

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XX
CASE NUMBER: PD1200820
BOARD DATE: 20130206

BRANCH OF SERVICE: MARINE CORPS
SEPARATION DATE: 20031115

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty LCpl/E-3 (6113/CH-53E Helicopter Mechanic) medically separated for T-10, T-11, T-12 compression fractures with a spinal angulation of 40 degrees. The CI sustained fractures of the thoracic spine from an all-terrain vehicle rollover. Despite a thoracolumbosacral orthosis (TLSO) brace, 4 months of physical therapy, and a month's stay in a rehabilitation hospital, medication, and orthopedic and rehabilitation medicine evaluations, the CI was unable to meet the requirements of his Military Occupational Specialty (MOS) or physical fitness standards. He was consequently placed on an 8 month limited duty (LIMDU) and referred for a Medical Evaluation Board (MEB). The MEB forwarded "Right Clavicular Fracture, T10, T11, and T12 Compression Fracture, and with a Spine Angulation of 40 degrees" to the Physical Evaluation Board (PEB). No other conditions were submitted by the MEB. The PEB adjudicated "T10, T11 and T12 Compression Fractures with a Spinal Angulation of 40 Degrees" as unfitting and rated 20% with application of the Veterans Affairs Schedule for Rating Disabilities (VASRD). The right clavicular fracture was adjudicated as Category III (conditions that are not separately unfitting and do not contribute to the unfitting condition). The CI made no appeals and he was discharged with a 20% service disability rating.

CI CONTENTION: The application states: "Disability has worsened [*sic*]. Have to change careers." He does not elaborate further or specify a request for Board consideration of any additional conditions.

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in Department of Defense Instruction (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 unfitting T-10, T-11, and T-12 compression fractures 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 Service Board for Correction of Military Records.

RATING COMPARISON:

Service PEB – Dated 20030828			VA (~1 Month Pre-Separation) – Effective 20031116			
Condition	Code	Rating	Condition	Code	Rating	Exam
T10, T11 and T12 compression fractures with a spinal angulation of 40 degrees	5288	20%	Thoracic Compression Fractures	5285-5288	20%	20031003
Right Clavicular fracture	Category III		Right Clavicular fracture	5201	0%	20031003
Combined: 20%			Combined: 20%			

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI's application regarding the significant impairment with which his incurred condition continues to burden him. It is a fact, however, that the Disability Evaluation System (DES) has neither the role nor the authority to compensate members for anticipated future severity or potential complications of conditions resulting in medical separation. This role and authority is granted by Congress to the Department of Veterans Affairs (DVA). The Board's authority as defined in DoDI 6040.44, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. The Board utilizes DVA 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. Post-separation evidence is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

T10, T11, and T12 Compression Fractures Condition. The 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 (In degrees)	PT ~6 Mo. Pre-Sep	MEB Exam ~6 Mo. Pre-Sep	VA C&P ~1 Mo. Pre-Sep
Flexion (90 Normal)		No ROM's	90° (100°)
Ext (0-30)	≤ 75%		10°
R Lat Flex (0-30)			30°
L Lat Flex 0-30)	> 90%		30°
R Rotation (0-30)			30° (35°)
L Rotation (0-30)			30° (35°)
Combined (240)			220°
Comment	"trunk ROM improved; especially lateral side bending improved"	Normal gait; slight kyphotic deformity at T10 non tender; excessive lumbar lordosis-normal for CI; strength 5/5; sensory intact L4-S1 ; 2+ reflexes; no upper motor neuron signs; kyphotic deformity out of brace T9-12 measures 40 degrees	Tenderness gluteal muscles, some mild tenderness iliopsoas insertion; Appears generally normal gait and posture; negative straight leg raise; walks normal heels, toes inside/outside of insteps; greater trochanter one side is not significantly greater than the other; right leg, hemipelvis 7mm shorter than left
§4.71a Rating	10%	20%	10%

Magnetic resonance imaging obtained at the time of the original trauma revealed minimal superior end plate compression fractures at T10, 11 and 12 without deformity. The CI was issued a TLSO brace during his month long rehabilitation hospitalization and an X-ray performed in October 2002 indicated a 30 degree kyphosis with brace applied. A thoracic spine X-ray performed in October 2002 showed a kyphotic deformity from T10 to T12 measuring 34 degrees. A follow-up X-ray a month later revealed a kyphotic deformity of 30 degrees. The CI was placed on an 8 month LIMDU starting in November 2002 and ending in July 2003 for the T10, 11 and 12 compression fractures with limitations of no deployment, no lifting greater than 20 pounds, no PFT, no formation, no prolonged standing greater than 20 minutes, no rifle range, no climbing on aircraft, no running, no sit-ups. At that time he was starting to wean off the back brace. A separation physical recorded on a DD Form 2808 dated 12 June 2003 noted an abnormal spine exam with "movement T10-12 (with) kyphosis nontender, FROM (without) pain." The MEB narrative summary (NARSUM) dictated 6 months prior to separation, noted that the CI continued to have back pain in the area of the fractures and had difficulty with running, lifting greater than 50 pounds, and fatigue at the end of the day. He was unable to bend over helicopters, climb aboard helicopters, or lie flat on his back as required for his job as a mechanic. An X-ray performed on the date of the MEB exam found that the CI's spinal deformity out of his brace measured 40 degrees from T9-T12. The NARSUM physical exam findings are summarized in the chart above. The commander's statement noted that because

the CI was away from his duties 12 hours per week due to his physical limitations, he was unable to perform his MOS. The VA Compensation and Pension (C&P) examination a month prior to separation noted that the CI had ongoing discomfort, pain with lifting, prolonged standing, and walking and pain on waking in the morning. The C&P physical exam findings are summarized in the chart above.

The 2003 VASRD coding and rating standards for the spine were changed to the current §4.71a rating standards on 26 September 2003, (approximately 2 months prior to the CI's separation from service). The earlier 2003 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. While the current VASRD rating standards were in effect at the time the CI separated in November 2003, it appears that both the PEB and the VA utilized the previous standards to determine their respective disability ratings as both recorded VASRD codes (5288 and 5285) from the earlier document.

The Board directs attention to its rating recommendation based on the above evidence. The PEB coded the T10, T11, and T12 compression fractures as 5288 (Spine, ankylosis of, dorsal: thoracic spine) rated 20% based on favorable ankylosis. The VA coded the thoracic compression fractures as 5285 (Vertebra, fracture of, residuals) with code 5288 (Spine, ankylosis of, dorsal: thoracic spine) but also assigned a 20% rating for favorable ankylosis. The VA stated that they did not grant the additional 10% for a demonstrable deformity of a vertebral body because there were no post-recovery X-rays in the CI's file. The NARSUM indicated there was a 40 degree kyphotic deformity and a normal gait. The C&P exam documented that posture and gait appeared generally normal and the CI had thoracolumbar flexion of 100 degrees and extension of 10 degrees on ROM. The ROM limitations support a 10% rating. Neither exam comments specifically on the presence or absence of muscle spasm or guarding severe enough to result in an abnormal spinal contour such as kyphosis. The CI did have kyphosis but even if it was granted that this resulted from muscle spasm or guarding, a 20% rating would be the maximum rating supported. No allowable coding or rating scheme would result in a rating greater than 20%. 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 T10, T11 and T12 compression fractures.

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 T10, T11 and T12 compression fractures with a spinal angulation of 40 degrees 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.

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
T10, T11 and T12 Compression Fractures with a Spinal Angulation of 40 Degrees	5288	20%
	RATING	20%

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120607, 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 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)