

RECORD OF PROCEEDINGS  
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: X  
BRANCH OF SERVICE: MARINE CORPS  
SEPARATION DATE: 20011115

CASE NUMBER: PD1200744  
BOARD DATE: 20130314

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**SUMMARY OF CASE:** Data extracted from the available evidence of record reflects that this covered individual (CI) was a U.S. Marine Corps active duty CPL/E-4(6531/Aviation Ordnanceman) medically separated for chronic low back pain (LBP). In May 2000, the CI began experiencing LBP and left radicular leg pain after from some lifting. Despite two 8-month periods of limited duty (LIMDU) along with low-impact aerobic fitness, steroid injections, and posterior lumbar and interbody fusion (PLIF) L4-S1, the CI failed to meet the physical requirements of his Military Occupational Specialty (MOS) and he was referred for a Medical Evaluation Board (MEB). The MEB forwarded "Status Post (S/P) Posterior Lumbar Interbody Fusion L4 to S1 for Grade II Spondylolisthesis at L5-S1 and Retrolisthesis L4-5; Chronic LBP; and Left Lateral Leg Numbness secondary to [number] 1" to the Physical Evaluation Board (PEB). The MEB forwarded no other conditions for PEB adjudication. The PEB adjudicated "Chronic LBP" as unfitting, rated 20%, with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD). Although the condition was also determined to have existed prior to service (EPTS), the disability rating was not reduced. The remaining conditions, "Left Lateral Leg Numbness and S/P Lumbar Interbody Fusion L4 to S1 for Grade II Spondylolisthesis at L5-S1 and Retrolisthesis L4-5" were determined to be related to the primary condition and were not separately rated. The CI made no appeals, and he was medically separated with a 20% disability rating.

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**CI CONTENTION:** "Spinal fusion and degenerative disk disease. L4-L5-S1 is fuse in 4.71a schedule of rating – musculoskeletal system diagnostic codes 5236 -5243 unfavorable ankylosis of the entire thoracolumbar spine %50. I have taken pain medication for over a decade which has resulted in stomach ulcers and the change of pain medication."

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**SCOPE OF REVIEW:** The Board wishes to clarify that the scope of its review as defined in DoDI 6040.44 (4.a) is limited to those conditions that were determined by the PEB to be specifically unfitting for continued military service; and, when requested by the CI, those condition(s) "identified but not determined to be unfitting by the PEB." The CI's chronic LBP and related conditions, as requested for consideration, meet the criteria prescribed in DoDI 6040.44 for Board purview and is addressed below. 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.

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**RATING COMPARISON:**

PEB – Dated 20010921			VA (1 Mos. Post-Separation) – All Effective Date 20011116			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Low Back Pain	5295	20%*	Grade II Spondylolisthesis L5-S1 with Retrolisthesis at L4-5, Status Post Fusion with Bone Graft and Residuals	5299	20%	20011213
Left Lateral Leg Numbness	Related			-		
Status post Lumbar Interbody Fusion L4 to S1 for Grade II Spondylolisthesis at L5-S1 and Retrolisthesis L4-5	Related			5293		
↓No Additional MEB/PEB Entries↓			Tinnitus	6260	10%	20011213
<b>Combined: 20%</b>			0% X 1 / Not Service-Connected x 1			
			<b>Combined: 30%</b>			

\*Existed Prior to Service (EPTS)—No Reduction

**ANALYSIS SUMMARY:** The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-incurred condition continues to burden him. The Board utilizes VA 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 Disability Evaluation System (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.

**Chronic LBP Condition.** There were goniometric range-of-motion (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation; as summarized in the chart below.

Thoracolumbar ROM	MEB ~3 Mo. Pre-Sep	VA C&P ~29 days Post-Sep
Flexion (90° Normal)	Forward flexion to ankles	50°
Ext (0-30)	30°	15°
R Lat Flex (0-30)	-	25°
L Lat Flex 0-30)	-	25°
R Rotation (0-30)	20°	30°
L Rotation (0-30)	20°	30°
Combined (240°)	-	175°
Comment	Normal gait; decreased sensation over left lateral thigh area; straight leg raise(SLR) neg; muscle strength 5/5; reflexes2+ symmetrical; “chronic pain”	Painful motion in all directions; normal gait; ; straightening of lumbar lordosis; paraspinal muscle spasm at L3-5, L5-S1; + SLR 60 degrees on left, neg on right at 75 degrees; no weakness, fatigue or tenderness; motor 5/5 bilaterally, reflexes 2+, and sensory intact; mild difficulty getting on and off examining table and changing positions
§4.71a Rating		
5292	20%	20%
5293	20%	20%
5295	20%	20%

