

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: X
CASE NUMBER: PD1201481
BOARD DATE: 20130314

BRANCH OF SERVICE: NAVY
SEPARATION DATE: 20030326

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty AN/E-3 (Airman) medically separated for a weakness of extremities. The CI was hospitalized in December 2001 for progressive weakness of the lower extremities. Despite treatment, the CI could not be rehabilitated to meet the requirements of his rating or physical fitness standards. He was placed on limited duty (LIMDU) and referred for a Medical Evaluation Board (MEB). The MEB sent three diagnoses to the Physical Evaluation Board (PEB): "History of Guillain-Barre syndrome" (Primary); "History of protracted weakness of both upper and lower extremities after Guillain-Barre syndrome, improving" (Second); and, "History of chronic lumbago" (Third). The PEB adjudicated "History of protracted weakness of both upper and lower extremities after Guillain-Barre syndrome" as Category I (unfitting) and rated 10%. The diagnosis of "History of Guillain-Barre syndrome" was judged as Category II (contributing) while "History of chronic lumbago" and "Chronic lumbosacral strain, posttraumatic" were deemed Category III (not contributing, not unfitting). The CI made no appeals and was medically separated with a 10% service disability rating.

CI CONTENTION: The application states "Guillain-Barre syndrome with lumbosacral strain was change without my permission. I am attaching the original rating letter I receive from the VA."

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 weakness of both upper and lower extremities, Guillain-Barre syndrome, back pain, and lumbosacral strain are judged to all be in scope and 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 Board for Correction of Naval Records.

RATING COMPARISON:

Service PEB – Dated 20030201			VA (7 Mo. Post-Separation) – Effective 20030327			
Condition	Code	Rating	Condition	Code	Rating	Exam
History of protracted weakness of BUE and BLE after GBS	8099-8011	10%	GBS w/ L/S strain	5295-6354	50%*	20030311
History of GBS	Cat II					
History of chronic lumbago	Cat III					
Chronic L/S strain, posttraumatic	Cat III					
↓No Additional MEB/PEB Entries↓			0% x 0/NSC x 1			20030311
Combined: 10%			Combined: 50%			

* 50 pre-stabilization through 20040401, dropped to 0% from 20040401, then 10% from 20040402 upon claim for increase.

ANALYSIS SUMMARY:

History of Protracted Weakness of Both Upper and Lower Extremities after Guillain-Barre Syndrome Condition. On 25 December 2001, the CI presented with a 2 day history of right sided low back pain (LBP) which progressed to an ascending paresis of both lower extremities (BLE) and areflexia. He was diagnosed with Guillain-Barre Syndrome (GBS) and treated with intravenous Immuno-globulin (IVIG) with improvement. After discharge from the hospital, he met a MEB which recommended eight months of LIMDU. Near the end of the LIMDU period he had improved considerably, but still did not meet full duty requirements and he was placed on a second 8 month LIMDU period on 24 June 2002. At a neurology evaluation on 15 October 2002, it was noted that the CI remained unfit for full duty despite slow, continuous improvement and MEB was recommended. He was admitted the next day for subjective weakness of his legs. He improved on steroids and was discharged 2 days later. Four days later, on 22 October 2002, his neurological examination was normal other than persistent diminished BLE reflexes. The CI reported that he had stopped the steroids due to side effects, but that his symptoms had not worsened. The narrative summary (NARSUM) was dictated on 23 October 2002, 5 months prior to separation. The CI's main complaint was that he was expected to work night shifts and stand at quarters for prolonged periods of time despite being on LIMDU. The examiner recorded that the CI requested the MEB. The neurological examination was normal other than the presence of giveaway weakness, an indication of non-organic weakness, after exercise and hypo-reflexia. The cognitive, cranial nerve, sensory, motor, and cerebellar examinations were normal as was the gait and station. The MEB examiner for the separation examination on 18 November 2002 noted that the CI had somewhat slurred speech (not documented elsewhere) and diminished reflexes. His last neurology follow up was a month later on 16 December 2002. The examiner noted continued improvement in his strength which was assessed at 5/5 (normal) for all muscle groups. The VA Compensation and Pension (C&P) general examination (for the back) was on 11 March 2003 (2 weeks prior to separation). It noted only that he had significant dysfunction which would be covered by the neurologist. On examination he was noted to walk slowly with no spring in his step. The reflexes were diminished, but the examiner recorded that there was otherwise no specific neurological deficit. The VA did not accomplish a specific neurological C&P examination for the GBS condition until 26 months after separation; it was recorded as essentially normal. A neurological examination for chronic fatigue syndrome had been done 5 months earlier; it documented that the CI had not used assistive devices for walking since discharge and that the neurological examination was essentially normal.

The Board directed attention to its rating recommendation based on the above evidence. The PEB coded the GBS condition as 8099-8011, analogous to poliomyelitis, and rated it at 10% for residuals. The VA coded the condition as 5295-6354, lumbosacral strain and chronic fatigue syndrome, and rated it at 50% IAW VASRD §4.28, pre-stabilization, but rated given a permanent 10% rating. While there was evidence of continued improvement as demonstrated by the return of the reflexes to normal, the Board determined that this had no functional bearing. Otherwise, both the NARSUM and C&P examinations were essentially normal. Accordingly, the CI was stable at separation from a functional standpoint. 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 of the GBS condition.

Contended PEB Conditions. The CI also contended for chronic back pain and lumbosacral strain in his application. Both were determined by the PEB to be not unfitting or to contribute to the underlying unfitting GBS condition. The Board's main charge with respect to these conditions is an assessment of the fairness of the PEB's determinations that they were not unfitting. The Board's threshold for countering fitness determinations is higher than the VASRD §4.3 (reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 "fair and equitable" standard. The CI first presented for LBP and strain on

24 November 2001, a month before the onset of the GBS. He denied a history of trauma, but was later noted to have hurt himself lifting boxes. He had a slight limp and tenderness over the lower right back. An orthopedic examination 2 months later, after the onset of the GBS, noted normal X-rays and a magnetic resonance imaging (MRI) exam. His examination was remarkable for the findings from the GBS. He was treated with medications and light duty. He continued to have LBP over the next year. The MEB NARSUM recorded normal strength and gait. The VA C&P examiner noted that his gait was slow without a spring to it and that the range-of-motion (ROM) slightly reduced due to muscle discomfort. The commander made no specific comment on the back pain. Both periods of LIMDU were solely for the GBS condition. Both back conditions were reviewed by the action officer and considered by the Board. There was no performance based evidence from the record that the back pain or strain conditions significantly interfered with satisfactory duty performance after the initial injury, over a year prior to separation. 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 back pain or lumbosacral strain condition; thus no additional disability ratings can be recommended.

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 history of protracted weakness of both upper and lower extremities after GBS condition and IAW VASRD §4.124a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended chronic lumbago and chronic lumbosacral strain, post-traumatic, conditions, the Board unanimously recommends no change from the PEB determinations as not unfitting. 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
History of Protracted Weakness of Both Upper and Lower Extremities After Guillain-Barre Syndrome	8099-8011	10%
History of Guillain-Barre Syndrome	Category II	
History of Chronic Lumbago	Category III	
Chronic Lumbosacral Strain, Posttraumatic	Category III	
	COMBINED	10%

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120706, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans Affairs Treatment Record.

X
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 04 Apr 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:

- xformer USMC
- xformer USN
- xformer USMC
- xformer USMC
- xformer USN
- xformer USMC
- xformer USMC
- xformer USN
- xformer USMC
- xformer USN
- xformer USMC

x
Assistant General Counsel
(Manpower & Reserve Affairs)