

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX
BRANCH OF SERVICE: COAST GUARD

CASE: PD-2021-00115
SEPARATION DATE: 20021125

SUMMARY OF CASE: Data extracted from the available evidence of record reflects this covered individual (CI) was a Coast Guard E5, Quartermaster, medically separated for “intervertebral disc syndrome: moderate, recurrent” with a disability rating of 20%.

CI CONTENTION: Requested review of an additional condition 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 - 20021002			VARD – 20030409			
Condition	Code	Rating	Condition	Code	Rating	Exam
Intervertebral Disc Syndrome (IVDS)	5293	20%	Degenerative Disc Disease, Lumbar Spine	5293-5242	40%	20030226
COMBINED RATING: 20%			COMBINED RATING OF ALL VA CONDITIONS: 80%			

ANALYSIS SUMMARY:

Intervertebral Disc Syndrome. According to the service treatment record (STR) and MEB narrative summary (NARSUM), the CI underwent a left L4-5 discectomy in May 2000 for a herniated disc with radiating pain to both lower extremities (LEs). He presented in July 2001 with complaint of left LE pain and foot numbness with occasional coccyx pain. An MRI on 4 December 2001 revealed a small recurrent central disc herniation superimposed on epidural scar tissue with resultant mild to moderate central spinal canal narrowing. After a decompression and revision discectomy in December 2001, he continued to report bilateral hip and thigh pain.

The 18 January 2002 MEB NARSUM examination, 10 months prior to separation, noted CI complaints of residual and constant pain in both hips and thighs. Physical findings noted mild to moderate distress, a well-healed midline lumbar incision, and lumbar paravertebral muscle tenderness. Lumbar spine range of motion (ROM) was decreased in all planes with pain at the extremes of motion, but LE strength and reflexes were normal. The examiner stated the CI was “not to engage in any in physical readiness crawling any testing, running, heavy lifting: prolonged walking, standing, or entering areas where unsteady gait may pose a danger to himself or others.” He was given a consult for aggressive physical therapy and lumbar stabilization. The 2 May 2002 MEB NARSUM orthopedic addendum noted that the CI continued to have “rather severe back pain,” which required pain medication to control. The specialist recommended physical therapy and pain relief medication, but no further surgery.

While the 26 February 2003 VA examination was not in the record, the 9 April 2003 VA Rating Decision summarized the findings, which noted CI complaints of low back pain with frequent radiation down the right leg and right foot numbness. Forward flexion was to 50 degrees (normal 90), extension to 10 degrees (normal 30) and lateral side bending to 20 degrees (normal 30) on both sides. Ankle strength and LE reflexes were normal, and spine X-rays were unremarkable.

A 15 August 2003 VA primary care note for chronic condition follow-up, 9 months after separation, noted the CI exercised regularly. Physical examination showed no acute distress, and normal LE strength, sensation, and reflexes. At an orthopedic visit on 20 November 2003 for right carpal tunnel syndrome, 12 months after separation, the provider noted a history of two back surgeries and the CI's report of persistent back pain; he walked several miles a day.

The panel directed attention to its rating recommendation based on the above evidence. The PEB rated the back condition 20%, coded 5293 (IVDS), citing "moderate; recurring attacks." The VA rated the back condition 40%, citing "severe loss of motion" of the lumbar spine but no diagnostic code. However, panel members concluded the reference to loss of motion met the description for code 5292 (limitation of lumbar spine motion). The panel also noted that the PEB used VA disability rating rules for the spine that had changed on 23 September 2002. The panel is required to make its rating recommendation based upon the VA rating rules in effect on the date of separation, and agreed that the CI's back ROM limitation was best characterized as moderate, not severe. Thus, a 20% rating was justified under code 5292. The rating criteria under code 5293, which the PEB cited, changed just weeks prior to the PEB adjudication. However, panel members found no evidence of incapacitating episodes requiring bedrest and treatment by a physician (with a total minimum duration of 4 weeks but less than 6 weeks in the past 12 months) to support a higher rating than 20%. The panel considered other VASRD spine and analogous codes, but all were less applicable and not advantageous for rating. There was therefore no higher rating than the 20% adjudicated by the PEB available under any applicable VASRD code in effect at the time of separation. Although the panel arrived at a 20% rating for the back condition under a different VASRD code than the PEB, there is no benefit to the CI to recommend changing the code. After due deliberation, considering all the evidence and mindful of VASRD §4.3 (reasonable doubt), the panel concluded that there was insufficient cause to recommend a change in the PEB adjudication for the back condition.

BOARD FINDINGS: In the matter of the back condition 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 20211205, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans Affairs Record

XXXXXXXXXXXX

Dear XXXXXXXXXXXX,

I am the Designated Decision Authority for the Coast Guard on applications submitted to the Department of Defense Physical Disability Board of Review (PDBR). Under the authority of Title 10, United States Code, section 1554a, I accept the PDBR's recommendation in your case (Case Number PD-2021-00115) and decline to modify your findings.

Enclosed for your information are a copy of the PDBR's recommendation and a copy of the record of proceedings.

A copy of this decision has also been provided to Coast Guard Enlisted Personnel Management Branch, the PDBR, and the Department of Veterans Affairs.

If you have any further questions, please contact the Coast Guard Personnel Service Center at (202) 795-6645

Enclosures: (1) Record of Proceedings

(2) Case File

Copy: CG Personnel Service Center (EPM-1)
DoD Physical Disability Board of
Review Department of Veterans Affairs