

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME:
CASE NUMBER: PD1200095
BOARD DATE: 20121005

BRANCH OF SERVICE: MARINE CORPS
SEPARATION DATE: 20081128

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Sgt/E-5 (6672/Aviation Supply Specialist), medically separated for fibromyalgia causing chronic neck and back pain. The CI had a long history of chronic pain that was ultimately diagnosed as fibromyalgia and was unresponsive to multiple therapeutic modalities. The CI was unable to meet the physical requirements of her Military Occupational Specialty (MOS or satisfy physical fitness standards. She was placed on limited duty (LIMDU) and referred for a Medical Evaluation Board (MEB). Headache and bilateral carpal tunnel syndrome, identified in the rating chart below, were also identified and forwarded by the MEB. The condition of fibromyalgia had been considered by an Informal Physical Evaluation Board (IPEB) in January 2004 and the CI had been found fit for duty. A MEB was performed in August 2007 but apparently did not get forwarded to a PEB. The most recent MEB was performed in June 2008. An IPEB performed on 10 July 2008 adjudicated the fibromyalgia causing chronic neck and back pain condition as unfitting, rated 20%, with application SECNAVINST 1850.4E. The remaining conditions were determined to be Category II (headache), and Category III (carpal tunnel syndrome bilaterally). The CI requested a reconsideration of these findings later that month and submitted documents pertaining to other medical conditions. She also notified the PEB she would request a Formal PEB if the findings were not changed. A Reconsideration PEB convened on 20 August 2008 and no changes were made. The CI accepted the reconsidered findings and was medically separated with a 20% disability rating.

CI CONTENTION: "Not all medical issues were mentioned and given compensation in medical separation. I was separated on Fibromyalsia [*sic*] and Headaches only despite having a Pinched Nerve, Bilateral Carpal Tunnel, (2) Herniated Discs in the low back L4 & L5/S1 as well as the C3 & C2 in the neck. I also suffered from Depression and PTSD from constant sexual harassment (MST) as well as defamation of character."

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in the Department of Defense Instruction (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 headache, pinched nerve and herniated discs in the back and neck, and carpal tunnel syndrome bilaterally conditions as requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview and are addressed below, in addition to a review of the ratings for the unfitting condition of fibromyalgia. The other requested conditions (depression and post traumatic stress disorder) 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.

RATING COMPARISON:

Service FPEB – Dated 20080820			VA (~2 Months Post-Separation) – All Effective Date 20081130			
Condition	Code	Rating	Condition	Code	Rating	Exam
Fibromyalgia Causing Chronic Neck and Back Pain	5025	20%	Strain, Cervical Spine	5237	10%	20090204
Headache	CAT II		Strain, Lumbar Spine	5237	10%	20090204
Carpal Tunnel Syndrome Bilaterally	CAT III		Fibromyalgia with Headaches	5025	40%	20090204
↓ No Additional MEB/PEB Entries ↓			Carpal Tunnel Syndrome, also Claimed as Median Neuropathy, Left (Non-Dominant)	8599-8515	0%*	20090204
			Carpal Tunnel Syndrome, also Claimed as Median Neuropathy, Right (Dominant)	8599-8515	0%*	20090204
			Undifferentiated Somatoform Disorder	9421	10%	20090131
			0% X 1 other / Not Service-Connected x 10			
Combined: 20%			Combined: 60%			

*Both increased to 10% and combined rating increased to 70% effective 20100824.

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which her service-incurred condition continues to burden her. The Board acknowledges the CI’s contention that suggests 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 member’s career, and then only to the degree of severity present at the time of final disposition. However the Department of Veteran 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 his 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.

Fibromyalgia Causing Chronic Neck and Back Pain Condition. The MEB narrative summary (NARSUM) performed on 5 June 2008 describes an extended timeline of chronic pain attributed to multiple different diagnoses, including psychiatric disorders, with the ultimate diagnosis of fibromyalgia. All of the patient’s complaints except those related to bilateral carpal tunnel syndrome can be attributed to fibromyalgia. Fibromyalgia was independently diagnosed by three separate rheumatologists, one civilian performed in January 2007, one Navy performed in April 2007, and one Army performed in January 2008. The latest psychiatric evaluation prior to separation from service was performed in March 2008. It documents no evidence of a mental health condition or personality disorder. The CI understandably experienced some symptoms of depression and anxiety throughout her diagnostic course of events, but was free of any psychiatric symptoms and diagnoses at the time of separation, at which time her GAF was 85.

