DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
Coast Guard Record of:

BCMR Docket
No. 1999-170

FINAL DECISION

[redacted] Deputy Chairman:

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The application was received and docketed on August 24, 1999. However, the application was not complete until December 1, 2000, the date on which the Board received the applicant's military record.

This final decision, dated August 31, 2001, is signed by three duly appointed members who were designated to serve as the Board in this case.

The applicant, a retired [redacted] pay grade E-5), asked the Board to correct his record by increasing the permanent disability rating he received from the Coast Guard from 40% to 90%. He also requested "reparations . . . for the financial devastation and credit damage caused by the [injustice in this case]."

The applicant enlisted in the Coast Guard on April 10, 1990. He was placed on the Temporary Disability Retired List on with a combined disability rating of 80%. He was removed from the TDRL[1] and placed on the Permanent Disability Retired List (PDRL) on , with a 40% combined disability rating.[2] He stated that he is disabled due to low back pain, headaches, stomach problems and depression.

EXCERPTS FROM RECORD AND SUBMISSIONS

[1] The TDRL is a pending list of individuals whose disabilities are not permanent. In order to be placed on the TDRL, the individual must have a disability that renders him or her unfit to perform the duties of his or her office, grade and rank, and the disability must be rated at a minimum of 30%. Temporary Disability retired pay terminates at the end of 5 years. See Chatper 8 of COMDTINST M1850.2C.

[2] Chapter 9.A.12 of COMDTINST M1850.2C states that "when an evaluee has more than one compensable disability, the percentages are combined rather than added. . . . This results from the consideration of the evaluee's efficiency as affected first by the most disabling conditions in the order of their severity. Thus, an evaluee having a 60 percent disability is considered to have a remaining efficiency of 40 percent. If an evaluee has a second disability at 20 percent, he or she is considered to have lost 20 percent of that remaining 40 percent, thus reducing the remaining efficiency to 32 percent."

The applicant enlisted in the Coast Guard on April 10, 1990. He was permanently retired from the Coast Guard by reason of physical disability effective , with the following disabling conditions: 1. Gastritis, with Esophagitis, and Duodenitis, Chronic, with multiple eroded areas, rated at 30% disabling. 2. Mild Intervertebral Disc Syndrome, rated at 10% disabling. 3. Muscle tension headaches, analogous to Migraines with characteristic prostrating attacks, rated at 10% disabling. He has a combined disability rating of 40% from the Coast Guard.

The applicant specifically requested that the 10% disability rating awarded by the Coast Guard for Interverterbral Disc Syndrome be changed to 60%. He also requested that the 10% disability rating for "muscle tension headaches analogous to migraine characteristics prostrating attacks" be changed to "muscle tension headaches analogous to migraine with frequent, prostrating, and prolonged attacks," with a 50% disability rating. He further requested that the Board find that he suffers from depression with a 0% disability rating. The higher disability ratings requested by the applicant coincide with those he was recently given by the Department of Veterans Affairs (DVA). Neither the Coast Guard nor the DVA determined that depression was a disabling condition for the applicant.

The applicant alleged that his condition has deteriorated to the point that he currently needs a wheelchair to leave his house. He stated that during the periodic TDRL medical examination[3] performed at the direction of the Coast Guard, no x-rays, CAT scans, or MRIs were taken. He stated that the failure to conduct such tests "leaves the conclusion as to the severity of [his] condition open for determination by the [B]oard." The applicant alleged that the finding by the 1998 (CPEB) that his headaches occur an average of once a month is not supported by the medical record. He claimed that his headaches occur an average 3 to 5 times a week.

The applicant stated that he needs depression added to the list of his disabilities. He claimed that he is currently being treated for this condition by a physician at the DVA medical center. The applicant further stated that "if treatment is discontinued because the FPEB [Physical Disability Evaluation Board] [finds] it necessary to remove depression from the list of service connected disabilities another injustice will have been levied against me." The applicant further stated as follows:

> The extent of damage caused by the decisions of the [physical disability evaluation system] which placed me on permanent retirement at 40% has had a catastrophic effect on the financial aspects of my and my [family's] life. I was forced by the unreasonable reduction in pay to lose my vehicle to repossession. I needed this vehicle because it met my disability needs and allowed me to be somewhat free to leave the house. Now I am by all accounts home bound and in debt over $5000.00 for a vehicle, I no longer

[3] At least once every 18 months, an individual on the TDRL must undergo a physical examination and the CPEB must review the resulting report to determine if the individual's condition has stabilized sufficiently to determine any existing permanent disabilities, if any.

have. The repossession irreparably destroyed my credit and now I cannot qualify for a mortgage to keep my home.

