

RECORD OF PROCEEDINGS  
PHYSICAL DISABILITY BOARD OF REVIEW

NAME:  
CASE NUMBER: PD1201255  
BOARD DATE: 20121212

BRANCH OF SERVICE: MARINE CORPS  
SEPARATION DATE: 20030115

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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 SSGT/E-6 (2146/M1A1 Tank Technician) medically separated for L5 nerve root compromise, due to degenerative spine disease and herniated nucleus pulposus (HNP). He was treated, but did not improve sufficiently to fully perform his military duties or meet physical fitness standards. He was placed on limited duty (LIMDU) status and underwent a Medical Evaluation Board (MEB). The MEB found his nerve root compromise condition medically unacceptable, and referred him to a Physical Evaluation Board (PEB). The MEB forwarded no additional conditions for adjudication. The PEB found the L5 nerve root compromise condition unfitting, and rated it 20%; with application of the Veteran's Administration Schedule for Rating Disabilities (VASRD). The CI accepted the PEB findings, and was medically separated with a 20% disability rating.

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**CI's CONTENTION:** The CI elaborated no specific contention, in Item 3 of DD Form 294.

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**SCOPE OF REVIEW:** The Board's scope of review as defined in DoDI 6040.44, 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 condition (L5 nerve root compromise secondary to degenerative spine disease and HNP) meets criteria prescribed in DoDI 6040.44 for Board purview, and is accordingly addressed below. There are no other conditions within the Board's defined scope of review.

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**RATING COMPARISON:**

Navy PEB – dated 20021104			VA (9 days Pre-Separation) – All Effective 20030116			
Condition	Code	Rating	Condition	Code	Rating	Exam
L5 Nerve Root Compromise, due to Degen. Spine Disease	8521	20%	S/P Lumbar Spine Surgeries with Left Radiculopathy	5293-8520	20%	20030106
No Additional MEB/PEB Entries			Not Service Connected (NSC) x 5			20030106
<b>Combined: 20%</b>			<b>Combined: 20%</b>			

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**ANALYSIS SUMMARY:**

Nerve Root Compromise, due to Degenerative Disc Disease (DDD) and HNP. In March 1998, this Marine complained of low back pain (LBP) which radiated down the right leg. He was treated with physical therapy (PT) and non-steroidal anti-inflammatory drugs (NSAIDs), but had no significant improvement. Magnetic resonance imaging (MRI) showed a broad-based L4-L5 HNP, with bilateral L5 nerve root involvement. The CI underwent L4-L5 and L5-S1 discectomy on 30 March 1998. He did well postoperatively and returned to full duty after completion of a 6-month period of LIMDU. Then in June 2001, he fell and injured his back. He was treated with

epidural steroid injections with some relief of pain. MRI in August 2001 showed epidural scarring and a mass effect at L5-S1. Electromyography (EMG) revealed evidence of S1 nerve root lesion. On 26 September 2001, the CI had a left L5-S1 discectomy, and S1 nerve root foraminotomy. Postoperatively, his pain improved, but he continued to have paresthesia in the left leg and no improvement in plantar flexion. Due to his persistent nerve damage and muscle weakness, an MEB was initiated. His MEB clinical evaluation was on 3 September 2002, at Walter Reed Army Medical Center (WRAMC). At that exam, mild muscle atrophy was noted in the left lower leg. Muscle testing revealed that left ankle strength was decreased for both plantar flexion and dorsiflexion.

On 6 January 2003, the CI had a VA Compensation and Pension (C&P) examination. At that exam, posture and gait were normal. There was muscle atrophy and decreased muscle strength in the left lower leg. He was not able to perform toe-walking on the left foot. Left ankle range-of-motion (ROM) was normal, but weakness was noted on plantar flexion. Lumbar spine exam was negative for any evidence of radiation pain on movement, muscle spasm, or tenderness. Straight leg raise (SLR) was negative bilaterally. Lumbosacral ROM was unrestricted and normal. There was no pain with lumbosacral motion.

The Board carefully reviewed all evidentiary information available. The PEB combined the CI's orthopedic and neurologic problems into a single unfitting condition: "L5 Nerve Root Compromise secondary to Degenerative Spine Disease and Herniated Nucleus Pulposus." The condition was coded 8521 and rated at 20%. Sixteen weeks later, the February 2003 VA Rating Decision (VARD) also listed a single bundled condition, and assigned a disability rating of 20%. The Board evaluated whether or not it was appropriate for the orthopedic and neurologic problems to be "bundled" together. The Board must determine if the PEB and the VA's approach of combining the conditions under a single rating was justified in lieu of separate ratings. The Board must apply separate codes and ratings in its recommendations if compensable ratings for each condition are achieved IAW the VASRD. If the Board judges that two or more separate ratings are warranted, however, it must satisfy the requirement that each 'unbundled' condition was separately unfitting. After due deliberation, the Board agreed that the evidence supports a conclusion that the orthopedic condition DDD, separately, would not have rendered the CI unable to perform his required military duties. Accordingly, the Board does not recommend a separate disability rating for the orthopedic DDD condition. It is appropriate for the orthopedic and neurologic problems to be "bundled" together, and treated as a single, unfitting condition.

The Board directs attention to its rating recommendation based on the above evidence. The Board determined that the January 2003 C&P exam was done just 9 days prior to separation and therefore carried greater probative value. At that exam, there was left calf muscle atrophy and weakness of plantar flexion, but his gait was normal. The Board determined that, based on the evidence, the CI had a moderate neurological deficit at the time of separation. IAW VASRD §4.124a, a disability rating of 20% is appropriate for a moderate neurological deficit in the left lower extremity.

After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the unfitting L5 nerve root compromise, secondary to DDD.

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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 L5 nerve root compromise secondary to degenerative spine disease and herniated nucleus pulposus, and IAW VASRD §4.124a, the Board unanimously recommends no change in the PEB adjudication.

There were no other conditions within the Board's scope of review for consideration.

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**RECOMMENDATION:** The Board, therefore, recommends that there be no recharacterization of the CI's disability and separation determination, as follows:

<b>UNFITTING CONDITION</b>	<b>VASRD CODE</b>	<b>RATING</b>
L5 Nerve Root Compromise, due to Degenerative Disc Disease	8521	20%
	<b>COMBINED</b>	<b>20%</b>

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The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20030110, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

President  
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 31 Dec 12

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 USMC
- former USN
- former USMC,
- former USMC

Assistant General Counsel  
(Manpower & Reserve Affairs)