

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXX
CASE NUMBER: PD1200118
BOARD DATE: 20121009

BRANCH OF SERVICE: NAVY
SEPARATION DATE: 20030215

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty ET2/E-5 (ET2/Electronics Technician), medically separated for neuropathic pain. The CI injured her back in 1997 in a motor vehicle accident and was eventually diagnosed with piriformis syndrome. While her symptoms improved after surgical treatment, she continued to have pain and paresthesias and was unable to meet the physical requirements of rating or satisfy physical fitness standards. She was placed on limited duty (LIMDU) and referred for a Medical Evaluation Board (MEB). The MEB forwarded the neuropathic pain, post release of her piriformis, and questionable labral tear per magnetic resonance imaging (MRI) conditions for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated the neuropathic pain condition as unfitting, rated 10%, with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD). The remaining conditions were determined to be not unfitting and rated Category II. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: The CI elaborated no specific contention in her application.

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. 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 20020909			VA (~5 Months Pre-Separation) – All Effective Date 20030216			
Condition	Code	Rating	Condition	Code	Rating	Exam
Neuropathic Pain	8799-8720	10%	Right Sciatic Nerve Dysfunction With Neuropathic Pain Caused By Piriformis Compression (Also Claimed as Numbness of 4th and 5th Digit, Right Foot)	8520	10%	20020917
Status Post Release of her Piriformis	Cat II		Status Post Right Hip Injury with Labral Tear	5299-5255	10%	20020917
Questionable Labral Tear Per MRI	Cat II		Lumbosacral Strain/Sprain	5295	10%	20020917
↓No Additional MEB/PEB Entries↓			Scar, Right Lower Leg	7804	10%	20020917
			Scar, Right Buttock Area	7804	10%	20020917
			Migraine Headaches	8100	10%	20020917
			Post Traumatic Stress Disorder	9411	10%	20021108
			0% X 1 / Not Service Connected x 0			20020917
Combined: 10%			Combined: 50%			

ANALYSIS SUMMARY: 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 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 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.

Neuropathic Pain Condition. The MEB narrative summary (NARSUM) was completed 8 months prior to separation and it noted a 4 year history of right hip, right buttock, and groin pain. The CI had been on limited duty (LIMDU) since August 2001 for mechanical low back pain with sciatica. The CI injured her lower back as a result of a motor vehicle accident while on active duty in 1997. Her symptoms continued despite therapy and worsened during pregnancy and childbirth in 1999. An EMG (Electromyography) in March 2001 showed no abnormalities in the right lower extremity including the right sciatic, sacral, and lumbar nerve roots. An MRI of the lumbar spine performed in April 2001 noted a mild broad-based disc bulge at L4-5 without significant mass effect and neural foramina were widely patent. Maximal medical benefit of therapy had not yet been achieved and further treatment from the pain clinic was pursued. She continued treatment including physical therapy, medication, and epidural steroid injections. However, her symptoms continued and a repeat EMG performed in February 2002 was also normal. An injection of the piriformis muscle in March 2002 did relieve her pain. Piriformis release surgery was completed in April 2002 for definitive treatment of what was now considered piriformis syndrome. She initially did well after surgery and regained some sensation in her right lower extremity. However, she developed a neuropathic type pain that was treated with physical therapy and medication: Elavil and then neurontin. Her pain and paresthesias persisted despite treatment and the medical board process was initiated. Physical examination noted full 5/5 strength in bilateral lower extremities and intact sensation. The scar from her surgery was hypersensitive. Separate VA Compensation and Pension (C&P) exams for general medical and peripheral nerves were completed approximately 7 months after the CI separated from the Navy Reserve. A similar clinic history was reported at the VA. The VA examiner noted that in addition to the piriformis release, a neurolysis was also done at the April 2002 surgery however the operative report is not available in the record for review. The general medical exam documented normal posture and gait, marked superficial tenderness over the scar in the right buttock area, and normal reflexes in bilateral upper and lower extremities. Tenderness to palpation over the sacroiliac joint and over the insertion of the iliopsoas muscle in the right groin was also noted. The peripheral nerve examiner noted that while the CI had considerably improved after surgery she continued to have a lot of pain and numbness down her right leg. The sciatic pain was intermittent and was made worse by any type of increased activity. Her complaints were limited to pain and paresthesias and she denied any weakness.

The PEB rated the unfitting condition of neuropathic pain as VASRD code 8799-8720 at 10% for mild incomplete paralysis. The VA rated using the direct code for sciatic nerve, 8520, and also applied a 10% disability rating. The Board directs attention to its rating recommendation based on the above evidence. Although the PEB and VA used different codes, they both determined

the CI should be rated as mild, incomplete paralysis of the sciatic nerve. No appropriate rating scheme leads to a rating greater than 10%. 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 neuropathic pain 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. The Board did not surmise from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised. In the matter of the neuropathic pain condition and IAW VASRD §4.124a, the Board unanimously recommends no change in the PEB adjudication.

RECOMMENDATION: The Board, therefore, recommends that there be no recharacterization of the CI's disability and separation determination, as follows:

UNFITTING CONDITION	VASRD CODE	RATING
Neuropathic Pain	8799-8720	10%
	COMBINED	10%

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120203, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans Affairs Treatment Record.

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 7 Nov 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:

- former USN
- former USN
- former USMC
- former USN
- former USMC
- former USMC
- former USMC
- former USMC
- former USN

Assistant General Counsel
(Manpower & Reserve Affairs)