

RECORD OF PROCEEDINGS  
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XX  
CASE NUMBER: PD1200867  
BOARD DATE: 20130212

BRANCH OF SERVICE: NAVY  
SEPARATION DATE: 20090103

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**SUMMARY OF CASE:** Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty PR2/E-5 (7352/Aircrew Survival Equipment man) medically separated for cervical, thoracic and lumbar spine pain. The CI received numerous orthopedic injuries from multiple parachute jumps due to his duty as a US Navy parachute tester. In January 2008, he was found "fit" after a Physical Evaluation Board (PEB) was convened to consider his left shoulder and right knee conditions. In spite of chronic pain therapy, the CI's orthopedic conditions could not be adequately rehabilitated to meet the physical requirements of his rating or satisfy physical fitness standards. In June 2008, another Medical Evaluation Board (MEB) was held to evaluate the CI's numerous orthopedic conditions and again he was found "fit for full duty" with seven conditions identified and forwarded for PEB adjudication. The PEB also adjudicated the CI fit for duty in September 2008. The CI then requested a PEB reconsideration citing that the PEB did not have medical information concerning his spinal condition due to an incomplete PEB package. The PEB reconsideration resulted in the adjudication of cervical, thoracic, lumbar spine pain condition as unfitting and the six additional conditions, identified in the rating comparison chart below, identified as Category III conditions, conditions that are not separately unfitting and do not contribute to the unfitting condition. The reconsidered PEB adjudication for the cervical, thoracic, lumbar spine pain condition was coded 5243 using the Veterans Affairs Schedule for Rating Disabilities (VASRD) and rated at 20%. The CI made no further appeals, and he was medically separated with a 20% disability rating.

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**CI CONTENTION:** "I would like the Physical Disability Board of Review to review my medical separation to ensure it was fair, consistent and accurate with the Veterans Affairs schedule for Rating Disabilities."

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**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 the unfitting cervical, thoracic, and lumbar spine pain condition will be reviewed. The six additional Category III conditions requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview, and are accordingly 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 Reconsideration – Dated 20081029			VA (3.5 Mos. Pre-Separation) – All Effective Date 20090104			
Condition	Code	Rating	Condition	Code	Rating	Exam
Cervical Thoracic, Lumbar Spine Pain	5243	20%	Thoracic Spondylosis; Lumbar DJD; Thoracolumbar Strain	5242	10%	20080917
Greater Trochanteric Bursitis	Cat III		Spondylosis Cervical Spine	5242	10%	20080917
Right Elbow Pain and Limitations of Motion	Cat III		Degenerative Arthritis - Right Hip Joint	5010-5252	10%	20080917
Bilateral Hand Pain and Stiffness	Cat III		Degenerative Arthritis Right Elbow	5003	0%*	STR
Left Shoulder Pain	Cat III		Osteoarthritis 1 <sup>st</sup> Metacarpal Joint, Bilateral Hands	5003	0%*	STR
Osteoarthritis, Bilateral Knees	Cat III		Left Shoulder Impingement / Residual Scar	5003-5024	10%	20080917
Bilateral Ankle Instability	Cat III		Degenerative Arthritis Right Knee / Residual Scar	5010	10%	20080917
↓No Additional MEB/PEB Entries↓			Instability, Right Knee	5257	10%	20080917
<b>Combined: 20%</b>			Chronic Left Ankle Strain	5271	10%	20080917
			Chronic Right Ankle Strain	5271	10%	20080917
			0% x1 / Not Service-Connected x2			20080917
			<b>Combined: 60% with Bilateral factors</b>			

\*Per VARD dated 20100701 additional conditions were added effective 20100218 with no change to combined rating

**ANALYSIS SUMMARY:** The Board acknowledges the CI’s contention that suggests ratings should have been conferred for other conditions documented at the time of separation. The Board wishes to clarify that it is subject to the same laws for service disability entitlements as those under which the Disability Evaluation System (DES) operates. 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. However the Department of Veterans Affairs, operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions and to periodically reevaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time.

