

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XX
CASE NUMBER: PD1200647
BOARD DATE: 20130219

BRANCH OF SERVICE: NAVY
SEPARATION DATE: 20030731

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty UT2/E-5 (Utilities man), medically separated for chronic right hip pain. The CI injured her right hip in October 2000 and did not improve adequately with treatment to meet the physical requirements of her rating or satisfy physical fitness standards. She was placed on limited duty (LIMDU) and referred for a Medical Evaluation Board (MEB). Chronic right hip pain and lumbosacral pain were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW SECNAVINST 1850.4E. There were no other conditions on the MEB submission. The PEB adjudicated the chronic right hip pain condition as unfitting, rated 10%, with application of the Veterans Affairs Schedule for Rating Disabilities (VASRD). The remaining conditions were determined to be conditions that contributed to the unfitting condition but were not separately ratable (Category II). The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: "Test were run in New Orleans prior to Hurricane Katrina to determine reason of ongoing back/hip pain. I have actually not seen the results but the pain has been consistent especially when I was pregnant with my son. I find it very difficult to exercise which makes maintaining a healthy weight very difficult. My hip/back also hurt while carrying my son, having sex and other activities up to a level 7 (of 10)." *sic*

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 chronic back pain (lumbosacral pain) condition requested for consideration and the unfitting chronic right hip pain condition meet the criteria prescribed in DoDI 6040.44 for Board purview, and are accordingly addressed below. Any condition 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 20030429			VA (<1 Mo. Post-Separation) – All Effective Date 20031001			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Right Hip Pain	5299-5003	10%	Residual, S/P Injury, R Hip w/Pain	5299-5252	10%	20030811
Lumbosacral Pain	Category II		Low Back Pain	5292	10%	20030811
No Additional MEB/PEB Entries			Not Service-Connected x 1			20030811
Combined: 10%			Combined: 20%			

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI's application regarding the significant impairment with which her service-connected condition continues to burden her. 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. 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. That role and authority is granted by Congress to the Department of Veterans Affairs (DVA), operating under a different set of laws (Title 38, United States Code). The Board evaluates DVA evidence proximal to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness decisions and rating determinations for disability at the time of separation. 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 DVA, however, 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.

Chronic Right Hip Pain Condition. According to the MEB narrative summary (NARSUM) the CI sustained a right hip injury in November 2000 after being struck by a large tent pole (beam) over the right hip. X-ray, magnetic resonance imaging (MRI) and bone scan exams of the right hip were all normal; however, the CI complained of progressive pain unalleviated by conservative treatment. The CI was unable to perform military related physical activities including running, climbing stairs, marching, sitting for more than 20 minutes secondary to pain and was placed on a limited duty profile immediately after sustaining the injury. No surgery treatment was recommended at any time. The CI reported increased pain in the hip and low back area with her physical therapy sessions. She stated she felt the pain along the superior iliac spine to the right lateral hip, extending to the right buttock and posterior thigh. At the time of the MEB NARSUM, 26 February 2003, 5 months prior to separation, the CI reported continued pain with activity. On physical examination, there was mild tenderness to palpation (TTP) over the anterior right hip. No radicular pain or paresthesia below the knee was noted. The range-of-motion (ROM) of the affected right hip was the same as the opposite non-affected left hip indicating no limitation (flexion 120 degrees, abduction 30, adduction 20, and external rotation 45 degrees). Motor and sensory exam were normal and the examination maneuvers for detecting pathology of the hip joint and sacroiliac joint were all negative. At the VA Compensation and Pension (C&P) examination, 11 August 2003, less than 30 days after separation, the CI did not have radicular pain in the legs and denied incapacitating episodes of back pain. On examination, abduction of the right hip was limited by pain to 30 degrees and flexion was limited to 110 degrees also by pain. Gait was normal.

