RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: BRANCH OF SERVICE: MARINE CORPS
CASE NUMBER: PD1200568 SEPARATION DATE: 20020131
BOARD DATE: 20121031

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty LCpl/E-3 (3251/Organizational Automotive Mechanic), medically separated for chronic low back pain. The condition began in 2001 as a consequence of injury. He did not respond adequately to operative and rehabilitative treatment and was unable to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was placed on light duty and referred for a Medical Evaluation Board (MEB). The MEB forwarded chronic low back pain and status post L5/S1 microdiscectomy for L5/S1 herniated nucleus pulposus for Physical Evaluation Board (PEB) adjudication. No other conditions appeared on the MEB's submission. The PEB adjudicated the chronic low back pain condition as unfitting, rated 20% with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD). Status post (s/p) L5/S1 microdiscectomy for L5/S1 herniated nucleus pulposus was included as a related Category II diagnosis. The CI made no appeals, and was medically separated with a 20% disability rating.

CI CONTENTION: "Because as of Sept. 1, 2008 my 20% rating was dropped to 0%, for what reason?"

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 20011130			**VA (~2 Mos. Pre-Separation) – All Effective Date 20020201**			
Condition	**Code**	**Rating**	**Condition**	**Code**	**Rating**	**Exam**
Chronic Low Back Pain	5295	20%	Lumbar Spine Degenerative Disc Disease	5003-5293	20%*	20011211
S/P L5/S1 Microdiscectomy	Cat 2					
↓No Additional MEB/PEB Entries↓			0% X 4			20011211
Combined: 20%			**Combined: 20%**			

*20070927 VA decision changed code to 5003-5242; 20080614 decision reduced rating to 0%, effective 20080901

ANALYSIS SUMMARY: It is noted for the record that the Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to the CI's statement in the application regarding the rating reduction by the VA in 2008. The CI should contact the Department of Veterans' Affairs to bring this concern to the DVA's attention. The Board's role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to VASRD standards, based on severity at the time of separation. It

must also judge the fairness of PEB fitness adjudications based on the fitness consequences of conditions as they existed at the time of separation.

Chronic Low Back Pain 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 CI injured his lumbar spine in April 2001 from falling onto his back while doing a hand stand, and soon developed left lower extremity numbness and weakness consistent with radiculopathy. Magnetic resonance imaging (MRI) confirmed a significant disc bulge at the L5-S1 vertebral level with associated central canal stenosis and effacement of the left S1 nerve root. Subsequent disc surgery performed on 19 July 2001 resulted in resolution of the radiculopathy, but complaints of low back pain persisted. The operating surgeon stated on 7 September 2001 (2 months after surgery, 5 months prior to separation) that the CI was recovering well and was using minimal pain medication. However, he indicated that the condition compromised the CI's ability to operate heavy machinery and perform in combat. ROM in evidence is provided in the following table:

Thoracolumbar ROM	Neurosurgery ~3 Mos. Pre-Sep	VA C&P ~6 Wks. Pre-Sep
Flexion (90º Normal)	45º	45º
Ext (0-30)	10º	5º
R Lat Flex (0-30)	25º	30º (35º)
L Lat Flex 0-30)	25º	30º (35º)
R Rotation (0-30)	Not specified	25º
L Rotation (0-30)		25º
Combined (240º)	N/A	160º
Comment	+muscle spasm, tenderness	
§4.71a Rating	20%	20%

At the narrative summary (NARSUM) exam 3 months prior to separation (23 October 2001), the CI reported constant pain that varied in intensity and was frequently associated with a feeling of grinding and audible cracking in the low back area. Bending, twisting and prolonged standing exacerbated the condition. Narcotic medication was sometimes needed for pain and he used a back brace. Radiating pain down the left leg was not present. The physical examination noted the CI to move slowly. A normal gait was present, although the ability to walk on heels and tiptoes was poor. There was no deformity of the lumbar spine. Mild tenderness of the left paraspinal muscles was present. Significantly decreased extension, left lateral bending and rotation were reported, although measurements were not specified. A positive straight leg raise (SLR) test was noted, but details were not provided. Decreased left thigh muscle strength was present, while deep tendon reflexes (DTR) were normal. A neurosurgical evaluation performed on 24 October 2001 reported that the CI complained of pain with slight bending, but that he could "walk without problems." Examination revealed minimal paraspinal muscle spasms and minimal left sacroiliac joint tenderness. Motor and sensory functions were intact and DTRs were normal. At the VA Compensation and Pension (C&P) exam, performed 6 weeks prior to separation, the CI reported daily use of analgesic medication. He was unable to run, march, arch his back, lie in one position too long or bend over due to considerable aggravation of pain. Examination revealed difficulty walking on toes and hopping, but squatting was performed without difficulty. Muscle strength, sensation and DTRs were normal. A positive SLR was noted bilaterally. Back extension and flexion caused considerable discomfort. Lumbar

region tenderness was present. Lumbar spine X-ray showed moderate degenerative disc disease (DDD) at L5-S1.

A VA clinic note 5 months after separation (27 June 2002) reported that the CI rarely took narcotic medication for pain. A follow-up VA pain clinic visit 9 months after separation (23 October 2002) reported that pain had improved to a 3 on a 0-10 scale and that his sleep had also improved. An MRI showed degenerative disc changes at L4 through S1 with some scar tissue, but without evidence of disc herniation.

The Board must correlate the above clinical data with the 2002 rating schedule which, for convenience, is excerpted below:

5292 Spine, limitation of motion of, lumbar:
- Severe 40
- 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 relief 40
- Moderate; recurring attacks 20
- Mild 10
- Postoperative, cured 0

5294 Sacro-iliac injury and weakness:

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 PEB assigned a 20% rating under the 5295 code (Lumbosacral strain). The VA assigned a 20% rating under a 5003-5293 code (degenerative arthritis, intervertebral disc syndrome) but in a later rating decision modified the code to reflect newer VASRD coding options; however, the rating was unaffected. The Board debated if a rating higher than the PEB's was justified using the older VASRD rules in effect at the time. Board members agreed that elements of the next higher 40% rating under the 5292, 5293, 5294 or 5295 codes were not present on any of the cited examinations. All Board members agreed that the condition more nearly approximated the criteria for the 20% rating. Status post L5/S1 microdiscectomy was designated as a Category II condition and was appropriately subsumed under the chronic low back pain condition already discussed above. 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 chronic low back 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 chronic low back pain 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
Chronic Low Back Pain	5295	20%
	COMBINED	**20%**

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120606, w/atchs
Exhibit B. Service Treatment Record
Exhibit C. Department of Veterans' Affairs Treatment Record

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 26 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 USMC
- former USMC
- former USMC
- former USMC

Assistant General Counsel
(Manpower & Reserve Affairs)