Background

On , a medical board met and diagnosed that the applicant was suffering from "(1) Chronic Back Pain (2) L/4&L/5 (portions of the vertebrae in the back) Laminectomy (3) Chronic Muscle Tension Headaches (4) Gerd, Barrett's Esophagitis, and Gastroduodenitis". The Medical Board Report (MBR) contains the following history of the applicant's medical condition:

> According to review of health record, systems, and social and family histories, the [applicant] was well until he reported to Clinic and related symptoms of low back pain for two weeks with numbness on left side buttock. Pain increased with sneezing. The [applicant] denied any trauma, and did not have any loss of bowel or bladder function. The examination was listed as normal and the assessment was acute L-S strain. The member was placed on Naprosyn, heat, and recommended follow up in four days. In , the member was seen three times at the medical clinic for a persistent back pain that radiated to the buttocks on forward bending which he described as stabbing pain. One of these visits was with our orthopedic consultant. Physical findings on these visits were limited ROM, can only bend forward 90 degrees, and tenderness over the left SI joint, and tenderness over the L4-L5 area. The examination was otherwise normal. Lumbar spine x-rays taken at that time showed slight scoliosis without any other significant findings. He was treated conservatively with NSAIDs and limited duty.
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> MRI was done on which showed congenitally short pedicles and diffuse disc bulge at L4-5 resulting in a moderate degree of spinal stenosis at this level. Bilateral facet arthropathy was also seen at L5-S1.

The MBR notes that after various methods of treatment failed to relieve the applicant's symptoms, an orthopedic neurosurgeon diagnosed the applicant as suffering from L5-S1 moderate to severe stenosis causing neurogenic claudication. A decompression laminectomy was recommended for the applicant. The MBR further stated:

> Complete laminectomy L5 & S1 was done on following which the [applicant] had complete resolution of the leg pain for 12 days. However, the pain gradually returned with resumption of activities. The [applicant] reported to the Clinic after convalescent leave on . The [applicant] reported that he detected no change with the pain as a result of the surgery. The patient noted continued pain running down his left leg and that he was still experiencing severe back pain. He underwent post surgical physical therapy rehabilitation program with no significant improvement of his symptoms.

> Because the [applicant] "continued to be incapacitated by pain, now back and left" a repeat MRI was done 09Mar95. The results were Degenerative Disc Disease at the L4-5 and L5-S1 levels. Status post L4 and L5 laminectomy with the expected postoperative changes in the region of the posterior elements but no evidence of mass effect on the thecal sac or spinal stenosis.

The MBR notes that the applicant was referred to Hospital , for multi-disciplinary management of his pain. The applicant was prescribed various forms of treatment for the pain, but no improvement was noted by the applicant.

On , the applicant was admitted to for intensive rehabilitation to "try and improve function". "[He] underwent multiple trials of conservative therapy that provided only minimal pain relief." On July 10, 1995, the applicant "underwent percutaneous implantation of a medtronic Pisces Quad spinal cord stimulation lead in his left epidural space." The applicant reported the device to be of limited benefit. Ten days later, the applicant underwent . The applicant reported no significant improvement after this procedure. Another treatment was tried but it was also unsuccessful.

While at the applicant had a neurology evaluation which was essentially negative. He was diagnosed with chronic tension-type headaches. "Trials on Toradol, Motrin, Darvocet, Tylox, Mexitid, Methadone, Elavil, Paxil, and Midrin all failed to give him relief." He was placed on London Protocol to break the headache cycle, but it did not relieve his headaches.

The applicant was also evaluated by the Gastroenterology Department at XXXX. He was diagnosed with Barrett's esophagitis, hiatal hernia, mild gastritis, and mild inflammation of the bulb and duodenum.

The MBR also noted that the applicant was evaluated by the Psychiatry Department at . The psychiatrist diagnosed the applicant with "1. Partner Relational Problems and II. Passive-Aggressive and Borderline Traits." The psychiatrist recommended that the applicant attend marriage counseling and group therapy.

