

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XX
CASE NUMBER: PD1201068
BOARD DATE: 20130122

BRANCH OF SERVICE: MARINE CORPS
SEPARATION DATE: 20011031

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active Sgt/E-5 (3432/Finance Technician), medically separated for evidence of a herniated disc at L4 and L5 levels. The CI first reported non-traumatic low back pain (LBP) in 1999. The CI did not improve adequately with treatment to meet the physical requirements of his Military Occupational Specialty or satisfy physical fitness standards. He was placed on light/limited duty and referred for a Medical Evaluation Board (MEB). Lumbar disc disease, plantar fasciitis, and chondromalacia patella right knee conditions, identified in the rating chart below, were also identified and forwarded by the MEB. The Physical Evaluation Board (PEB) adjudicated the lumbar disc condition as unfitting, rated 10%, with application of SECNAVINST 1850.4D. The PEB determined four additional radiographic findings delineated in the chart below, as integral contributing elements of the back pain condition not subject to additional individual disability rating (Category II). The PEB was silent on the plantar fasciitis and chondromalacia patella conditions. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: "I have been unable to maintain the same physical lifestyle that I have prior to my honorable service in the Marines. I can no longer run, pick up heavy objects And do the daily tasks that I once could do without pain. I have held off surgery for several years however that has resulted in major nerve issues that I still deal with daily and have to rely on medications And quarterly nerve blocks. The VA benefits have greatly helped but to be not considered A full medical retirear [*sic*] was an ungreatful [*sic*] benefit that I feel should have been Awarded years Ago."

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 condition(s) will be reviewed in all cases. The evidence of a herniated disc at L4 and L5 levels condition as requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview; and, is addressed below. The requested nerve condition will be discussed with the disc condition. The plantar fasciitis and knee conditions are not contended by the CI and will not be addressed. The remaining conditions rated by the VA at separation are not within the Board's purview. 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 IPEB – Dated 20010906			VA (~1 Mo. Post-Separation) – All Effective Date 20011101			
Condition	Code	Rating	Condition	Code	Rating	Exam
Evidence of a Herniated Disc at Lumbar Four and Lumbar Five Levels	5293	10%	Lumbar Spine Degenerative Disk Disease with Mild Disk Bulging	5293*	10%	20020322
At the Lumbar Five, Sacral One Level There is a Right Sided Neural Foraminal Narrowing	CAT II					
Facet Hypertrophy Is Noted Bilaterally - The Existing Disc Lesions are Not Associated with any Neurologic Deficit	CAT II					
At the Lumbar Four, Lumbar Five Level There was Compression of the Lateral Recesses Bilaterally, Right Greater Than the Left and Compression of the Lumbar Five Nerve Roots	CAT II					
Multiple Level Lumbar Disc Disease, Including the Lumbar Three, Lumbar Four and Lumbar Five Levels	CAT II					
Plantar Fasciitis	Not Rated		NO VA ENTRY			
Chondromalacia Patella Right Knee	Not Rated		NSC			
↓No Additional MEB/PEB Entries↓			Migraine Headaches	8100	10%	
Combined: 10%			0% X 4 / Not Service-Connected x 8			20020321
			Combined: 20%			

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 VASRD standards, based on severity at the time of separation.

Herniated Disc Condition. The CI developed non-traumatic LBP in 1999. Magnetic resonance imaging obtained in May 2001 revealed a herniated disc at the L4-5 area of the lower back with compression of the L5 nerve root. The CI was treated with multiple modalities with unsustained relief of painful symptoms. At the MEB narrative summary evaluation 25 July 2001, 3 months prior to separation, the CI reported being able to run 15 to 20 miles a week. On physical exam kinematics of the back were reported as good. Motor, sensory and reflex exams were normal. Three VA Compensation and Pension (C&P) evaluations were performed, all within 4 months after separation.

At the C&P general evaluation, 21 March 2001, the CI reported back pain while sitting or standing for long periods with some tingling in the legs. Gait and posture and motor, sensory and reflex exams, were normal. Neuropathy and spasm were not present. Spinal ROM was reported as reduced to 30 degrees flexion and 10 degrees extension secondary to pain. At the C&P Joint evaluation, 22 March 2001, the CI noted some shooting pains down both legs. Motor strength was normal. ROM was reported as 90 degrees flexion and 30 degrees extension. At the C&P neurologic evaluation, 28 March 2001, the CI noted daily LBP with standing over 15 minutes. Gait, coordination, motor, sensory and reflex exams were normal. Absence of neuropathy was specifically noted.

The Board directs attention to its rating recommendation based on the above evidence. The PEB and VA both rated the back condition 10%, code 5293, intervertebral disc syndrome, mild. Under this code, a higher rating of 20% requires moderate disease with recurring attacks of pain. The Board noted the significant disparity in ROM on the C&P general evaluation (flexion 30 degrees) and C&P Joint evaluation (flexion 90 degrees) performed one day apart suggesting a more severe condition. The Board opined that the 30 degrees of flexion was inconsistent with the normal gait and posture on proximate examinations and that the latter ROM most accurately reflected the condition of the CI at separation. The Board unanimously agreed the preponderance of evidence documented the condition to be mild and supported a rating of 10%. There was no evidence or ratable peripheral nerve impairment in this case, since no motor weakness was present and sensory symptoms had no functional implication. The Board was unable to find a pathway to a higher rating under any other applicable VASRD code. The Board unanimously agreed that the Category II conditions listed by the PEB were integral contributing components of the back condition and not subject to additional disability rating IAW §4.14 (Avoidance of pyramiding). 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 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. As discussed above, PEB reliance on SECNAVINST 1850.4D for rating the back condition was operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the back 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
Herniated Disc of the Back	5293	10%
	COMBINED	10%

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120620, 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 26 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 USMC
- former USN
- former USMC
- former USMC
- former USN
- former USMC

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Assistant General Counsel
(Manpower & Reserve Affairs)