

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME:
CASE NUMBER: PD1200108
BOARD DATE: 20121011

BRANCH OF SERVICE: MARINE CORPS
SEPARATION DATE: 20060315

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (7212/Low Altitude Air Defense Gunner), medically separated for left shoulder condition and a low back condition. He did not respond adequately to operative treatment for his left shoulder or conservative treatment for his low back and was unable to fulfill the physical demands within his Military Occupational Specialty (MOS), meet worldwide deployment standards or meet physical fitness standards. He was placed on limited duty and underwent a Medical Evaluation Board (MEB). Left shoulder adhesive capsulitis and lumbar L4-L5 right sided herniated disc were forwarded to the Physical Evaluation Board (PEB) IAW SECNAVINST 1850.4E. The PEB adjudicated the left shoulder condition and degenerative disk disease (DDD) L4-L5 as unfitting, rated 10% and 0% respectively. The lumbar right sided L4-L5 herniated disc (HNP) condition was determined to be a related Category II diagnosis which contributes to the unfit condition. Additionally, the PEB determined the condition of obesity was a Category IV condition which does not constitute a physical disability. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: "The military separation board rated the member at 10%. The 10% rating was from Degenerative disc disease and left shoulder dislocations with adhesive capsulitis. The VA rated the member for the same conditions as the following. Degenerative disc disease 20% and left shoulder dislocation with adhesive capsulitis 10%. In addition to separation board findings the member has been assigned a 50 % for Obstructive Sleep Apnea service. The member was also rated from the VA for the following items and have been service connected and documented at the time of discharge: 1) tinnitus 10%, 2) folliculitis 10%, 3) left hammertoes, great toe hallux valgus, fifth toe fracture and a calcaneal spur 4) right hammertoes, hallux valgus, of the great toe and a calcaneal (sic), 0% 5) vestibular symptoms secondary to central vestibular pathology 0%, 6) left shoulder surgery scars 0%, 7) obstructive sleep apnea 50%. This gives the member a total combined VA rating of 70%. All of the listed ratings are service connected and were all reported during the time of service. The member request (sic) for the board to grant a medical retirement."

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 unfitting left shoulder and low back conditions requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview, and are accordingly addressed below. The remaining contended conditions rated by the VA at separation and listed on the DD Form 294 application 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 IPEB – Dated 20051221			VA (2 Mos. Pre -Separation) – All Effective Date 20060316			
Condition	Code	Rating	Condition	Code	Rating	Exam
Lt Shoulder Adhesive Capsulitis	5299-5003	10%	Lt Shoulder Dislocations w/ Adhesive Capsulitis	5299-5203	10%	20060116
L4-5 DDD	5299-5237	0%	L-Spine DDD	5243	20%	20060116
L4-5 HNP	Category II		OSA	6847	50%	20091208
↓No Additional MEB/PEB Entries↓			Tinnitus	6260	10%	20060116
			Folliculitis	7899-7806	10%	20060116
			0% X 4 / Not Service-Connected x 1			20060116
			Combined: 10%			Combined: 70%

ANALYSIS SUMMARY: The Board acknowledges the CI's contention suggesting that disability ratings should have been higher for his unfitting conditions and further acknowledges the CI's contention suggesting that ratings should have been conferred for other conditions documented at the time of separation and for conditions not diagnosed while in the Marines (but later determined to be service-connected). While the Disability Evaluation System (DES) considers all of the 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. The Department of Veterans Affairs, however, is empowered to compensate all 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.

Left Shoulder Condition. The right hand dominant CI dislocated his left shoulder for the first time prior to joining the Marines. Since that time he had numerous dislocations, for one of which he was medevac'd back from Iraq. After conservative treatment he elected definitive operative care and underwent an arthroscopic Bankart repair, which was performed in January 2005. Six months post-operatively he continued to have significant limitation of range-of-motion (ROM) despite physical therapy and underwent another operative procedure, manipulation under anesthesia, with marked improvement. However, he continued to have some persistent pain in the left shoulder which limited his ability to get his arm over his head, perform pull-ups and had increased pain with any lifting. There were three goniometric ROM evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation as summarized in the chart below.

Left Shoulder ROM	MEB ~4.5 Mo. Pre-Sep	Ortho ~3 Mo. Pre-Sep	VA C&P ~2 Mo. Post-Sep
Flexion (0-180°)	135°	135°	160°
Abduction (0-180°)	120°	120°	120°
Comments	Silent on painful motion	Painful motion	Painful motion
§4.71a Rating*	10%	10%	10%

*Conceding §4.59 (painful motion)

The MEB physical exam demonstrated well healed anterior and posterior surgical scars, normal strength of the rotator cuff muscles, and normal neurovascular findings. The examiner documented "Although he has not had any recurrent dislocations, he has been unable to return to his preinjury level of function." At the VA Compensation and Pension (C&P) exam, performed prior to separation, the CI reported constant daily pain, worsened with any daily activity, marked limited ROM and weakness, however, he had no further recurrent dislocations. He took no medications for this condition and had missed work three times weekly. The C&P exam demonstrated no evidence of heat, redness, swelling, effusion, drainage, abnormal movement, or instability. There was tenderness to palpation of the anterior left shoulder and his ROM was limited by pain, fatigue, weakness, lack of endurance, and incoordination

following repetitive use, however without Deluca criteria observations; the examiner stated that “without resorting to mere speculation, the additional limitation in degrees cannot be determined.”

