

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX
CASE NUMBER: PD1200476
BOARD DATE: 20130118

BRANCH OF SERVICE: NAVY
SEPARATION DATE: 200203022

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty HM2/E-5 (8404/Field Medical Service Technician), medically separated for cervical spondylosis. The condition began in approximately 1996 and was not a consequence of trauma or associated with a surgical indication. The CI did not improve adequately with treatment to meet the physical requirements of his rating or satisfy physical fitness standards. He was placed on light duty and referred for a Medical Evaluation Board (MEB). The MEB forwarded cervical spondylosis and neck pain to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. No other conditions appeared on the MEB's submission. The PEB adjudicated the cervical spondylosis condition as unfitting, rated 10% with application of the Veterans Affairs Schedule for Rating Disabilities (VASRD). Neck pain was included as a related Category II diagnosis; and major depressive disorder was adjudicated as 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: The CI elaborated no specific contention in his application.

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. 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 20020220 | | | VA (~18 Mos. Pre-Separation) – All Effective Date 20020323 | | | |
|---------------------------------|-----------|--------|--|------|--------|----------|
| Condition | Code | Rating | Condition | Code | Rating | Exam |
| Cervical Spondylosis | 5299-5295 | 10% | Cervical DDD and Spondylosis, C5-6 | 5293 | 10% | 20001006 |
| Neck Pain | Cat II | | No VA Entry | | | |
| Major Depressive Disorder | Cat III | | Not Service-Connected x 1 | | | |
| ↓No Additional MEB/PEB Entries↓ | | | 20001006 | | | |
| Combined: 10% | | | Combined: 10% | | | |

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 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. 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 6044.40, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Cervical Spondylosis Condition. The 2002 VASRD coding and rating standards for the spine, which were in effect at the time of permanent separation, were changed to the current §4.71a rating standards on 26 September 2003, following the CI’s permanent disability disposition. The older ratings were based on a judgment as to whether the disability was mild, moderate or severe. The current standards are grounded in range-of-motion (ROM) measurements. IAW DoDI 6040.44, this Board must consider the appropriate rating for the CI’s back condition at separation based on the VASRD standards in effect at the time of separation. The VA Compensation and Pension (C&P) examination 18 months prior to separation reported tenderness but no muscle spasm. The neck flexed “easily to bring the chin to the sternum” (normal is 45 degrees by current standards). Extension was 30 degrees (45 degrees normal by current standards), lateral bending 45 degrees bilaterally (45 degrees normal) and rotation 60 degrees without pain (80 degrees normal). A primary care assessment 10 months prior to separation noted tenderness and limited cervical spine ROM in all directions due to pain. The MEB narrative summary (NARSUM) examiner (9 months prior to separation), reported that the CI had daily neck pain that could awaken him from sleep, and occasionally radiated to the right arm. Physical examination revealed the neck to be supple with painful flexion and extension. Testing for nerve root pain was negative. Neurologic findings in the upper and lower extremities were normal. Radiographic evaluation revealed an osteophyte at C5-6 without neuroforaminal impingement. Multi-level retrolisthesis (backward slippage of a vertebral body) on extension of the neck was also present. An orthopedic examiner 5 months prior to separation noted decreased ROM in all directions, although measurements were not specified. An outpatient evaluation for an acute febrile respiratory illness 4 months prior to separation noted “full ROM” of the neck with painful motion.

The Board must correlate the above clinical data with the 2001 rating schedule which, for convenience, is excerpted below:

- 5290** Spine, limitation of motion of, cervical:
 - Severe 30
 - Moderate 20
 - Slight 10

- 5293** Intervertebral disc syndrome:
 - Pronounced; with persistent symptoms compatible with sciatic neuropathy with characteristic pain and demonstrable muscle spasm, absent ankle jerk, or other neurological findings appropriate to site of diseased disc, little intermittent relief 60
 - Severe; recurring attacks, with intermittent relief40
 - Moderate; recurring attacks 20
 - Mild 10
 - Postoperative, cured 0

- 5295** Lumbosacral strain:
 - Severe; with listing of whole spine to opposite side, positive Goldthwaite's sign, marked limitation of forward bending in standing position, loss of lateral motion with osteo-arthritic

changes, or narrowing or irregularity of joint space, or some of the above with abnormal mobility on forced motion 40
 With muscle spasm on extreme forward bending, loss of lateral spine motion, unilateral, in standing' position 20
 With characteristic pain on motion 10
 With slight subjective symptoms only 0

The unfitting cervical spine condition was designated as existing prior to service by the PEB, but no deduction was applied. The PEB assigned a 10% rating under an analogous 5295 code (lumbosacral strain). The VA initially assigned a 10% rating for a period of military service that ended 1 November 2000, and again following a second separation from service ending on 22 March 2002. The VA's rating increase to 20% in 2004 was based on a later C&P exam performed on 2 July 2004. Since that exam falls well outside the 12-month window specified in DoDI 6040.44 regarding VA evaluations for Board consideration, it was not considered. Board members agreed that a 10% rating was easily justified by the evidence at hand, but debated if a higher rating was warranted under the 5290 code. Although there was documentation of reduced ROM prior to separation, there was also an evaluation proximal to separation that noted ROM to be full. Members agreed that the 5293 coding criteria did not provide an avenue to a higher rating, and that there was likewise no evidence to support a higher rating using the PEB's approach under an analogous 5295 code. The PEB properly subsumed neck pain as a related condition. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (Resolution of reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the cervical spondylosis 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 cervical spondylosis condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. 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 |
|----------------------------|-------------------|---------------|
| Cervical Spondylosis | 5299-5295 | 10% |
| | COMBINED | 10% |

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120531, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXX
 President
 Physical Disability Board of Review

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 31 Jan 13

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

XXXXXXXXXXXXXXXXX
Assistant General Counsel
(Manpower & Reserve Affairs)