On , without objection, the applicant was placed on the temporary disability retired list (TDRL) with a combined disability rating of 80% that included the following conditions and disability ratings: 1. 50% for "Muscle Tension Headaches Analogous to Migraine with Frequent Prostrating and Prolonged Attacks". 2. 40% for severe "Intervertebral Disc Syndrome". 3. 30% for "Gastritis, with Esophagitis, and Duodenitis, Chronic, with Multiple Eroded Areas". 4. 0% for "Major Depression without Melancholia, with neurotic symptoms that do not cause impairment of working ability."

The applicant's military medical record contains a medical record progress note dated August 25, 1997, regarding a psychological pain assessment evaluation on the applicant. The note indicated that he was given a battery of psychological tests, with the following results:

> [The applicant's] test results are consistent with his reported pain. Patients with similar results have physical problems. He appears moderately-to-severely depressed. Medical patients with similar profiles are often rather colorless and emotionally blunt. They tend to be quiet and untalkative. Health care professionals may need to give clear directions in order to get them to follow a treatment plan.

A progress note dated September 12, 1997 indicated that a multidisciplinary treatment plan had been developed for the applicant. The goals of the plan were to (1) decrease depression and "[d]ecrease pain (by self-report) at least 20%"; and (2) improve coping ability. This note also stated that no progress had been made toward the goals, and that "[the applicant] has been discharged from PM&RS because [the treatment team] felt that his significant symptom magnification would make him unresponsive to their treatment modalities."

In , the applicant reported for his first and only periodic TDRL examination. The neurologist at wrote that since his 1996 medical board, the applicant's history included daily headaches and low back pain, which had caused him to be unable to gain employment or retraining. The neurologist described the headaches as holocephalic, constant, and especially severe 3 to 4 days per week. The applicant denied "bowel/bladder symptoms or impotence." With respect to physical findings the neurologist wrote that: "General examinations as well as detailed neurological examinations were within normal limits with the exceptions of patchy areas of decreased sensation in the bilateral lower extremities . . . Mental status was intact. The prognosis for recovery is poor. The patient is mentally competent. The degree of civilian, social, and occupational impairment is severe."

The applicant's TDRL examination included a psychological evaluation. His final psychological diagnosis was "Pain Disorder Associated with a General Medical Condition (chronic lower back and extremity pain; chronic headaches), Chronic." The psychiatrists further stated that the applicant reported feelings of dysphoria, irritability, anger, frustration, helplessness, and vague suicidal ideation without plan, which are often present in the context of chronic and severe pain. The psychiatrist stated that there was no evidence of a major mood disorder. The psychiatrist further reported, "There is no evidence in the available records that establishes the patient was experiencing the characteristic signs and symptoms of major depressive illness or diagnosed with such a disorder by a mental health provider prior to his discharge from active duty. The patient's social and occupational impairment appears to be a direct consequence of his physical disability."

The applicant's gastrointestinal condition was evaluated on March 2, 1998, with the following findings:

> The [applicant] had Grade III erosive esophagitis with circumferential erosions at the gastroesophageal junction. He had a moderate sized hiatal hernia. The duodenum appeared inflamed consistent with duodenitis. Multiple biopsies were obtained to evaluate for Helicobacter pylori. . . . Biopsies were obtained of the gastroesophageal junction and

> demonstrated changes consistent with chronic reflux esophagitis. There was no evidence of intestinal metaplasia present. Therefore, the diagnosis of Barrett's Esophagus is not existent at this time.

The TDRL examination also included an evaluation of the applicant by an orthopedist. He wrote the following:

> Physical Evaluation. Thirty-five year old muscular male in moderate distress, utilizing a cane in his right hand with antalgic gait on his left, leaning heavily on a decorated cane in his right hand. The patient has significant hyperpathia in the paraspinal region from approximately L1 to S1 with touch-me-not posturing upon light touch. He has decreased range of motion with 10 degrees of forward flexion, 0 degrees of extension, 5 degrees of lateral bending and rotation. Strength in his lower extremities is 5/5 throughout. Sensation is intact. Deep tendon reflexes are 2/4 with downgoing toes. Waddell's testing[4] was 5/5.
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> Final Diagnoses: (1) Failed back syndrome, secondary to L4-5 and L5-S1 laminotomies for Stenosis with continued lower back and leg pain . . . (2) Chronic muscle tension headaches . . . (3) Gatroesophageal Reflux Disease . . . (4) Changes consistent with Barrette's Epithelium . . . (5) Depression Secondary to #1 . . .
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> [The applicant] has received a multidisciplinary comprehensive evaluation and management program for chronic pain without change in the last four years. The [applicant] states that his pain has been stable over the last four years without change regardless of management regime that was used. It is determined that the patient is at maximum medical improvement, and no further investigation is warranted at this time. Prognosis is poor for any recovery or change in present status.

