

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XX
CASE NUMBER: PD1200648
BOARD DATE: 20130117

BRANCH OF SERVICE: NAVY
SEPARATION DATE: 20040204

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Petty Officer Third Class/E-4 (MT3/Missile Technician Third Class), medically separated for L3/4 and L4/5 disc herniation status post (s/p) laminectomy. The CI complained of persistent back pain after having a multiple level lumbar laminectomy performed in January 2002. That surgery was performed for multiple disc herniations incurred after injury sustained while on active duty. His pain did improve after surgery. He had permanent restrictions since his surgery to include no running. Because of persistent pain in the low back and pain (LBP) in both the right and left buttocks and hamstrings, the CI was unable to meet the physical requirements of his rating or to satisfy physical fitness standards. He was placed on limited duty and referred for a Medical Evaluation Board (MEB). L3/4 and L4/5 disc herniation s/p laminectomy, recurrent disc herniation on L5/S1, degenerative disc disease (DDD) L3 /4, L4/5 and LBP conditions, identified in the rating chart below, were also identified and forwarded by the MEB. The PEB adjudicated the L3/4 and L4/5 disc herniation s/p laminectomy conditions as unfitting, rated 20% with application of the SECNAVINST 1850.4E. The remaining conditions (degenerative disc disease L3/4, L4/5, low back pain, and recurrent disc herniation L5/S1) were determined to be not unfitting and determined to be Category II. The CI made no appeals, and was medically separated with a 20% disability rating.

CI CONTENTION: "The disability rating of 10% did not accurately reflect the level of trauma to my lower back. The lack of mobility and daily pain warranted a higher rating."

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 Category II PEB conditions of DDD L3/4, L4/5; and LBP; recurrent disc herniation L5/S1; as well as the CI-specified lack of mobility and daily pain conditions as requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview; and are addressed below, in addition to a review of the ratings for the unfitting L3/4 and L4/5 disc herniation s/p laminectomy condition. 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 20030916			VA (~1 Mo. Post-Separation) – All Effective Date 20040205			
Condition	Code	Rating	Condition	Code	Rating	Exam
L3/4 And L4/5 Disc Herniation Status Post Laminectomy (Low Back Pain)	5295	20%	Status Post Discectomy and Laminectomy, L3-L4 and L4-L5	5243	10%*	20040330
Degenerative Disc Disease L3/4, L4/5	CAT II					
Low Back Pain	CAT II					
Recurrent Disc Herniation L5/S1	CAT II					
↓No Additional MEB/PEB Entries↓			0% X 1			20040330
Combined: 20%			Combined: 10%*			

*Increased to 40% from 20080414 (combined 40%)

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the gravity of his condition and the significant impairment with which his service-connected condition continues to burden him. The Board wishes to clarify that it is subject to the same laws for 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 Veteran’s Affairs (DVA), operating under a different set of laws (Title 38, United States Code). The Board evaluates DVA evidence proximate to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of fitness decisions and rating determinations for disability at the time of separation.

L3/4 and L4/5 Disc Herniation Status Post Laminectomy (Low Back Pain) Condition [Including Associated Lower Back Conditions]. The goniometric range-of-motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation, with documentation of additional ratable criteria, are summarized in the chart below.

Thoracolumbar ROM	PT ~12 Mos. Pre-Sep	MEB ~5 Mos. Pre-Sep	VA C&P ~3 Mos. Post-Sep	
Flexion (90° Normal)	"AROM WNL"	"50% expected flex/ext without discomfort"-	80°	
Ext (0-30)			30°	
R Lat Flex (0-30)			-	
L Lat Flex 0-30)			-	
R Rotation (0-30)			75-80% of expected due to discomfort	30°
L Rotation (0-30)			-	30°
Combined (240°)			-	-
Comment	"hamstring flexibility lacking 35 bilat"; non-antalgic gait, [Tenderness; painful motion, not commented]	Pain in back, rad'g to buttocks, HS. "50% expected flex/ext without discomfort" 75-80% expected lat rotn due to discomfort; normal gait	"Mild limitation of motion"; + spasm; X-ray: reversal of the curvature of the lumbar spine	
§4.71a Rating	0%-unk	20%	20%	

At the MEB examination, dictated 5 months prior to separation, the CI reported pain in his back radiating to his buttocks and hamstrings, without weakness. The MEB physical exam noted decrease in ROM to "50% expected flexion extension at the lumbosacral spine without significant discomfort." Lateral rotation was noted to be "75 to 80% of expected" limited to discomfort. The examiner noted normal gait and did not comment on the presence of spasm. X-ray showed multi-level facet changes. Magnetic resonance imaging on 9 August 2003 showed advanced degenerative changes, new bulging at L5/S1 and severe disc 'dessication' at L3/4 and L4/5 levels.

At the VA Compensation and Pension exam, 3 months after separation, the CI reported stiffness and pain localized to his low back, aggravated by sitting and standing for long periods. He had no neurologic symptoms to include weakness. Physical evaluation revealed spasm to his low back, forward flexion to 80 degrees, extension to 30, lateral extension to 30 bilaterally and rotation to 30 bilaterally. There was radiographic evidence of reversal of the curvature of the lumbar spine.

The Board directs attention to its rating recommendation based on the above evidence. The PEB, under the interim spine rules (prior to September 2003), rated the low back condition 20% code 5295, lumbosacral strain. The VA, under the new spine rules, rated the low back condition 10% under code 5243, intervertebral disc syndrome, based upon ROM measurements at that time. At the date of separation, codes 5237, 5243, and 5242 (degenerative arthritis of the spine) are appropriate to the CI's pathology. The ROM described in the narrative summary correlates to a 20% rating under the General Rating Formula for Diseases and Injuries of the Spine (Forward flexion of the thoracolumbar spine greater than 30 degrees but not greater than 60 degrees). A 40% rating requires thoracolumbar spine 30 degrees or less or ankylosis of the entire thoracolumbar spine. There is no evidence of incapacitating episodes to support a rating under the 5243 (intervertebral disc syndrome) formula for rating intervertebral disc syndrome based on incapacitating episodes. There was no evidence of unfitting peripheral nerve impairment in this case. The general spine formula ratings are with or without symptoms such as pain (whether or not it radiates), stiffness, or aching in the area of the spine affected by residuals of injury or disease. The CI's contended lack of mobility and daily pain, as well as the Category II diagnoses of DDD L3/4, L4/5; LBP; and recurrent disc herniation L5/S1 are considered under the single rating in accordance with the general spine formula ratings. 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 20% adjudication for the LBP condition, but recommended a change in code to 5243 to align with the VASRD in effect at the date of separation.

Contended PEB Conditions. All of the Category II and contended conditions were subsumed in the modification of the CI's rating for his unfitting lower back condition above.

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; however, the PEB rating was under an older VASRD no longer in effect at the time of separation. In the matter of the L3/4 and L4/5 disc herniation s/p laminectomy (LBP) condition, the Board unanimously recommends no change in the PEB's 20% disability rating level, but a change to VASRD code 5243 IAW VASRD §4.71a to conform to the VASRD in effect at the date of separation. This change is because an administrative correction (VASRD Code changed to 5243) noted. In the matter of the contended DDD L3/4, L4/5; LBP (and lack of mobility); and recurrent disc herniation L5/S1; conditions, the Board unanimously recommends no change from the PEB determinations as Category II and not separately unfitting or compensable. 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
L3/4 and L4/5 Disc Herniation Status Post Laminectomy (Low Back Pain) Condition	5243	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

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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)