The CI did however have significant symptoms of chronic pain, headaches, and gastrointestinal irritability due to fibromyalgia at the time of separation. The MEB NARSUM did not comment on frequency of symptoms or response to therapy. However, multiple outpatient notes from 2008 document constant pain that was not relieved with medication and minimally relieved with physical therapy. A VA Compensation and Pension (C&P) spine examination performed in February 2009 also documents no relief from pain medication. A general C&P examination

performed in February 2009 documented minimal results with Lyrica or any other medications. At the time of that examination she had pain and exhaustion everyday and one a day a week she was unable to do anything at all. However, her gastrointestinal symptoms at that time were limited to occasional constipation.

The Board directs attention to its rating recommendation based on the above evidence. The initial and reconsideration PEBs applied a 20% rating for fibromyalgia. The VA applied a 40% rating based on widespread musculoskeletal pain and tender points, with or without associated symptoms that are constant, or nearly so, and refractory to therapy. The evidence available supports a finding of constant pain with associated fatigue, sleep disturbance, stiffness, paresthesias, and headaches. Her pain and exhaustion were constant with intermittent periods of worsening. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 40% for the fibromyalgia condition.

Contended PEB Conditions. The contended conditions adjudicated as not unfitting or not separately unfitting by the PEB were headache, pinched nerve, herniated discs in the back and neck, and carpal tunnel syndrome bilaterally. The Board's first charge with respect to these conditions is an assessment of the appropriateness of the PEB's fitness adjudications. The Board's threshold for countering 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. None of these conditions were implicated in the commander's non-medical assessment and none were judged to fail retention standards as separate conditions. All were reviewed by the action officer and considered by the Board. There was no indication from the record that any of these conditions significantly interfered with satisfactory duty performance separately from the fibromyalgia condition. The headaches as well as back pain and neck pain with pinched nerve and herniated discs in the back and neck are all part of the unfitting fibromyalgia condition. There is no evidence in the record of a headache, back, or neck condition separate from the fibromyalgia condition. Bilateral carpal tunnel is not considered as part of fibromyalgia but there is no evidence it was unfitting at the time of separation. After due deliberation in consideration of the preponderance of the evidence, the Board concluded that there was insufficient cause to recommend a change in the PEB fitness determination for any of the contended conditions and therefore, no additional disability ratings can be recommended.

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 fibromyalgia condition, the Board unanimously recommends a disability rating of 40%, coded 5025 IAW VASRD §4.71a. In the matter of the contended headache, pinched nerve, herniated discs in the back and neck, and bilateral carpal tunnel syndrome conditions, the Board unanimously recommends no change from the PEB determination they were not unfitting or separately unfitting. There were no other conditions within the Board's scope of review.

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

UNFITTING CONDITION	VASRD CODE	RATING
Fibromyalgia with Chronic Neck and Back Pain and Headaches	5025	40%
	COMBINED	40%

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120123, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

MEMORANDUM FOR DEPUTY COMMANDANT, MANPOWER & RESERVE AFFAIRS
COMMANDER, NAVY PERSONNEL COMMAND

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATIONS

Ref: (a) DoDI 6040.44
(b) PDBR ltr dtd 12 Oct 12 ICO
(c) PDBR ltr dtd 17 Oct 12 ICO
(d) PDBR ltr dtd 22 Oct 12 ICO

1. Pursuant to reference (a) I approve the recommendations of the Physical Disability Board of Review set forth in references (b) through (d).
2. The official records of the following individuals are to be corrected to reflect the stated disposition:
 - a. former USN: Disability retirement with a final disability rating of 30% with assignment to the Permanent Disability Retired List effective 18 March 2005.
 - b. former USMC: Disability retirement with a final disability rating of 40% with assignment to the Permanent Disability Retired List effective 28 November 2008.
 - c. former USMC: Disability retirement with a final disability rating of 30% and assignment to the Permanent Disability Retired List effective 15 March 2006.
3. Please ensure all necessary actions are taken, included the recoupment of disability severance pay if warranted, to implement these decisions and that subject members are notified once those actions are completed.