Since the applicant was determined to be at maximum medical improvement, his case was referred to the CPEB to determine his fitness for duty. On June 30, 1998, the CPEB determined that the applicant was unfit for duty and recommended that he be permanently retired with a combined 49.6% disability rating, rounded to 50%, that included the following conditions and disability ratings: 1. 30% disability rating for "muscle tension headaches analogous to migraine with characteristic prostrating attacks occurring on average once a month." 2. 20% disability rating for "Ulcer, Duodenal; Moderate." 3. 10% disability rating for "Intervertebral Disc Syndrome; Mild." 4. 0% disability rating for "Major Depressive Disorder; Symptoms not severe enough to interfere with functioning or require continuous medication."

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[4] Waddell's testing consists of a group of signs that indicate the presence of non-organic problems for patients with lower back pain. Testing for these signs are performed during the physical examination and takes less than on minute. See Waddell G, etal: Non-organic physical signs in low back. Spine 5:117-125, 1980.

On July 20, 1998, the applicant rejected the findings of the CPEB. He acknowledged the following by his signature: "I have been advised by . . . named counsel regarding acceptance or rejection of the findings and recommended disposition of the [CPEB]. He further acknowledged by his signature that he "reject[ed] the findings of the [CPEB] and recommended disposition and demand[ed] a hearing before a formal physical evaluation board" [FPEB].[5] He disagreed with the 50% combined rating given to him by the CPEB.

On October 7, 1998, an FPEB held a hearing, which the applicant and his counsel attended. The FPEB determined that the applicant was unfit for duty with a 43.3% combined disability rating rounded to 40%. It described the applicant's disabilities as follows: 1. Gastritis, with Esophagitis, and Duodentis, Chronic, with multiple eroded areas – 30%. 2. Intervertebral Disc Syndrome: Mild – 10%. 3. Muscle Tension Headaches Analogous to Migraine; with Characteristic Prostrating Attacks – 10%.

The applicant objected to the findings of the FPEB and submitted a rebuttal. He challenged the findings of the FPEB by stating that no MRI, X-ray, or CT scans were ordered to help determine whether his condition had stabilized, improved, or worsened. He stated that his condition had not improved since his placement on the TDRL, and if anything, his condition had deteriorated. The applicant argued that the 10% disability rating for headaches should be 50% because the headaches severely impair the civilian, social, and occupational areas of his life. He argued that the FPEB should not have removed depression as a disabling condition. He stated that he suffers from depression, just as anyone would in his condition.

On November 13, 1998, the applicant's case was forwarded to the physical review counsel (PRC)[6] for review. On January 19, 1999, the PRC concurred with the findngs of the FPEB. The Chief Counsel approved the findings of the FPEB and the PRC on January 21, 1999, and the Commandant approved them on January 25, 1999. On January 25, 1999, the applicant was notified that he would be permanently retired with a 40% disability rating, effective February 23, 1999.

Department of Veterans Affairs [DVA] Rating Decision[7]

The applicant submitted a copy of a DVA rating decision dated June 17, 1999, informing the applicant of an increase in his DVA disability rating. This decision increased the applicant's disability rating for lumbar spinal stenosis from 40% to 60%,

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[5] The FPEB meets to evaluate a case of an individual who has exercised the right to demand a formal hearing subsequent to the evaluation of the case by the CPEB, or upon which the CPEB could not unanimously agree.

[6] The PRC reviews decisions by the CPEB and FPEB in which individuals rebut the findings or recommended dispositions of those boards.

[7] The DVA rating decision is separate and independent of any disability rating rendered by the Coast Guard.

his disability rating for gastroesophageal reflux disease from 0% to 30%; and his disability rating for headaches from 0% to 50%. The applicant's combined DVA disability rating is 90%.