The reconsideration PEB combined cervical, thoracic and lumbar spine pain as a single unfitting condition. The Board must apply separate codes and ratings in its recommendations if compensable ratings for each condition are achieved IAW VASRD §4.71a. If the Board judges that two or more separate ratings are warranted in such cases, however, it must satisfy the requirement that each ‘unbundled’ condition can be reasonably justified as unfitting in and of itself. Not uncommonly, this approach by the PEB reflects its judgment that the constellation of conditions was unfitting, and that there was no need for separate fitness adjudications, not a judgment that each condition was independently unfitting. Thus, the Board must exercise the prerogative of separate fitness recommendations in this circumstance, with the caveat that its recommendations may not produce a lower combined rating than that of the PEB.

**Cervical Spine Pain Condition.** The combined cervical, thoracic and lumbar spine pain condition will be considered by the Board as two separate entities for fitness determination and subsequent coding and rating purposes. This is based on note six of the General Rating Formula for Diseases and Injuries of the Spine contained in VASRD §4.71a, the Schedule of ratings-musculoskeletal system. Note six states, “Separately evaluate disability of the thoracolumbar and cervical spine segments, except when there is unfavorable ankylosis of both segments, which will be rated as a single disability.” There was no unfavorable ankylosis of either spinal segment therefore, they will be separately evaluated for disability ratings. Independent fitness determinations must be accomplished prior to coding and rating recommendations for each of the unbundled conditions. The Board first considered if the cervical spine pain, having been decoupled from the combined PEB adjudication, was independently unfitting. The service

treatment record (STR) document the CI's complaint of neck pain over an 8 year period prior to separation. Although there were no limited duty (LIMDU) chits or specific mention of neck pain in the commander's statement, the duration of the pain along with his continued exposure to repetitive cervical trauma, it is reasonably justified that the CI be found unfit for continued military duty in his rating as a parachute tester due to his cervical spine pain. All members agreed that the cervical spine pain, as an isolated condition, would have rendered the CI incapable of continued service within his Rating, and accordingly merits a separate service rating.

There was one goniometric range-of-motion (ROM) evaluation in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation; as summarized in the chart below.

Cervical ROM	MEB 5.5 Mos. Pre-Sep	VA C&P 3.5 Mos. Pre-Sep
Flex (45° Normal)	45°	45°
Ext (0-45)		45°
R Lat Flex (0-45)	-	45°
L Lat Flex (0-45)	-	35°
R Rotation (0-80)	75°	75°
L Rotation (0-80)		55°
COMBINED (340°)	-	300°
Comment	None	Normal Gait and posture; No radiating pain on movement; Pos. muscle spasm of left paracervical musculature; Pos. tenderness of cervical spine; No ankylosis of cervical spine; Joint function is additionally limited by 10° in left rotation after repetitive use due to pain, fatigue and lack of endurance
§4.71a Rating	10%*	10%*

\*Adequate evidence of painful motion IAW VASRD §4.59

The narrative summary (NARSUM) prepared 5 months prior to separation noted nothing related to the CI's cervical spine pain. The NARSUM was prepared specifically for the PEB's consideration of the six conditions ultimately adjudicated as Category III conditions, not separately unfitting and not contributing to the unfitting condition. At the MEB exam accomplished 5 months prior to separation, the CI reported cervical radiculopathy with C6 denervation on electromyogram testing. Multi-level degenerative changes affecting all three levels of the spine was documented on magnetic resonance imaging with neuroforaminal narrowing, bulging discs and annular tear. Recurrent and extremely painful back and neck issues were diagnosed with arthritis in back and neck due to compression from parachute landing falls. He also noted having bone spurs on C5-6 pushing on the spinal cord and he was prescribed Celebrex to reduce the swelling in the spinal column. He experienced numbness and tingling in hands, arms, lower back, legs and feet before turning into a partial paralysis in the same areas lasting 30 minutes or less. These episodes started in 2003, occurred after hard landings and had persisted until 2007. He had not had an episode after starting Celebrex. He had multiple whiplash injuries from parachuting. The MEB physical exam findings are summarized in the cervical ROM chart above.

