

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME:
CASE NUMBER: PD1200473
BOARD DATE: 20121130

BRANCH OF SERVICE: NAVY
SEPARATION DATE: 20031002

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty PO2/E-5 (BU/Builder), medically separated for chronic neck pain. The condition began in 1992 after an episode of head trauma. Despite surgery in 1998 for a herniated disc and ongoing conservative treatment, the neck pain did not improve adequately to meet the physical requirements of his rating or satisfy physical fitness standards. He was placed on limited duty (LIMDU) and referred for a Medical Evaluation Board (MEB). The MEB forwarded neck pain with intermittent C7 radiculopathy, right greater than left, to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. The MEB forwarded no other conditions for PEB adjudication. The PEB adjudicated the chronic bilateral neck and shoulder pain as unfitting, rated 10% with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD). Neck pain with intermittent C7 radiculopathy, right greater than left, was determined to be Category II: conditions that contribute to the unfitting condition; and no shoulder pathology Category III: conditions that are not separately unfitting and do not contribute to the unfitting condition. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: "I was medically discharged at 10% rating after having cervical spine fusion. I was discharged at Naval Hospital San Diego while going through tests with a possibility of undergoing through a second cervical spine fusion operation. The doctor decided it was too risky to undergo a second operation. I was discharged by the hospital and the person who discharged me told me that if I challenge the 10% discharge rating, that there was a possibility I may get 0%. I was scared accepted 10% and when I was discharged I lost my apartment, vehicle, I was hopeless because I could not work."

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 remaining 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 20030421			VA (4 Mos. Pre-Separation) – All Effective Date 20031003			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Bilateral Neck and Shoulder Pain	5290	10%	Cervical Spine Fusion Residuals	5243	20%*	20030605
Intermittent C-7 Radiculopathy	CAT II		NO VA ENTRY			
No Shoulder Pathology	CAT III		20030630			
No Additional MEB/PEB Entries			Speech Impediment	5045-9304	10%	STR
			Tinnitus	6260	10%	20030630
			Major Depressive Disorder	9434	10%	20030605
			0% X 7 / Not Service-Connected x 9			
Combined: 10%			Combined: 40%**			

*VA decision 20060410 increased to 30% effective 20050427 based on later exams

**VA decision 20060410 added right and left cervical radiculopathy rated 10% each, effective 20050621; combined 80% with other non-PEB conditions

ANALYSIS SUMMARY: With regard to the CI’s assertion that he was advised not to challenge the separation rating, the Board must note for the record that it has neither the jurisdiction nor authority to scrutinize or render opinions in reference to suspected service improprieties in the disposition of a case.

Neck pain. A fusion procedure with diskectomy at C5-C6 was performed on 11 December 1998 for treatment of progressive neck pain, left arm pain, and weakness in the left upper extremity due to a herniated disc. Pain and radiculopathy resolved post-operatively, but neck pain returned within a year. Subsequent evaluation with cervical myelography, magnetic resonance imaging (MRI) and electromyography (EMG) demonstrated no compromise of neural structures, good surgical fusion and no evidence of radiculopathy. Epidural steroid injections and physical therapy were of no lasting benefit. There were two range-of-motion (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.

Cervical ROM in degrees	MEB ~8 Mo. Pre-Sep	VA C&P ~4 Mo. Pre-Sep
Flex (45 Normal)	"Near Full ROM"	20
Ext (0-45)		10
R Lat Flex (0-45)		45
L Lat Flex (0-45)		45
R Rotation (0-80)		80
L Rotation (0-80)		80
COMBINED (340)	--	280
Comment	Normal gait	
§4.71a Rating	10%*	20%

