

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME:
CASE NUMBER: PD1200273
BOARD DATE: 20121127

BRANCH OF SERVICE: MARINE CORPS
SEPARATION DATE: 20040315

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (0311/Rifleman), medically separated for thoracic back pain secondary to a T6 compression fracture (FX). The CI injured his back when the Amtrak vehicle that he was riding in was rear ended by a second vehicle, the passengers were thrown about and the CI sustained a T6 compression Fx. Despite a hospitalization, physical therapy (PT), and non steroidal anti inflammatory drugs (NSAIDS) the CI failed to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was placed on limited duty (LIMDU) and referred for a Medical Evaluation Board (MEB). The MEB forwarded recalcitrant thoracic back pain secondary to T6 compression Fx. on NAVMED 6100/1 to the Physical Evaluation Board (PEB). The MEB forwarded no other conditions for PEB adjudication. The PEB adjudicated the recalcitrant thoracic back pain secondary to T6 compression Fx. condition as unfitting, rated 0%. The CI made no appeals, and was medically separated with a 0% disability rating.

CI CONTENTION: "0% seems to be a unrealistic rating for a back injury that caused me to be found unfit for duty and has limited and changed my way of life prementley. My injury is constant and limits me daily. In addition to the 0% rating for my back injury, I was never screened for PTSD or Tinnitus which I have been diagnosed with and rated for through the VA."

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 unfitting recalcitrant thoracic back pain secondary to T6 compression Fx. condition meets the criteria prescribed in DoDI 6040.44 for Board purview and is accordingly addressed below. The other requested conditions [PTSD and Tinnitus] 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 20040120			VA (1 Mos. Pre-Separation) – All Effective Date 20040316			
Condition	Code	Rating	Condition	Code	Rating	Exam
Recalcitrant Thoracic Back Pain Secondary to T6 Compression Fx.	5299-5291	0%	Residuals, T spine compression fx at T6	5235	20%	20040205
↓ No Additional MEB/PEB Entries ↓			0% X 0 / Not Service-Connected x 1			
Combined: 0%			Combined: 20%*			

* PSTD (9411 @50%) and Tinnitus (6260 @10%) added effective 20090407 (combined 60%)

ANALYSIS SUMMARY: The 2004 Veterans Administration Schedule for Rating Disabilities (VASRD) coding and rating standards for the spine, were in effect at the time of the PEB, and at

the time of separation. The PEB coding (use of 5299-5291, Spine, limitation of motion of, dorsal) indicated use of the prior 2003 VASRD, before the change to the current §4.71a rating standards effective 26 September 2003. The 2003 standards for rating based on range-of-motion (ROM) impairment were subject to the rater’s opinion regarding degree of severity, and had three versus two ratable spine segments. The VASRD in effect at the time of separation (2004) uses the current General Rating Formula for Diseases and Injuries of the Spine and does not have a 5291 disability code. The 2004 VASRD will be used in rating this case.

Recalcitrant Thoracic Back Pain Secondary to T6 Compression Fx. Condition: The goniometric ROM evaluations in evidence which the Board weighed in arriving at its rating recommendation, with documentation of additional ratable criteria, are summarized in the chart below.

Thoracolumbar ROM	MEB ~6 Mo. Pre-Sep	VA C&P ~1 Mo. Pre-Sep
Flexion (90° Normal)	"no limited ROM there"	90° /Pain occurred at 60°
Ext (0-30)		0°
R Lat Flex (0-30)		30°
L Lat Flex 0-30)		30°
R Rotation (0-30)		30° (45°) /Pain occurred at 35°
L Rotation (0-30)		30° (45°) /Pain occurred at 35°
Combined (240°)		210°
Comment: Spine Note (2) and plate V limit to VA normal ROM	Slight tenderness to palpation (TTP); no muscle spasms; no step off; "unsteady gait"; "approximately 3° kyphosis" "approximately 27% loss of height"; reflexes, motor and sensory exams normal (see text)	Muscle spasms present T4-T8; TTP between T4-T8; painful ROM; ROM additionally limited by pain (see text); Radiating pain on movement in a band around chest; negative straight leg raising; no signs of intervertebral disc syndrome; motor, sensory, reflexes intact; gait normal
§4.71a Rating	10%-20% (PEB 0%)	10%-20% (VA 20%)