At the VA Compensation and Pension (C&P) exam performed 3 months prior to separation, the CI reported being diagnosed with recurrent whiplash, spondylosis C5 and C6. The condition existed since 2003 and was due to whiplash injuries related to parachuting. He reported the following symptom from the spine condition: stiffness. He indicated he experienced semi-paralysis for up to 45 minutes after each episode due to the spine condition. He had no numbness, loss of bladder or bowel control. He reported constant pain in the neck that traveled to the left shoulder. He described the pain as aching, sharp and cramping with a level of 6 out of 10. The pain was elicited by physical activity, stress and computer work. It was

relieved by rest, Tramadol, Celebrex and by massage therapy. During painful episodes, he could function with medication use. The treatment was Tramadol, taken as needed with some response and no side effects. He stated his condition had not resulted in any incapacitation. From the above condition, the functional impairment was impaired pushing, pulling, heavy lifting and carrying. The pertinent physical exam findings are summarized in the cervical ROM chart above.

The Board directs attention to its rating recommendation based on the above evidence. The reconsideration PEB adjudicated the CI's back pain as one combined condition, applied VASRD coded 5243, intervertebral disc syndrome based on incapacitating episodes, and rated it 20% for incapacitating episodes having a total duration of at least 2 weeks but less than 4 weeks during the past 12 months. The VA applied VASRD code 5242, degenerative arthritis of the spine, and rated it 10% based on limitation of joint function on repetitive use due to pain, fatigue and lack of endurance. The NARSUM did not address the cervical spine condition and the MEB exam is inadequate for rating purposes. The C&P exam is the most probative document for rating purposes; it was accomplished most proximate to the date of separation and provides the most detailed information. Significant historical information contained in the C&P exam document includes the statement that the CI "stated his condition had not resulted in any incapacitation." That language specifically relates to the PEB's use of VASRD code 5243 that utilizes "incapacitating episodes" as the bases for its rating. The C&P exam also notes that the CI experienced 45 minute periods of "semi-paralysis" that could be considered incapacitating, however, these episodes had not occurred within 12 months of separation. The lack of incapacitating episodes within 12 months of separation calls into question the PEB's use of the 5243 code. There is substantial evidence that the CI had significant degenerative arthritis of the cervical spine that justifies application of VASRD code 5242. That code refers to the General Rating Formula for Diseases and Injuries of the Spine to arrive at a rating level based on ROM measurements. The C&P exam documents non-compensable ROM measurements with adequate evidence of painful motion. Rating policy §4.59, painful motion, states that joints with painful motion are "entitled to at least the minimum compensable rating for the joint." In this case, the minimum rating is 10% IAW the General Rating Formula for Diseases and Injuries of the Spine. An alternative coding and rating option for non-compensable ROM measurements limited by pain is the application of VASRD code 5003, which also calls for a 10% rating in such cases. There was no ratable radicular component to the CI's cervical pain. 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 10% for the degenerative arthritis of the cervical spine condition.

Thoracolumbar Spine Pain Condition. As stated above, the combined cervical, thoracic and lumbar spine pain condition will be considered by the Board as two separate entities for fitness determination and subsequent coding and rating purposes. Independent fitness determinations must be accomplished prior to coding and rating recommendations for each of the unbundled conditions. The Board first considered if the thoracolumbar spine pain, having been de-coupled from the combined PEB adjudication, was independently unfitting. The STRs document the CI's complaint of back pain over an 8 year period prior to separation. Although there were no LIMDU chits or specific mention of low back pain (LBP) in the commander's statement, the duration of the pain along with his continued exposure to repetitive trauma, it is reasonably justified that the CI be found unfit for continued military duty due to his thoracolumbar spine pain. It is also noted that the reconsideration PEB specifically requested ROM measurements of the CI's thoracolumbar spine for rating purposes, directly signaling their adjudication that the thoracolumbar spine was independently unfitting. All members agreed that the thoracolumbar spine pain, as an isolated condition, would have rendered the CI incapable of continued service within his rating, and accordingly merits a separate rating.