The DVA report stated that an examination of the applicant on December 8, 1998, showed no muscle spasms, tenderness, or trigger points in the lumbar spine. "The range of motion on flexion was 15 degrees with pain. The [applicant's] extension was 0; he could not extend his spine due to pain. His right and left lateral movement was to 5 degrees with pain. He exhibited severe pain and weakness secondary to the lumbar spine." The report noted that the applicant was unable to work due to severe incapacitating back pain. It further stated as follows:

> [The applicant] cannot stay in one position, sitting, standing or walking. He cannot tie his shoes. There is radiculopathy into the lower extremities which is quite severe in both legs. The lower extremities are abnormal with loss of strength and decreased mobility in the lower legs. The deep tendon reflexes are normal and the ankle jerks are intact. There were no abnormal neurological findings. The [applicant] does not fully meet the criteria for the 60 percent evaluation in that there are no muscle spasms, absent ankle jerks or other neurological findings . . . The [DVA] examiner stated that the primary disability in regard to employment or schooling was [the applicant's] restriction in movement and chronic pain related to his musculoskeletal condition, his lumbar spine.

With respect to the applicant's gastroesophageal reflux disease the DVA report stated the following:

> An evaluation of 30 percent is granted. . . A higher evaluation of 60 percent is not warranted unless there are symptoms of pain, vomiting, material weight loss, and hematemesis or melena with moderate anemia, or other symptom combinations productive of severe impairment of health.
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> The Gastroenterology at the performed an . . . on which revealed Grade III erosive esophagitis with multiple circumferential erosions at the gastroesophgeal junction, gastropathy in the antrum, a moderate sized hiatal hernia, erythema, duodenitis in the bulb of the duodenum and several erosions suggestive of possible healed ulcerations. The TDRL physical on showed a diagnosis of gastroesophageal reflux disease, a hiatal hernia and duodenitis. He has had a history of Helicobacter pylori negativity. He has heartburn daily with some regurgitation. He does not complain of dysphagia, but does have pyrosis or reflux disease chronically. He currently takes Lansoprazole and Cisapride. The [applicant's] symptomatology does not meet all the criteria for a 30 percent evaluation, but exceeds the criteria for the 10 percent evaluation; therefore the 30 percent evaluation has been assigned based on persistent recurrent epigastric distress with pyrosis, regurgitation and considerable impairment of health.

The DVA rated the applicant's headaches as 50 percent disabling as of March 11, 1998. The DVA grants a 50% disability rating if headaches are shown to be "very frequent, completely prostrating, and prolonged attacks productive of severe economic inadaptability."

> The [applicant's] periodic examination dated from the revealed a diagnosis of severe tension headaches. He has continual daily headaches, which coupled with his back pain cause him to be unable to gain employment or retraining. The headaches are holocephalic, constant, severe in intensity and occur 3-4 days a week. They involve associated blurred vision and photophobia... The examination at dated revealed that tension headaches are incapacitating most of the time and he has problems taking pain medication for the headaches because of his gastroesophageal reflux disease. The headaches are described as band-like throughout the head and he either suffers it out, if possible, or sleeps it off.

Views of the Coast Guard

The Coast Guard recommended that the applicant's request be denied for lack of proof of error or injustice. The Chief Counsel stated that the applicant failed to prove by a preponderance of the evidence that the Coast Guard committed error or injustice when it determined that the applicant's physical disability rating should be 40%. He stated that the Coast Guard does not have to disprove the applicant's contentions or allegations of error; instead, the applicant bears the burden of producing sufficient substantial evidence to establish prima facie proof of the alleged errors or injustices. The Chief Counsel argued that the applicant has failed to provide sufficient evidence to overcome the strong presumption of regularity afforded the military officials who determined that the applicant's physical disabilities justified a 40% disability rating.

The Chief Counsel stated that the applicant's medical record reflects that a qualified medical professional evaluated applicant's failed back syndrome on March 17, 1998 and found that the applicant's strength in his lower extremities was 5/5 throughout and the Waddell's testing was 5/5. In a footnote, the Chief Counsel explained, "5/5 positive Waddell's strongly suggests magnified illness behavior and should prompt psychiatric assessment. See Waddell, G. et.al. Non-Organic Physical Signs in Low Back, Spine 5:117-125, 1980." The Chief Counsel stated that the medical examiner's findings on March 17, 1998, are consistent with the 10% disability findings assigned to the applicant's Intervertebral Disc Syndrome diagnosis.

The Chief Counsel stated that the applicant's allegations that his diagnosis of "muscle tension headaches analogous to migraine with frequent prostrating and prolonged attacks" should have been rated at 50% disabling is unsupported by the medical record. According to the Chief Counsel, "[t]here is no evidence in the record indicating Applicant was seen on a regular urgent basis for muscle tension headaches analogous to migraine while he was on the TDRL." He stated that the Board should conclude that the applicant has failed to offer sufficient evidence to overcome the strong presumption of regularity afforded the military official who determined the applicant's disability to be 40%.

