

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: xx
CASE NUMBER: PD1200619
BOARD DATE: 20130124

BRANCH OF SERVICE: MARINE CORPS
SEPARATION DATE: 20020215

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSgt/E-6 (2651/Special Intelligence System Administrator/Communicator), medically separated for lumbar discogenic back pain. The CI developed discogenic back pain that did not improve adequately with treatment to meet the physical requirements of his Military Occupational Specialty or satisfy physical fitness standards. He was placed on limited duty /placed on light duty and referred for a Medical Evaluation Board (MEB). The MEB forwarded lumbar discogenic back pain to the Physical Evaluation Board (PEB) for adjudication. No other condition was forwarded to the PEB. The PEB adjudicated the lumbar discogenic back pain condition as unfitting, rated 20%, with application of the SECNAVINST 1850.4D. The CI made no appeals, and was medically separated with a 20% disability rating.

CI CONTENTION: "I was given 20% when I got out then I was 20% for 6 years until I fought it. Then It was raised to 60% disability."

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 lumbar discogenic back pain condition as requested for consideration meets the criteria prescribed in DoDI 6040.44 for Board purview; and, is addressed below. The remaining conditions rated by the VA at separation and listed on the DA Form 294 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 20011206			VA (~1 Mo. Post-Separation) – All Effective Date 20020216			
Condition	Code	Rating	Condition	Code	Rating	Exam
Lumbar Discogenic Back Pain	5293	20%	Degen. Disc Dis. Lumbosacral Spine w/ HNP; without Radiculopathy	5293	10%*	20020711
			Tinnitus	6260	10%	20020711
↓No Additional MEB/PEB Entries↓			0% X 2 / Not Service-Connected x 1			
Combined: 20%			Combined: 20%			

*Increased to 40% effective 20080618 by VARD 20081212 (code changed to 5237; combined rating changed to 60%).

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. 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. The DES has neither the role nor the authority to compensate members for anticipated future severity

or potential complications of conditions resulting in medical separation nor for conditions determined to be service-connected by the Department of Veterans Affairs (DVA) but not determined to be unfitting by the PEB. However the DVA, operating under a different set of laws (Title 38, United States Code), is empowered to compensate all 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'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 Veteran Affairs Schedule for Rating Disabilities (VASRD) standards, based on severity at the time of separation.

Lumbar Discogenic Back Pain Condition. The CI was well until September 2000 at which time he experienced the sudden onset of low back pain (LBP). The CI was seen in the orthopedic clinic at which time he was diagnosed with extension back pain consistent with facet syndrome. Subsequent magnetic resonance imaging of the lumbar spine revealed multilevel degenerative disk disease (DDD) with broad-based disk bulges at L4-5 and L5-S1 with small central protrusion or herniation. Along with medical treatments, he was treated on several occasions at the pain clinic where he received nerve blocks (twice), epidural steroid injections, and radiofrequency ablation. Despite all these interventions, the CI continued to have LBP. At the MEB narrative summary examination on 14 September 2001, the CI reported continued LBP with occasional radiation down the legs. The symptoms were worse with running or jogging. On examination there was no tenderness or muscle spasm. Straight leg raising (SLR) on the left provoked symptoms. Muscle strength, reflexes and sensation were normal. At the VA Compensation and Pension exam on 11 July 2002, the CI reported recurrent LBP in the midline with sitting more than 30 minutes, standing more than 10 minutes, twisting, turning, bending, or lifting variable amounts of weight or lifting repetitively. On examination, the CI had a normal gait. There was paravertebral tenderness but without spasm. His active range-of-motion (ROM) showed forward flexion to 110 degrees (with pain reported beyond 45 degrees), extension to 25 degrees, lateral bending 20 degrees bilaterally, and rotation 40 degrees bilaterally. SLR was negative for nerve root irritation and strength and reflexes were normal.

The Board directs attention to its rating recommendation based on the above evidence. In accordance with DoDI 6040.44, the Board is required to recommend a rating IAW the VASRD in effect at the time of separation. The Board notes that the 2001 VASRD standards for the spine, which were in effect at the time of separation, were changed to the current §4.71a rating standards in 2004. The Board must correlate the above clinical data with the 2001 rating schedule (applicable diagnostic codes include: 5292 limitation of lumbar spine motion, 5293 intervertebral disc syndrome, and 5295 Lumbosacral strain). The PEB rated the condition 20% coded 5293 for lumbar discogenic back pain. The VA rated 10% coded 5293 for congenital variant, lumbosacral junction (lumbarization at the S1 level) with DDD of the lumbosacral spine with herniated nucleus pulposus (HNP), but without objective evidence of lower extremity radiculopathy. The Board first considered the rating under code 5293, used by both the PEB and the VA. The Board noted that the CI had a well documented disc condition that could account for his chronic pain. In the year leading up to the MEB examination, the service treatment records (STRs) document an extensive history of chronic back pain and multiple treatment interventions including nerve blocks, epidural steroid injection, and nerve ablation. At the time of the MEB examination the CI had continued pain with radiation, however there were no abnormal neurologic findings. All members agreed that the STRs and the MEB examination did not support a rating higher than the 20% adjudicated by the PEB. The Board also concluded that the VA examination after separation did not support a rating higher than the 10% adjudicated by the VA. The Board then considered rating under codes 5292 limitation of motion and 5295 lumbosacral strain. Since there was no more than slight limitation of motion with pain on motion, no spasm or unilateral loss of lateral bending, normal strength and gait, the Board concluded that the condition would rate no more than 10% under either of these codes. The Board also considered if additional disability rating was justified for peripheral

nerve impairment due to radiculopathy. The CI had DDD with radiating pain; however, examinations indicated normal strength, reflexes and gait. 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. Therefore the critical decision is whether or not there was a significant motor weakness which would impact military occupation specific activities. There is no evidence in this case that motor weakness existed to any degree that could be described as functionally impairing. The Board therefore concludes that additional disability rating was not justified on this basis. 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 lumbar discogenic 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. In the matter of the lumbar discogenic 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
Lumbar Discogenic Back Pain	5293	20%
	COMBINED	20%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120604, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

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Director
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 21 Feb 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 USN
- former USN
- former USMC
- former USN
- former USMC
- former USN
- former USN
- former USN
- former USMC
- former USMC
- former USMC
- former USMC

xxxx
Assistant General Counsel
(Manpower & Reserve Affairs)