There were two goniometric 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 5.5 Mos. Pre-Sep	VA C&P 3.5 Mos. Pre-Sep	ROMs for reconsideration IPEB 3 Mo. Pre-Sep
Flexion (90° Normal)	Lumbar spine - Full Range of Motion	90°	60°
Ext (0-30)		25°	10°
R Lat Flex (0-30)		30°	10°
L Lat Flex (0-30)		30°	10°
R Rotation (0-30)		30°	20°
L Rotation (0-30)		30°	20°
Combined (240°)		235°	130°
Comment	Pos. Tenderness to palpation T2, medial/inferior border of both scapula and paraspinals at T10-12 bilaterally; Marked crepitance and popping of lumbar spine with all movements	Normal Gait; No radiating pain on movement or muscle spasm; Pos. tenderness of thoracolumbar spine; Neg. straight leg raise on right and left; No ankylosis of the lumbar spine; joint function is additionally limited by 10° in flexion and extension after repetitive use due to pain, fatigue and lack of endurance; Normal head position with symmetry in appearance and motion; normal spinal curvature; No signs of Intervertebral Disc Syndrome with chronic and permanent nerve root involvement	Positive painful motion
§4.71a Rating		10%*	20%

\*Adequate evidence of painful motion IAW VASRD §4.59

The narrative summary (NARSUM) prepared 5 months prior to separation noted nothing related to the CI's thoracolumbar spine pain. The NARSUM was prepared specifically for the PEB's consideration of the six conditions ultimately adjudicated as Category III conditions, not separately unfitting and not contributing to the unfitting condition. At the MEB exam accomplished 5 months prior to separation, the CI reported the same history documented in the cervical spine pain condition above. The pertinent physical exam findings are summarized in the thoracolumbar ROM chart above.

At the C&P exam performed 3 months prior to separation, the CI reported being diagnosed with recurrent thoracolumbar strain since 2004. The history was similar to that noted above with the following significant additions. The CI reported constant pain in the mid and lower back that traveled to his right hip and bilateral lower extremities. The pain was aching sharp, sticking and cramping. From 1 to 10 (10 being the worst pain) the pain level was at 6. He stated his condition had not resulted in any incapacitation. From the above condition, the functional impairment was limitation in prolonged sitting, standing, walking, bending and heavy lifting. The pertinent physical exam findings are summarized in the chart above.

The Board directs attention to its rating recommendation based on the above evidence. The reconsideration PEB adjudicated the CI's back pain as one combined condition, applied VASRD coded 5243, intervertebral disc syndrome based on incapacitating episodes, and rated it 20% for incapacitating episodes having a total duration of at least 2 weeks but less than 4 weeks during the past 12 months. The VA adjudicated the thoracic spondylosis, lumbar degenerative joint disease (DJD) and thoracolumbar strain applying VASRD code 5242, degenerative arthritis of the spine, and rated it 10% based on limitation of joint function on repetitive use due to pain, fatigue and lack of endurance. The NARSUM did not address the thoracolumbar spine condition and the MEB exam is inadequate for rating purposes. The reconsideration PEB examination contained adequate ROM measurements for rating the thoracolumbar spine,

