

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX
BRANCH OF SERVICE: MARINE CORPS

CASE: PD-2021-00098
SEPARATION DATE: 20070515

SUMMARY OF CASE: Data extracted from the available evidence of record reflects this covered individual (CI) was an active duty E3, Aircraft Maintenance SE/Hydraulic/Pneumatic/Structures Mechanic, medically separated for "lumbago" with a disability rating of 10%.

CI CONTENTION: Review requested review of additional conditions not identified by the Medical Evaluation Board (MEB) and/or Physical Evaluation Board (PEB). The complete submission is at Exhibit A.

SCOPE OF REVIEW: The panel's scope of review is defined in DoDI 6040.44. It is limited to review of disability ratings assigned to those conditions determined by the PEB to be unfitting for continued military service, and when specifically requested by the CI, those conditions identified by the MEB, but determined by the PEB to be not unfitting or non-compensable. Any conditions outside the panel's defined scope of review, and any contention not requested in this application, may remain eligible for future consideration by the Board for Correction of Military Records. The panel's authority is limited to assessing the fairness and accuracy of PEB rating determinations and recommending corrections when appropriate. The panel gives consideration to VA evidence, particularly within 12 months of separation, but only to the extent that it reasonably reflects the severity of disability at the time of separation.

RATING COMPARISON:

SERVICE PEB - 20070321			VARD - 20071121			
Condition	Code	Rating	Condition	Code	Rating	Exam
Lumbago	5237	10%	Chronic Lumbago, S/P Total Disc Replacement at L5-S1	5243	20%	20070620
Degenerative Disc Disease (DDD), L5-S1		Cat II				
COMBINED RATING: 10%			COMBINED RATING OF ALL VA CONDITIONS: 30%			

ANALYSIS SUMMARY:

Lumbago. According to the service treatment record (STR) and MEB narrative summary (NARSUM), the CI's lower back pain began while participating in martial arts training in May 2004. An MRI in May 2005 revealed a minimal diffuse disc bulge at L5-S1 with some impingement on the thecal sac. The CI underwent an L5-S1 discectomy in April 2006.

The 12 January 2007 MEB NARSUM examination, 4 months prior to separation, noted complaints of constant and sharp low back pain rated at 2/10, which increased to 8/10 with "twisting" movements. The CI denied radicular symptoms, as well as any changes in bowel or bladder function. The examiner noted that he walked with a cane due to pain, but physical findings showed no spine deformity, tenderness, or muscle spasm. "Full" spine flexion, extension, lateral flexion, and rotation were recorded with pain throughout all planes of motion.

Controlled by: DAF
Controlled by: SAF/MRBD
CUI Categories: SP-MIL/SP-PRVCY
Limited Dissemination Control: N/A
POC: SAF.MRBD.Workflow@us.af.mil

At the 14 March 2007 MEB follow-up examination, 2 months before separation, the CI reported little change in pain or activity levels since the last evaluation. He still used a cane to assist ambulation. Lumbosacral range of motion (ROM) testing revealed flexion to 85 degrees (normal 90 normal), extension to 5 degrees (normal 30) with pain, and lateral flexion to 20 degrees (normal). There was no tenderness or muscle spasm noted.

At the 20 June 2007 VA Compensation and Pension (C&P) examination, 1 month after separation, the CI used a cane for walking, and reported constant daily pain with numbness in both buttocks. Physical examination showed lumbosacral spine flexion to 80 degrees, right and left lateral bending to 25 degrees, and extension to 15 degrees, with pain in all those planes. Right and left rotation was to 30 degrees (normal), both without pain. Combined ROM was 205 degrees (normal 240).

The panel directed attention to its rating recommendation based on the above evidence. The PEB rated the lumbago 10%, coded 5237 (lumbosacral strain), and listed degenerative disc disease (DDD), L5-S1, as a related Category II condition (contributed to the primary unfitting condition but not separately ratable). The impairment from the DDD was properly subsumed under the overall rating for the lumbago IAW §4.14 (avoidance of pyramiding; more than one rating based on the same impairment is prohibited). The VA rated the lumbago 10%, but coded 5243 (intervertebral disc syndrome (IVDS)), based on the C&P examination, citing ROM. Panel members agreed that a 10% rating, but no higher, was justified for limitation of flexion (greater than 60 degrees but not greater than 85 degrees), as reported on the MEB follow-up and VA examinations proximate to separation. There was no muscle spasm or guarding severe enough to result in an abnormal gait or spinal contour, thus the next higher 20% rating was not justified on this basis. There was no documentation of IVDS with incapacitating episodes which would provide for a higher rating under that formula. After due deliberation, considering all the evidence and mindful of VASRD §4.3 (reasonable doubt), the panel concluded there was insufficient cause to recommend a change in the PEB adjudication for the lumbago.

BOARD FINDINGS: In the matter of the lumbago and IAW VASRD §4.71a, the panel recommends no change in the PEB adjudication. There are no other conditions within the panel's scope of review for consideration. Therefore, the panel recommends no modification or re-characterization of the CI's disability and separation determination.

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20210929, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans Affairs Record

2/8/2023



DEPARTMENT OF THE NAVY
SECRETARY OF THE NAVY COUNCIL OF REVIEW BOARDS
720 KENNON STREET SE STE 309
WASHINGTON NAVY YARD, DC 20374-5023

IN REPLY REFER TO
6040
CORB: 003
11 May 23

From: Director, Secretary of the Navy Council of Review Boards

Subj: Physical Disability Board of Review Determination

Ref: (a) DoDI 6040.44(Series)

1. The Physical Disability Board of Review (PBDR) reviewed your case in accordance with reference (a) and forwarded their recommendation for action.
2. On 11 May 2023, the Assistant Secretary of the Navy (Manpower and Reserve Affairs) accepted the PBDR's recommendation of no change to your characterization of separation or disability rating assigned.
3. The PBDR determination is final and not subject to appeal or review.