R Rotation (0-30) | 30° (70⁰ Minimal Discomfort) | Not measured | 20⁰ |
| L Rotation (0-30) | 30° (70⁰ Minimal Discomfort) | Not measured | 20⁰ |
| COMBINED (240) | 190⁰ | NA | 170⁰ |
| Comment | Normal, steady gait; heel and toe walk with good strength and without difficulty; tenderness to palpation midline lower lumbar spine; spasm and tenderness of paraspinal muscles; negative straight leg raise testing; Reflexes 2+, motor 5/5, light touch and pin prick sensation was intact all in bilateral lower extremities; Lasegue’s sign and Faber maneuvers negative; Waddell’s testing 0/5. | L-spine DJD R>L L4-5 levels with chronic pain refractory to corticosteroid injections, non-surgical. | No muscle spasm; mild percussion tenderness lower spine; reflexes equal bilaterally; motor 5/5 bilaterally, and sensation was intact in the bilateral lower extremities; no muscle atrophy; normal lumbar spine x-rays. |
| §4.71a Rating | 10% | 10% | 10% |

The PEB on 30 April 2004 determined the degenerative spondylolysis of the lumbar spine was unfitting rated at 10% as 5242 degenerative arthritis of the spine. Although the VA used a different code, 5239 spondylolisthesis or segmental instability, they also assigned a 10% rating. Neither rating affords any advantage to the CI nor does any other applicable code. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the degenerative spondylolysis of the lumbar spine condition.

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 degenerative spondylolysis of the lumbar spine condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication at separation. There were no other conditions within the Board’s scope of review for consideration.

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** |
| Degenerative Spondylolysis of the Lumbar Spine | 5242 | 10% |
| **COMBINED** | **10%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20111024, 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 Jul 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 that the following individual’s 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:

XXXXXXX, former USN

XXXXXXX, former USMC

XXXXXXX, former USMC

XXXXXXX, former USN

XXXXXXX, former USN

XXXXXXX, former USMC

XXXXXXX, former USN

XXXXXXXXXX

Assistant General Counsel

(Manpower & Reserve Affairs)