

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XX
CASE: PD1200802
BOARD DATE: 20130122

BRANCH OF SERVICE: NAVY
SEPARATION DATE: 20030613

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty PO3/E-4 (GSM3/Gas Turbine Mechanic), medically separated for chronic low back pain (LBP). The CI suffered traumatic LBP shortly after a fall down a ladder well in 2002. A chronic condition developed which could not be adequately rehabilitated to meet the physical requirements of his rating or satisfy physical fitness standards. He was placed on limited duty and referred for a Medical Evaluation Board (MEB). The MEB also identified and forwarded right radicular pain, herniated nucleus pulposus (HNP) right L3-4 with negative root tension findings and normal neurologic exam, and spondylolysis L5 with Grade 1 spondylolisthesis identified in the rating chart below. The Physical Evaluation Board (PEB) adjudicated chronic LBP as unfitting, rated 20%. The remaining conditions were determined to be contributing to the unfitting condition (Category II). The CI made no appeals, and was medically separated.

CI CONTENTION: "Over the years, my low back condition has got worse."

SCOPE OF REVIEW: The Board's scope of review is defined in DoDI 6040.44, Enclosure 3, paragraph 5.e. (2). It is limited to those conditions determined by the PEB to be unfitting for continued military service and those conditions identified but not determined to be unfitting by the PEB when specifically requested by the CI. Ratings for unfitting conditions will be reviewed in all cases. The chronic LBP, (herniated L3-4 disk, spondylolysis L5/ spondylolisthesis) and right radicular pain, as requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview; and is(are) 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.

RATING COMPARISON:

Service IPEB – Dated 20030319			VA - (1 Mos. Pre-Separation) Effective Date- 20030614			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Low Back Pain	5295	20%				
Herniated Nucleus Pulposus Right L3-4 with Negative Root Tension Findings and Normal Neurologic Exam	Cat II		Herniated Nucleus Pulposus L3-4	5293-5292	20%	20030501
Right Radicular Pain	Cat II		Right Lower Extremity Radiculopathy	5293-8520	10%	20030501
Spondylolysis L5 with Grade 1 Spondylolisthesis	Cat II		No VA Entry			20030501
No Additional MEB/PEB Entries						
Combined: 20%			Combined: 30%			

VAR020030724 (most proximate to Date of Separation)

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 Veterans Affairs Schedule for Rating Disabilities (VASRD) standards, based on severity at the time of separation.

Chronic Low Back Pain Condition. The CI developed traumatic back pain in 2002. Routine back X-rays were normal at that time. Magnetic resonance imaging performed on 24 May 2002 revealed a herniated disc at the L3-4 level contacting the L4 nerve root, a pars defect at the L5-S1 level (spondylolysis) and mild forward shifting of L5 on S1 (spondylolisthesis). Bone scan demonstrated these areas to be old or developmental in origin. At the MEB narrative summary performed on 27 December 2002, 6 months before separation, the CI reported 40% improvement in back pain rated 5-6/10 and radiation of pain to the right leg, also improving. He noted ability to walk for 10 to 15 minutes without difficulty and ability to lift up to 20 pounds. On physical examination, the CI was able to flex to within 10 to 12 inches of the floor. Motor, sensory and reflex exams were normal. Back spasm was absent and gait was normal. At the VA Compensation and Pension exam on 1 May 2003, a month before separation, the CI reported pain in back and right leg but no weakness or incoordination. On physical exam, posture, gait, motor, sensory and reflex exams were normal. Spinal range-of-motion (ROM) was recorded as 80 degrees flexion and 20 degrees extension. The examiner noted the spondylosis and spondylolisthesis findings to be stable and not currently a factor at the present time.

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 utilized 2002 VASRD standards for the spine, which were in effect at the time of separation. The PEB and the VA both rated the back condition 20% using different codes. The PEB rated code 5295, lumbar-sacral strain. A rating of 20% requires muscle spasm on extreme forward bending, loss of lateral spine motion; unilateral in the standing position. The next higher rating of 40% requires marked limitation of forward flexion, with listing of the total spine to the opposite side, and loss of lateral motion. The VA rated code 5292, spine, ROM, moderate, citing the moderate limitation of motion. A higher rating of 40% requires severe loss of motion. The Board unanimously agreed that the MEB and VA examinations were equivalent. The Board agreed that the normal gait and posture, mild to moderate reduction in forward flexion, absence of spasm and normal motor, sensory and reflex findings on both exams confirmed the back condition to be mild to moderate. There was no evidence of incapacitating episodes for a higher rating under code 5293. The Board reviewed the Category II radicular pain condition, specifically contended by the CI. The Board unanimously agreed that the preponderance of evidence record documented this condition to not be unfitting and, thus, could not recommend any additional rating. The Board unanimously agreed that the other Category II conditions, as noted in the rating chart, were integral contributing elements of the back pain condition and could not be recommended for additional disability rating IAW §4.14.(Absence of pyramiding). Given the above, the Board was unable to find a pathway to a rating higher than 20% using any applicable VASRD code. 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 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 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 20120608, 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

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Assistant General Counsel
(Manpower & Reserve Affairs)