The chronic back condition was rated IAW the 2002 VASRD standards which are no longer in effect. The 2002 Veterans’ Administration Schedule for Rating Disabilities (VASRD) coding and rating standards for the spine, which were in effect at the time of separation, were changed in 23 September 2002 for code 5293 Intervertebral disc syndrome criteria, and then changed to the current §4.71a rating standards in 26 September 2003. The 2002 standards for rating based on ROM impairment were subject to the rater’s opinion regarding degree of severity, whereas the current standards specify rating thresholds in degrees of ROM impairment. The pertinent 5293 criteria also specifically included symptoms compatible with sciatica that were present in

this case. (NOTE: The current VASRD general spine formula does not include similar 5293 criteria).

A lumbar spine X-ray in August 2000 revealed spondylolisthesis and a lumbar spine magnetic resonance imaging (MRI) in November 2000 demonstrated multilevel disc disease with compression of the bilateral exiting nerve roots at L5-S1 and a pars interarticularis defect at the L4-5 level. No further studies were completed after surgery in February 2001. An orthopedic consult in September 2000 suspected herniated nucleus propulsus (HNP) at L5-S1 with left radiculopathy. A pain management consultant noted that pain radiated to left leg down to calf however, physical exam findings revealed bilateral normal strength with a slight light touch sensation on the left leg in L3-S1. The CI underwent two steroid injections without pain relief. The CI underwent a posterior lumbar interbody fusion (PLIF) procedure in February 2001. The commander's statement noted that due to an inability to lift more than fifteen pounds along with time limits in standing and sitting, the CI was rendered unable to perform all of his MOS duties. The MEB narrative summary (NARSUM) approximately 3 months prior to separation indicated that the CI had post-operative residual LBP approximately 6 months later. The MEB NARSUM physical exam findings are summarized in the chart above. The VA Compensation and Pension examination (C&P) completed 29 days after separation indicated occasional numbness and pain radiation to the left leg, constant back pain associated with weakness, stiffness, fatigue and lack of endurance. He was taking narcotic pain medication with good response. The C&P physical exam findings are summarized in the chart above.

Board precedent is that a functional impairment tied to fitness is required to support a recommendation for addition of a peripheral nerve rating at separation. The sensory component noted on the NARSUM examination has no functional implications and neither the NARSUM nor the C&P examination notes any motor impairment. Since no evidence of functional impairment exists in this case, the Board cannot support a recommendation for additional rating based on nerve impairment.

The Board directs attention to its rating recommendation based on the above evidence. The PEB coded the chronic LBP condition as 5295 lumbosacral strain and rated 20% presumably for muscle spasm on extreme forward bending, loss of lateral spine motion, unilateral, in standing position. The VA coded the Grade II Spondylolisthesis L5-S1 with retrolisthesis at L4-5, status post (s/p) fusion with bone graft and residuals condition analogous to 5293 intervertebral disc syndrome and rated 20% based on recurring attacks of moderate intervertebral disc syndrome. The PEB and the VA chose different coding options, however this did not materially affect the rating. Although the C&P examination was completed after separation, it was more complete and closest to the date of separation. Therefore it was adjudged to have the higher probative value. The MEB exam showed chronic pain, however the forward flexion to ankles was difficult to quantify since there was no goniometric measurement. The C&P exam ROM was complete and documented flexion limited to 50 degrees and painful motion in all directions along with straightening of lumbar lordosis and paraspinal muscle spasm at L3-5 and L5-S1. This supports a 20% rating under multiple different VASRD codes. While the CI did have spinal fusion surgery, he was able to maintain motion in all directions as evidenced on both the NARSUM and the VA examinations and therefore, ankylosis was not present. No appropriate coding scheme results in a rating greater than 20%. 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 LBP condition.

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**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 LBP 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.

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**RECOMMENDATION:** The Board, therefore, recommends that there be no recharacterization of the CI's disability and separation determination, as follows:

<b>UNFITTING CONDITION</b>	<b>VASRD CODE</b>	<b>RATING</b>
Chronic Low Back Pain	5295	20%
	<b>COMBINED</b>	<b>20%</b>

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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

X  
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)