*Conceding painful motion or pain with use

The narrative summary (NARSUM) performed 8 months prior to separation reported that neck pain radiated to the right upper extremity. Neck pain caused difficulty sleeping and lifting heavy items. Physical examination revealed normal upper extremity muscle strength and no sensory deficits. Gait was normal. There was no mention of muscle spasm, guarding or spinal contour. An orthopedic NARSUM addendum clarified that shoulder pain was not due to any shoulder pathology, but was associated with the neck condition. At the MEB exam 7 months prior to separation, the CI reported numbness from the shoulder to fingers. Daily use of narcotic pain medication was required. The physical exam noted normal muscle strength but diminished sensation in a radicular pattern bilaterally. Gait was normal. At a neurosurgical clinic exam 4 months prior to separation the CI complained of intermittent incapacitating episodes of pain precipitated by unpredictable activities. The pain lasted hours and radiated from the neck along the back of the arm to the elbow and forearm. The left upper extremity was unaffected. Neck ROM was intermittently disrupted by these episodes. Examination

revealed no tenderness of the cervical spine. Neck ROM was documented in an unclear way, but limitation of extension and slow rotation were present. There was no evidence of myelopathy. At the VA Compensation and Pension (C&P) exam 4 months prior to separation, the CI reported a daily neck pain severity averaging two on a 0-10 scale. Neck pain was caused by lifting, and radiation to the right upper extremity occurred intermittently. Activities of daily living were not prevented. Examination revealed normal motor, sensory and reflex findings, but was silent regarding gait and spinal contour. ROM of the neck was not decreased with repetition and was performed "without difficulty." Spinal contour was not mentioned, but a separate VA examiner that day noted a normal gait. At a follow-up VA clinic visit seven months after separation, the CI reported an inability to perform office work due to recurrent pain with lifting boxes; he was attending school. Neck pain sometimes radiated down the right arm. Examination revealed decreased flexion and rotation.

The Board directs attention to its rating recommendation based on the above evidence. It is noted in this case that the PEB's adjudication was IAW VASRD §4.71a criteria in effect at the time of those proceedings; but, a change to the current §4.71a criteria (General Rating Formula for Diseases and Injuries of the Spine) occurred on 26 September 2003, in advance of the date of separation. The Board, IAW DoDI 6040.44, must apply the latter criteria to its recommendation. The PEB assigned a 10% rating under the old 5290 code ("slight" limitation of cervical motion), while the VA's 20% rating was under the new 5243 code (intervertebral disc syndrome). Under the newer VASRD rules in effect, a 20% rating is assigned when forward flexion of the cervical spine is greater than 15 degrees but not greater than 30 degrees; combined range of motion is not greater than 170 degrees; or, muscle spasm or guarding is present severe enough to result in an abnormal gait or abnormal spinal contour such as scoliosis, reversed lordosis, or abnormal kyphosis. The Board considered that the near full ROM on the NARSUM exam was not consistent with other notes in evidence proximal to separation showing limitation of motion. Because the C&P exam was more proximal to separation than the NARSUM, provided the detailed ROM measurements necessary to accurately determine a rating and was more consistent with other clinical observations detailed above, it was assigned higher probative value by the Board. The cervical spine flexion documented by this exam supported a 20% rating. The Board further deliberated if additional disability was justified for the history of right upper extremity radiculopathy. The PEB adjudicated intermittent radiculopathy as a Category II condition that contributed to the unfitting neck condition. The CI complained of intermittent right upper extremity radiating pain. There were no electrodiagnostic abnormalities and an MRI showed no right-sided neuroforaminal impingement or cord compression. Except for one examiner detecting diminished sensation, all examinations recorded normal neurologic findings, including muscle strength. The presence of functional impairment with a direct impact on fitness is the key determinant in the Board's decision to recommend any condition for rating as additionally unfitting. There is no evidence in this case of functional impairment attributable to peripheral neuropathy. While the CI experienced radiating pain, this is subsumed under the general spine rating criteria, which specifically states "with or without symptoms such as pain (whether or not it radiates)." The Board therefore concludes that additional disability was not justified on this basis. The Board finally considered whether a higher rating could be achieved under the formula for rating intervertebral disc disease based on incapacitating episodes. The CI complained of episodes of "incapacitating pain" prior to separation, but there was no evidence that the minimum rating under that formula was met. 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 neck pain condition, and recommends the code 5241 (spinal fusion) IAW the newer §4.71a VASRD criteria.

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 chronic bilateral neck and shoulder pain condition, the Board unanimously recommends a disability rating of 20%, coded 5241 IAW VASRD §4.71a. 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, effective as of the date of his prior medical separation:

UNFITTING CONDITION	VASRD CODE	RATING
Chronic Bilateral Neck and Shoulder Pain	5241	20%
	COMBINED	20%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120602, 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)