The Board directs its attention to its rating recommendations based on the evidence just described. The PEB’s chosen code 5003 (arthritis, degenerative) specifies that, in the presence of degenerative arthritis established by X-ray findings, when “the limitation of motion of the specific joint or joints involved is noncompensable under the appropriate diagnostic codes, a rating of 10 pct is for application for each such major joint or group of minor joints affected by limitation of motion, to be combined, not added under diagnostic code 5003. Limitation of motion must be objectively confirmed by findings such as swelling, muscle spasm, or satisfactory evidence of painful motion.” There was noncompensable ROM impairment of the left shoulder, and the Board agreed that there is adequate documentation of painful motion of the joint in the prior to separation data to merit application of a minimal compensable rating under this code. The Board considered the VA choice of coding 5203 (Clavicle or scapula, impairment of), and also code 5201 (Arm, limitation of motion of) and agreed the evidence did not reflect criteria for a higher rating under either code. There was no clinical and/or radiologic evidence in the examinations completed proximate to separation that suggested ankylosis, loss of the humeral head, nonunion, malunion, fibrous union, deformity, nonunion or dislocation of the scapula, or recurrent dislocations of the humerus that would have justified any code with higher rating potential. 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 left shoulder condition.

Low Back Condition. The CI first sought treatment for atraumatic back and hip pain in 2003. He underwent prolonged physical therapy and chiropractic care without relief of his pain which was activity related. In June 2005 he was seen by sports medicine and underwent a magnetic resonance imaging study (MRI) which revealed DDD at the L4-L5 level, a broad-based disk bulge, which was worse on the right side with some effacement of the foramina at the L4 L5 level. The examiner diagnosed HNP and DDD of L4-L5, and lumbago with recommendations for a LIMDU which prohibited high impact activity and allowed for slow increase of low impact activity. He was encouraged to follow-up if he desired to pursue further treatment. His LIMDU limitations included no running, road marches or lifting greater than 10 pounds. There were two goniometric ROM evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation as summarized in the chart below.

Thoracolumbar ROM	STR* ~9 Mo. Pre-Sep	VA C&P ~2 Mo. Pre-Sep
Flexion (90° Normal)	60°	40°
Ext (0-30°)	15°	20°
R Lat Flex (0-30°)	30° (full)	20°
L Lat Flex (0-30°)	30° (full)	25°
R Rotation (0-30°)	30° (full)	25°
L Rotation (0-30°)	30° (full)	25°
Combined (240°)	195°	155°
Comment	Painful motion	Painful motion
§4.71a Rating	20% (PEB 0%)	20%

* Sports Medicine Clinic

The MEB physical exam cited the abnormal MRI findings and documented that the CI’s finger tips reached to the junction of the middle and distal third of his tibia with some discomfort. The action officer opines this indicates limited flexion but could not speculate to what degree. The exam also demonstrated that extension did not cause discomfort, and there were normal neuromuscular findings of the lower extremities. The examiner diagnosed DDD and right side

HNP of L4-L5 and opined that the CI's constellation of symptoms of right-sided hip and leg pain correlated with the level and location of the disk on the MRI findings. At the C&P exam the CI reported an injury to his back in boot camp. He reported intermittent flare-ups of the back condition at least twice daily, each time lasting 3 hours and that he was able to function with nonsteroidal medications. The pain usually radiated down the right lower extremity with intermittent numbness and tingling, was sharp and he graded it in severity 3 to 8 of 10 on a pain scale, exacerbated with physical activity and prolonged sitting. He denied incapacitation requiring prescribed bed rest by a physician but stated he missed time from work 3 days per week because of his condition. The C&P exam documented normal spinal contour, gait, no muscle spasm or tenderness to palpation and normal neuromuscular findings. The ROM of the thoracolumbar spine was limited by pain, fatigue, weakness, lack of endurance, and incoordination following repetitive use, however without Deluca criteria observations; the examiner stated that "without resorting to mere speculation, the additional limitation in degrees cannot be determined." Additionally, there was no evidence of intervertebral disc syndrome with chronic and permanent nerve root involvement.

The Board directs attention to its rating recommendation based on the above evidence. The PEB's 0% rating, likely derived from the SECNAVINST 1850.4E policy, is not compliant with VASRD §4.71a criteria. Limited flexion is documented in the MEB exam and the ROM measurements by both the STR and VA are consistent with a 20% rating IAW §4.71a schedule of ratings—musculoskeletal system under the general rating formula for diseases and injuries of the spine. The Board considered the VA's coding choice 5243 (Intervertebral disc syndrome) and code 5242 (Degenerative arthritis of the spine) and agreed, while both codes were more clinically specific to the CI's clinical pathology, neither code allowed for higher or additional rating as there was no evidence of documentation of incapacitating episodes. There was also no evidence of ratable peripheral nerve impairment which would provide for additional or higher rating. The Board deliberated briefly with regards to the lack of STR's for his back after his visit to the sports medicine examiner in 2005. However, the Board majority agreed likely the limited duty restrictions imposed at that visit, his prior multiple visits with physical therapy and chiropractic care and self medication likely allowed him to seek less care for his back condition. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 20% for the low back 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. As noted above, PEB reliance on SECNAVINST 1850.4E for rating the left shoulder and low back conditions was operant in this case and the conditions were adjudicated independently of that instruction by the Board. In the matter of the left shoulder condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the low back condition, the Board by a vote of 2:1 recommends a disability rating of 20%, coded 5242 IAW VASRD §4.71a. The single voter for dissent (who recommended no recharacterization) did not elect to submit a minority opinion. There were no other conditions within the Board's scope of review for consideration.

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:

UNFITTING CONDITION	VASRD CODE	RATING
Lt Shoulder Adhesive Capsulitis	5299-5003	10%
DDD L4-L5	5242	20%
	COMBINED	30%

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120127, 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.