The Chief Counsel stated that the findings of the DVA regarding the applicant's alleged disabilities have no bearing or legal effect on the Coast Guard's medical findings. In this regard, the Chief Counsel stated that the DVA determines to what extent a veteran's civilian earning capacity has been reduced as a result of physical disabilities and provides compensation. In contrast, the Coast Guard determines if a member is unfit to perform his military duties. He further stated as follows:

> The procedures and presumptions applicable to the DVA evaluation process are fundamentally different from, and more favorable to the veteran than, those applied under the Coast Guard's Physical Disability Evaluation System. The DVA is also not limited to the time of Applicant's retirement from the Service. If a service-connected condition later becomes disabling, the DVA may award compensation on that basis.

Applicant's Reply to the Views of the Coast Guard:

On May 3, 2001, a copy of the Coast Guard views was mailed to the applicant with an invitation for him to submit a response. He did not submit a response.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's record and submissions, the Coast Guard's submission, and applicable law:

1. The BCMR has jurisdiction of the case pursuant to section 1552 of title 10, United States Code. The application was timely.

2. The applicant alleged that the Coast Guard committed an error and/or injustice at the time he was placed on the permanent disability retired list (PDRL) by assigning him a 10% disability rating for Interverterbral Disc Syndrome and a 10% disability rating for muscle tension headaches and by failing to list depression as a disability. The applicant was medically retired on , with a combined disability rating of 40%.

3. The applicant has submitted insufficient evidence to show that the Coast Guard committed an error or injustice when it determined that he was not suffering from disabling depression. The psychiatrist who evaluated the applicant with respect to this condition stated that there was no evidence of a major mood disorder. He further reported: "There is no evidence in the available records that establishes the patient was experiencing the characteristic signs and symptoms of major depressive illness or diagnosed with such a disorder by a mental health provider prior to his discharge from active duty." Although the applicant claims that he is currently being treated for depression, he has not submitted any evidence to support this allegation. Nor has he submitted any evidence to show that the diagnosis and findings by the TDRL psychiatrist were inaccurate.

4. The applicant has not shown that the 10% disability rating given to him for headaches at the time he was placed on the PDRL was erroneous or unjust. According

to 38 CFR 4.124a (DVA Schedule for Rating Disabilities (VASRD)),[8] a 50% disability rating for migraines is given when the headaches are "very frequent completely prostrating and prolonged attacks productive of severe economic inadaptability." The neurologist who performed the TDRL examination described the applicant's past history with headaches as "holocephalic, constant, and especially severe 3 to 4 days per week." This description of the applicant's condition by the neurologist does not comport with that of the VASRD for a 50% disability rating. The neurologist did not state that the applicant's headaches were frequent, completely prostrating and prolonged attacks. It is not enough that the headaches were severe; they must have been frequent, completely prostrating, and prolonged.

5. A 30% disability rating for headaches should have the "characteristic prostrating attacks occurring on an average of once a month over the last several months." The 1996 medical board report (MBR) noted that the applicant had tension-type headaches, but the neurological evaluation was negative. Nothing in the periodic TDRL neurological report indicated that the applicant suffered from completely prostrating headaches at least once per month over the previous several months. As the Chief Counsel stated, there is no evidence in the record that the applicant received urgent medical treatment for headaches while on the TDRL. The applicant has not shown that he suffered from prostrating headaches on an average of once per month over the previous several months preceding the TDRL examination. Therefore, he is not entitled to a 30% disability rating for headaches.

6. The DVA's 1999 decision to increase the applicant's disability rating for headaches from 0% to 50% was based in part on a December 1998 examination of the applicant at the . According to the DVA, this medical examination revealed that the applicant's headaches were incapacitating most of the time and were of a band like nature throughout the head. However, no medical report from this entity has been provided to the Board. There is no indication that the physician who treated the applicant on this particular occasion was a neurologist. However, as stated previously, none of the medical reports from evaluations obtained through the Coast Guard indicated that the applicant was incapacitated by the headaches. At most, the headaches were described as chronic tension headaches occurring 3 to 4 times per week. The applicant has not submitted sufficient evidence to show that the Coast Guard's 10% disability rating for headaches is in error. According to the VASRD, for a 10% disability rating, headaches must be "characteristic prostrating attacks averaging one in 2 months over last several months." The DVA initially rated the applicant's headaches as 0% disabling.