Injury was 11 months. prior to separation and magnetic resonance imaging (MRI) demonstrated a sub acute partial compression fracture of T6 with loss of height as noted above. The MEB examination, 6 months prior to separation, indicated pain with strenuous walking and prolonged activity; however the overall pain showed improvement as well as mobility along with no deficits in strength with upper or lower extremities. The MEB physical exam findings are summarized in the chart above, and the examiner indicated a restriction from areas "... where an unsteady gait may pose a danger to himself or others." The separation physical, DD Form 2808, indicated tenderness to palpation and decreased ROM secondary to discomfort. There were no periods of incapacitation documented following initial hospitalization.

The VA Compensation & Pension (C&P) examination performed a month prior to separation noted that the CI had aching sharp cramping back pain exacerbated by physical activity and relieved by rest and medication. The examiner documented that the functional impairment was pain and stiffness in the lower back that inhibited the CI’s ability to function in a normal manner. The C&P physical examination findings are summarized in the chart above. A CT scan of the thoracic spine demonstrated a normal thoracic spine.

The Board directs attention to its rating recommendation based on the above evidence. The old spine rules were in effect at the time of the MEB. The PEB used the old spine rules to rate the thoracic spine condition at 0% under 5291 criteria. The VA used the new spine rules to code the back condition 5235 (Vertebral fracture or dislocation). The MEB exam would rate between 10% to 20% based on if the abnormal spinal contour and/or abnormal gait were attributed to guarding. The Board considered that there was no muscle spasm at the MEB exam which demonstrated abnormal spine contour and abnormal gait, and although the VA exam documented muscle spasm, there was no concurrent abnormal spinal contour or gait at that exam. Under the new spine rules, the General Rating Formula for Diseases and Injuries of

the spine considers the CI's pain symptoms "With or without symptoms such as pain (whether or not it radiates), stiffness or aching in the area of the spine affected by residuals of injury or disease." The VA exam is independently rated at 10% for pain-limited ROM and for muscle spasm, guarding, or localized tenderness not resulting in abnormal gait or abnormal spinal contour. However, the Board deliberated if the VA rating consideration for either using the "degree that pain occurs" as the ROM limitation, the radiating chest pain on movement, and/or the abnormal contour from the MEB exam constituted consideration of DeLuca, or sufficient justification to adjudge that the CI's condition more closely approximated the disability picture envisioned by the 20% criteria. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a separation rating of 10% for the recalcitrant thoracic back pain secondary to T6 compression Fx. and coded 5235.

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 reliance on the 2003 VASRD for rating the thoracic back condition was operant in this cases and the condition was adjudicated IAW the 2004 VASRD in effect at the time of separation by the Board. In the matter of the recalcitrant thoracic back pain secondary to T6 compression Fx condition, the Board unanimously recommends a disability rating of 10% , coded 5235 IAW VASRD §4.71a. 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:

UNFITTING CONDITION	VASRD CODE	RATING
Recalcitrant Thoracic Back Pain Secondary to T6 Compression Fx	5235	10%
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120303, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

President
Physical Disability Board of Review

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 17 Dec 12
(c) PDBR ltr dtd 5 Dec 12
(d) PDBR ltr dtd 11 Dec 12
(e) PDBR ltr dtd 26 Nov 12
(f) PDBR ltr dtd 20 Nov 12

1. Pursuant to reference (a) I approve the recommendations of the Physical Disability Board of Review set forth in references (b) through (f).
2. The official records of the following individuals are to be corrected to reflect the stated disposition:
 - a. former USMC: Disability separation with a final disability rating of 20 percent (increased from 10 percent) with entitlement to disability severance pay.
 - b. former USMC: Disability separation with a final disability rating of 10 percent (increased from zero percent) with entitlement to disability severance pay.
 - c. former USN: Disability separation with a final disability rating of 20 percent (increased from 10 percent) with entitlement to disability severance pay.
 - d. former USN: Disability separation with a final disability rating of 20 percent (increased from 10 percent) with entitlement to disability severance pay.
 - e. former USMC: Disability separation with a final disability rating of 20 percent (increased from 10 percent) with entitlement to disability severance pay.
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.

Assistant General Counsel
Manpower & Reserve Affairs)