

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: X
CASE NUMBER: PD1201706
BOARD DATE: 20130306

BRANCH OF SERVICE: MARINE CORPS
SEPARATION DATE: 20011218

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Cpl/E-4 (6092/Aircraft Maintenance) medically separated for low back pain (LBP). He was treated, but did not improve adequately to fully perform his military duties or meet physical fitness standards. He was placed on limited duty and underwent a Medical Evaluation Board (MEB). The MEB found his back condition medically unacceptable and referred him to an Informal Physical Evaluation Board (IPEB). No other conditions were listed on NAVMED Form 6100/1. The June 2001 IPEB found the CI fit for duty. The CI did not accept the IPEB findings and requested reconsideration. In July 2001, IPEB reconsideration was performed. The back condition was found unfitting, and rated at 10%. The CI did not accept these findings and requested a formal hearing. He later withdrew his request, and accepted the findings of the July 2001 IPEB reconsideration. The CI was then medically separated with a 10% disability rating.

CI CONTENTION: "The ratings for the condition that rendered the member unfit should be changed because the unfit condition was not commensurate with a 10% disability rating; it was more disabling. The difficulties I encountered with civilian life once separated, changed the way I live my life and to the extent I could live my life. My lower back condition incapacitated me while I was in the service and it has worsened."

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 back condition (post-traumatic lumbar pain syndrome, no evidence of radiculopathy) meets the criteria prescribed in DoDI 6040.44, and is accordingly addressed below. No other conditions are within the Board's purview. Any condition outside the Board's defined scope of review may be eligible for future consideration by the Board for Correction of Naval Records.

RATING COMPARISON:

IPEB Reconsideration – dated 20010719			VA (13 mos. Post-Separation) – All Effective 20011216			
Condition	Code	Rating	Condition	Code	Rating	Exam
Lumbar Pain Syndrome	5295	10%	Lumbar Pain Syndrome	5237	20%*	20030122
↓ No Additional MEB/PEB Entries ↓			Not Service Connected x 1			
Combined: 10%			Combined: 20%*			

*VA rating for the Lumbar condition was later increased to 30%, by a subsequent VA Rating Decision dated 20080906

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed by the CI regarding the impairment with which his condition continues to burden him, and the significant impact it has had on his quality of life. It is noted for the record that the Board is subject to the same laws for disability entitlements as those under which the military Disability Evaluation System (DES) operates. The DES has neither the role nor the authority to compensate members for

future severity or potential complications of conditions. That role and authority is granted to the Department of Veterans Affairs (DVA). The Board evaluates DVA evidence in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness and rating determinations at the time of separation. Post-separation evidence is probative only to the extent that it reasonably reflects the disability and fitness implications at separation.

Low Back Pain (LBP). In July 1999, this CI injured his back while training on an obstacle course. When he presented for care and was evaluated, imaging studies showed a compression fracture of L4, and two bulging discs at L4-L5 and L5-S1. It was decided that he was not a candidate for surgery. Many different treatment options were tried, including non-steroidal anti-inflammatory drugs (NSAIDs) and physical therapy (PT). However, in spite of treatment, his LBP persisted and an MEB was initiated. The MEB clinical evaluation was at Camp Pendleton on 24 November 2000. The CI complained of significant LBP. Because of the pain, he could not swim, cycle or perform crunches. He denied any lower extremity (LE) pain or dysesthesia. Examination of his lumbar back revealed decreased range-of-motion (ROM). Forward flexion brought fingers to ten inches above the floor. Extension was also diminished. There was normal strength in all LE muscle groups. Sensation was intact, deep tendon reflexes (DTRs) were symmetric, and gait was normal. As noted above, the CI was medically separated from the Marine Corps in December 2001. Thirteen months later, he had a VA Compensation and Pension (C&P) exam. He reported that the LBP was constant, and kept him awake at night. On examination, gait was normal, and he was in no acute distress. His movements in the examination room were normal. Forward flexion was 90 degrees, and brought fingers to within an inch of the floor. Backward extension was 20 degrees. Straight leg raise was normal, and DTRs were normal. There were no sensory or motor deficits.

The Board carefully reviewed all evidentiary information available, and directs attention to its rating recommendation based on the above evidence. The PEB coded the condition 5295 (lumbosacral strain) and rated it 10%. The Veterans' Administration Schedule for Rating Disabilities (VASRD) coding and rating standards for the spine, which were in effect at the time of the CI's separation, were modified in September 2002, and then were changed again in September 2003. The older standards were based on the rater's opinion regarding degree of severity, whereas current standards specify certain rating thresholds, with measured degrees of ROM impairment. IAW DoDI 6040.44, the Board must use the VASRD coding and rating standards which were in effect at the time of the CI's separation. Based on the evidence in the treatment record, the Board unanimously agreed that the CI's low back condition was best described as "slight." There was insufficient evidence in the treatment record to support classifying the LBP condition as "moderate" or "severe." Although there was some bilateral muscle spasm documented at the January 2003 C&P exam, the Board determined that the spasm was not severe enough to justify a rating of 20%. IAW VASRD §4.71a, the Board unanimously recommends a rating of 10% for the LBP condition. 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 LBP 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. In the matter of the LBP 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
Post Traumatic Low Back Pain, with no Radiculopathy	5295	10%
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120830, 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)