

RECORD OF PROCEEDINGS  
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXX  
CASE NUMBER: PD1200863  
BOARD DATE: 20130110

BRANCH OF SERVICE: MARINE CORPS  
SEPARATION DATE: 20020930

**SUMMARY OF CASE:** Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (4066/Computer Systems Specialist), medically separated for Grade 1 lumbar five – sacral one (L5–S1) spondylolisthesis. The CI reported injuring his back during weight lifting in 1999 and had persistent low back pain (LBP). He was diagnosed with Grade 1 spondylolisthesis of L5-S1 and was treated with physical therapy, ultrasound, and nonsteroidal anti-inflammatory drugs. He did not improve adequately to meet the physical requirements of his Military Occupational Specialty or to satisfy physical fitness standards. He was placed on light duty, and referred for a Medical Evaluation Board (MEB). The MEB forwarded acquired spondylolisthesis as medically unacceptable IAW SECNAVINST 1850.4E to the Physical Evaluation Board (PEB). The PEB adjudicated the Grade 1 L5–S1 spondylolisthesis condition as unfitting, rated 10%, with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% disability rating.

**CI CONTENTION:** “The frequency of the muscle tension headaches - rated at 0% - has increased and interferes with my ability to work and/or perform normal, routine activities.”

**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 unfitting L5–S1 spondylolisthesis condition meets the criteria prescribed in DoDI 6040.44 for Board purview, and is accordingly addressed below. The requested condition of tension headaches (rated by the VA) is not within the Board’s purview. 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 20020807			VA (~5 Mos. Post-Separation) – All Effective Date 20021001			
Condition	Code	Rating	Condition	Code	Rating	Exam
Grade 1 Lumbar Five – Sacral One Spondylolisthesis	5299-5295	10%	DDD Lumbosacral Spine, Grade I, Spondylolisthesis of L5-S1	5292	10%	20030306
No Additional MEB/PEB Entries			Scar Left Back	7802	0%	20030306
			Muscle Tension Headaches	9403-8045	0%	20030306
			Not Service-Connected x 7			20030306
<b>Combined: 10%</b>			<b>Combined: 10%</b>			

\*No change to ratings in subsequent VARDs

## ANALYSIS SUMMARY:

Grade I L5-S1 Spondylolisthesis Condition. At the MEB exam (including the addendum), 6 months prior to separation, the CI reported persistent LBP when on his feet for a long period and with running. The MEB physical exam revealed decreased ability to flex forward, with normal strength and neurologic examination. The orthopedic examiner noted back weakness, spasm and stiffness with flexion and extension. His lower extremity sensation was normal. There were no formal goniometric range-of-motion (ROM) evaluations documented. Magnetic resonance imaging (MRI) revealed reduction in disc height within L4-5 and L5-S1 discs and Grade I spondylolisthesis of L5 on S1, without evidence of nerve root impingement nor significant disc bulge at L4-5 and L5-S1.

At the VA Compensation and Pension exam 5 months post-separation, the CI complained of constant, daily pain in the back which developed around noon and lasted for the rest of the day. ROM studies of the lumbar spine revealed “flexion 0-90 degrees, extension 0-25 degrees (normal typically 30°), and lateral bending of 0-30 degrees bilaterally. Flexion elicited some mild pulling in his hamstrings.” Gait was normal. There was tenderness to palpation, with no evidence of spasm.

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 notes that the 2003 VASRD standards for the spine, which were in effect at the PEB evaluation, were changed effective 23 September 2002 (for code 5293 Intervertebral disc syndrome) and were in effect at the CI’s date of separation 30 September 2002. The 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.

The PEB, under the old spine rules, rated the back condition code 5295 at 10% for characteristic pain on motion. The VA, IAW the interim spine rules in effect at date of separation, code 5292 at 10% for limitation of spine motion (slight). There were no incapacitating episodes for alternate coding under 5293 (Intervertebral disc syndrome), and the older criteria for 5293 (radicular symptoms) were no longer in effect at the date of separation.

The Board deliberated if the CI’s documented lower back weakness and spasm were sufficient to meet the 20% criteria under code 5295, absent any documentation of loss of lateral spine motion. All ROM limitations were otherwise considered slight under code 5292 (10%) or with characteristic pain on motion under code 5295 (10%). The Board considered alternative rating under 5295. Discussion ensued with regard to the MRI’s description of reduction of disc height and its correlation to the “narrowing or irregularity of joint space” required at the 40% level (severe), or with spasm at the 20% level. The Board adjudged that the 40% disability was not approached and that the narrative summary and orthopedic MEB addendum documented lower back spasm supported a disability picture closer to the 20% criteria under 5295. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (Resolution of reasonable doubt), the Board recommends a disability rating of 20% for the grade L5-S1 spondylolisthesis condition, coded 5295.

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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 grade 1 L5-S1 spondylolisthesis condition and IAW VASRD

§4.71a, the Board unanimously recommends a disability rating of 20%, coded 5295 IAW VASRD §4.71a. There were no other conditions within the Board's scope of review for consideration.

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**RECOMMENDATION:** The Board, therefore, recommends that the CI's prior determination be modified as follows, effective as of the date of his prior medical separation:

<b>UNFITTING CONDITION</b>	<b>VASRD CODE</b>	<b>RATING</b>
Grade 1 Lumbar Five – Sacral One Spondylolisthesis	5295	20%
	<b>COMBINED</b>	<b>20%</b>

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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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President  
Physical Disability Board of Review

MEMORANDUM FOR DEPUTY COMMANDANT, MANPOWER & RESERVE AFFAIRS  
COMMANDER, NAVY PERSONNEL COMMAND

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATIONS

Ref: (a) DoDI 6040.44  
(b) PDBR ltr dtd 29 Jan 13 ICO XX  
(c) PDBR ltr dtd 15 Jan 13 ICO XX  
(d) PDBR ltr dtd 22 Jan 13 ICO XX

1. Pursuant to reference (a) I approve the recommendations of the Physical Disability Board of Review set forth in references (b) through (d).

2. The official records of the following individuals are to be corrected to reflect the stated disposition:

a. XXXXXXXXX former USN: Disability retirement with a final disability rating of 30 percent with retroactive placement on the Permanent Disability Retired List effective 23 October 2002.

b. XXXXXXXXXXX former USMC: Disability retirement with a final disability rating of 30 percent with retroactive placement on the Permanent Disability Retired List effective 31 January 2002.

c. XXXXXXXXXXX former USMC: Disability separation with a final disability rating of 20 percent (increased from 10 percent) with entitlement to disability severance pay effective 30 September 2002.

3. Please ensure all necessary actions are taken, included the recoupment of disability severance pay if warranted, to implement these decisions and that subject members are notified once those actions are completed.

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Assistant General Counsel  
(Manpower & Reserve Affairs)