documented the presence of painful motion and it was performed 3 months prior to separation. This exam, accomplished by a physical therapy technician, did not contain any additional comments or details concerning the thoracolumbar spine. The STRs do not document any reasonable explanation for the significant difference in ROM measurements between the PEB utilized exam and the C&P exam performed only 3 weeks apart. Significant historical information contained in the C&P exam includes the statement that the CI “stated his condition had not resulted in any incapacitation.” That language specifically relates to the PEB’s use of VASRD code 5243 that utilizes “incapacitating episodes” as the bases for its rating. The C&P exam also notes that the CI experienced 45minute periods of “semi-paralysis” that could be considered incapacitating, however, these episodes had not occurred within 12 months of separation. The lack of incapacitating episodes within 12 months of separation calls into question the PEB’s use of the 5243 code. After significant Board deliberation, the C&P exam was determined to be the most probative exam for rating purposes. That exam contained adequate information for rating and reflected the STRs overall level of disability related to thoracolumbar spine pain. There is substantial evidence that the CI had significant degenerative arthritis of the thoracolumbar spine that justifies application of VASRD code 5242. That code utilizes the General Rating Formula for Diseases and Injuries of the Spine to arrive at a rating level based on ROM measurements. The C&P exam documents a non-compensable ROM measurement of 90 degrees forward flexion of the thoracolumbar spine with painful motion. Rating guidance contained in the VASRD grants a rating of 10% for a non-compensable ROM measurement with adequate evidence for Painful motion IAW §4.59. That is the minimal compensable rating for the thoracolumbar spine under the General Rating Formula for the Spine. The next higher 20% rating is not warranted based on the documented ROM measurements evidenced in the most probative examination. There was no ratable radicular component to the CI’s thoracolumbar spine pain. 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 10% for the degenerative arthritis of the thoracolumbar spine pain condition.

Contended PEB Conditions. The contended conditions adjudicated as not unfitting by the PEB were the six Category III conditions listed in the rating comparison chart above. The Board’s first charge with respect to these conditions is an assessment of the appropriateness of the PEB’s fitness adjudications. The Board’s threshold for countering a “PEB not unfitting to Board unfitting” fitness determination is higher than the VASRD §4.3 (Resolution of reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 “fair and equitable” standard. While the left shoulder and right knee conditions were separately profiled, that action was taken in the immediate post-surgical recuperation period for each condition and each was adjudged as “fit” by two different PEBs after recuperation. The remaining four conditions, trochanteric bursitis, right elbow pain, bilateral hand pain, and bilateral ankle instability were not profiled. None of the contended conditions were specifically implicated in the CI’s commander’s statement; and, none were judged to be separately unfitting by all previous MEBs, PEBs and the most recent Reconsideration PEB that designated all contended conditions as Category III. All were reviewed by the action officer and considered by the Board. There was no indication from the record that any of these conditions, when considered individually, interfered with satisfactory duty performance to such a degree that the Board is compelled to overturn two PEB “not unfitting” fitness determinations. After due deliberation in consideration of the preponderance of the evidence, the Board concluded that there was insufficient cause to recommend a change in the PEB fitness determination for the any of the contended conditions; and, therefore, no additional disability ratings can be recommended.

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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 cervical spine pain condition, the Board unanimously recommends a disability rating of 10%, coded 5003 IAW VASRD §4.71a. In the matter of the thoracolumbar spine pain condition, the Board, by a vote of 2:1, recommends a disability rating of 10%, coded 5242 IAW VASRD §4.71a. The single voter of dissent, who voted for a 20% rating, elected not to submit a minority opinion. There were no other conditions within the Board's scope of review for consideration.

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**RECOMMENDATION:** The Board 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>
Cervical Spine Pain Due to Degenerative Arthritis Condition	5003	10%
Thoracolumbar Spine Pain Due to Degenerative Arthritis Condition	5242	10%
	<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

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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 22 Mar 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 USMC
- former USN
- former USMC
- former USMC
- former USN
- former USMC
- former USMC

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Assistant General Counsel  
(Manpower & Reserve Affairs)