The Board directs attention to its rating recommendation based on the above evidence. Both the PEB and VA rated the CI condition 10 % under different codes. Considering the 5003 code used by the PEB, a higher rating could not be given considering the specific criteria ratings under this code. The VA assigned a 10% rating based on slight loss of ROM with pain (coded 5299-5252). The only symptoms evidenced at the C&P separation exam were subjective pain and slightly reduced ROM. The limitation of motion on examinations did not attain a compensable level under the respective codes for limitation of hip motion. The 10% rating adjudicated by the PEB and VA was supported based on painful motion and functional impairment related to pain. There were no neurologic, muscular, or vascular symptoms to increase the disability ratings. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (Resolution or reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the chronic right hip pain condition.

Contended PEB Conditions. The contended conditions adjudicated as not separately unfitting by the PEB was lumbosacral pain. The PEB considered the lumbosacral pain as a condition that contributed to the unfitting condition but was not separately unfitting or ratable. The Board's first charge with respect to these conditions is an assessment of the appropriateness of the PEB's fitness adjudications. The Board's threshold for countering fitness determinations is higher than the VASRD §4.3 (Resolution or reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 "fair and equitable" standard. The MEB NARSUM mentioned both hip and low back pain (LBP) secondary to the injury sustained by the CI in October 2000. Medical documents from the time of injury do not record a complaint of back pain. However, a clinic note dated 4 May 2001 evidenced the occurrence of back pain at the end of March 2001. The CI denied any back injury in the 2000 accident. She stated that she noticed the pain at the end of March 2001 starting in the scapula area and radiating to the lower back. The physical exam evidenced TTP in the lower back area. At that time, the treating physician considered the pain mechanical, secondary to overuse. A referral to physical therapy in June 2001 recorded a history of LBP since 1998. After August 2001, service treatment records (STRs) reflected intermittent care for LBP. The 26 January 2002 clinic encounter recorded increased LBP for one day. The next encounter was 21 May 2002 recording LBP for two days. A 17 December 2002 orthopedic evaluation makes no mention of back pain, only the right hip pain. An 8 January 2003 orthopedic follow up notes right hip and right buttock pain. A 5 February 2003 clinic follow up for LIMDU mentions only hip pain. The MEB NARSUM, 26 February 2003, reported "chronic right hip pain with associated low back pain" describing the pain as reported to be along the superior iliac spine to the right lateral hip, extending to the right buttock and posterior thigh. The NARSUM noted there was no radicular pain and that there were no incapacitating episodes of back pain. The MEB NARSUM examination focused on the hip and did not record an examination of the back. The MEB physical examination 11 March 2003, documented on DD Form 2808, recorded tenderness of the lumbar spine and paravertebral areas, with full range of motion. A 7 March 2003 clinic encounter recorded a history of occasional back pain. At the C&P exam performed less than 30 days after separation, the gait was normal and the lumbar spine curvature was normal. Forward flexion was 90 degrees with pain noted at 80 degrees, all other ranges of motion were normal. The Board first considered whether the LBP back pain was separately unfit for duty. Although the hip and back pains were reported to be associated, the Board noted the medical record indicated the CI experience back pain one year later after the hip injury. Primary treatment records also indicated the right hip pain was the predominant chronic problem interfering with duty and that complaints of back pain were intermittent after August 2001. The description of pain in the MEB NARSUM describes hip girdle pain but not separate back pain. The Board members concluded the intermittent symptoms from the LBP did not prevent performance of duty. Therefore, the Board did not conclude there was a preponderance of evidence to support a separately unfit determination. There was no indication from the record that this condition separately significantly interfered with satisfactory duty performance. After due deliberation in consideration of the preponderance of the evidence, the Board concluded that there was insufficient cause to recommend a change in the PEB fitness determination for the contended back pain (lumbosacral pain) condition; and, therefore, no additional disability ratings can be recommended.

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 right hip pain condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended back pain (lumbosacral pain) condition, 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 Right Hip Pain	5299-5252	10%
Lumbosacral Pain	Cat II	
	COMBINED	10%

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

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Acting 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 04 Apr 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:

- xformer USMC
- xformer USN
- xformer USMC
- xformer USMC
- xformer USN
- xformer USMC
- xformer USMC
- xformer USN
- xformer USMC
- xformer USN
- xformer USMC

x
Assistant General Counsel
(Manpower & Reserve Affairs)