7. With respect to the 10% disability rating for Intervertebral Disc Syndrome, the applicant has not submitted sufficient evidence to prove that the Coast Guard's rating determination for this condition is in error or unjust. According to the VASRD, to obtain a 60% disability rating for this condition, it must be pronounced, "with persistent symptoms compatible with sciatic neuropathy with characteristic pain and demonstrable muscle spasms, absent ankle jerks, or other neurological findings,

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[8] Article 2.C.3.(3)(a) of COMDTINST M1850.2C states that the CPEB, FPEB and PRC will use theDVA Schedule for Rating Disabilities (VASRD), in determining the percentage of disability at the time of evaluation, the code number and the diagnostic nomenclature for each disability.

appropriate to cite with little intermittent relief." According to the neurologist for the TDRL examination, the applicant's neurological findings were within normal limits, except for "patchy areas of decreased sensation in the bilateral lower extremities . . .."

8. The TDRL orthopedist stated that a 1995 MRI showed that the applicant had degenerative disk disease at L4-5 and L5-S1. The MRI also showed "post L4 and L5 laminectomy with the expected postoperative changes in the region of the posterior elements but no evidence of mass effect on the thecal sac or spinal stenosis." The applicant complained that no diagnostic tests were performed during the TDRL periodic examination. However, he did not submit any recent diagnostic tests showing results that were different from the results of the 1995 tests.

9. The TDRL orthopedic examination of the applicant revealed some decrease in the applicant's range of motion. The orthopedic report also stated the following: "[The applicant] has significant hyperpathia in the paraspinal region from approximately L1 to S1 with touch-me-not posturing upon light touch." Hyperpathia is defined as "abnormally exaggerated subjective response to painful stimuli." See Dorland's Illustrated Medical Dictionary, Twenty-fifth Edition, p. 742. The orthopedist also stated that the applicant's strength in his lower extremities was 5/5 and that sensation was intact. He stated that the applicant's deep tendon reflexes were 2/4 with down going toes and Waddell's testing was 5/5. A 5/5 on the Waddell scale indicates a strong suggestion of magnified (exaggerated) illness behavior. The Board notes that the applicant was discharged from pain management and rehabilitation service in because the "[treatment team] felt that [the applicant's] significant symptom magnification would make him unresponsive to their treatment modalities." Even the DVA, while granting the applicant a 60% rating for Intervertebral Disc Syndrome, found that he did not meet the requirements for the rating because he had no "muscle spasms, absent ankle jerks or other neurological findings."

10. There is very little objective medical evidence before the Board to support the applicant's claim that at the time he was placed on the PDRL, he was 60% disabled by Intervertebral Disc Syndrome. The Board notes in this regard that neither the neurologist nor the orthopedist found that the applicant suffered from muscle spasms, absent ankle jerks, or any other neurological condition. Most of the evidence before the Board suggesting that the applicant's condition was more severe than rated by the Coast Guard is uncorroborated.

11. The fact that the applicant received higher disability ratings from the DVA does mean that the Coast Guard committed an error or injustice by assigning the applicant lower ratings. The Court of Federal Claims has stated that "[d]isability ratings by the Veterans Administration [now the Department of Veterans Affairs] and by the Armed Forces are made for different purposes. The Veterans Administration determines to what extent a veteran's earning capacity has been reduced as a result of specific injuries or combination of injuries. [Citation omitted.] The Armed Forces, on the other hand, determine to what extent a member has been rendered unfit to perform the duties of his office, grade, rank, or rating because of a physical disability. [Citation omitted.] Accordingly, Veterans' Administration ratings are not determinative of issues involved in military disability retirement cases." Lord v. United States, 2 Cl. Ct. 749, 754 (1983).

12. The applicant received all due process to which he was entitled from the Physical Disability Evaluation System. Absent clear evidence of error or injustice, the Board will not disturb findings rendered by the FPEB and the PRC.

13. The Board has no authority in law or regulation to award reparations to the applicant for any alleged damages he claimed to have suffered.

14. The Board finds that the applicant has failed to prove that the Coast Guard committed an error or injustice when it assigned the applicant a combined 40% disability rating at the time he was placed on the PDRL.

15. Accordingly, the applicant's request for relief should be denied

ORDER

The application of , for correction of his military record is denied.

[redacted]