

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXX
BRANCH OF SERVICE: NAVY

CASE: PD-2023-00033
SEPARATION DATE: 20050221

SUMMARY OF CASE: Data extracted from the available evidence of record reflects this covered individual (CI) was an active duty E5, Navigation Equipment Operator, medically separated for “mild cervical degenerative disk disease [DDD]” with a disability rating of 10%.

CI CONTENTION: “Review all conditions.” The CI also requested review of additional conditions not identified by the Medical Evaluation Board (MEB) and 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 - 20041014			VARD - NA			
Condition	Code	Rating	Condition	Code	Rating	Exam
Mild Cervical DDD	5242	10%	No VA Examination Proximate to Separation in Evidence			
Cervical Spondylolysis Without Myelopathy		Cat II				
COMBINED RATING: 10%			COMBINED RATING OF ALL VA CONDITIONS: NA			

ANALYSIS SUMMARY:

Mild Cervical DDD. According to the service treatment record and MEB narrative summaries (NARSUMs), the CI began experiencing neck pain in 1999 “after repetitive living on steel decks” over multiple shipboard deployments. Conservative treatment, to include intermittent steroid injections, did not provide relief.

At the 12 May 2004 MEB NARSUM examination, 9 months before separation, the CI reported an inability to do any heavy lifting or overhead work even though a round of epidural steroid injections 2 weeks prior had significantly reduced his pain. Physical findings showed full range of motion (ROM) for flexion and extension and “good excursion on side-to-side” neck motion, but with pain. The examiner recommended a second 8-month period of limited duty.

The 15 September 2004 MEB NARSUM examination, 5 months prior to separation, noted complaints of persistent axial neck and shoulder pain (left sided), with tingling into the left third, fourth and fifth digits. Physical examination showed full ROM in all planes except for neck

extension, which the examiner noted was “probably restricted to only 30 degrees.” The CI reported that he could laterally flex his neck to 45 degrees, but this caused substantial pain on the right side and some tingling into the left side. An MRI noted mild bilateral DDD at C3-4, C4-5 and C6-7. The spinal cord appeared of normal caliber with no abnormal T2 signal.

During the 22 September 2004 MEB examination (recorded on DD Forms 2807-1 and 2808), the CI reported recurrent pain with numbness and tingling. Physical examination revealed decreased left upper extremity strength and reflexes as well as decreased left lower extremity sensation. There was no VA examination proximate to separation in evidence.

The panel directed attention to its rating recommendation based on the above evidence. The PEB rated the cervical spine condition 10%, coded 5242 (degenerative arthritis of the spine), and also listed cervical spondylolysis without myelopathy as a Category II diagnosis (contributes to the primary unfitting condition but not separately ratable). Panel members agreed that the cervical spondylolysis was not a separately ratable condition IAW §4.14 (avoidance of pyramiding; more than one rating based on the same impairment is prohibited).

The panel determined that a 10% rating, but no higher, was justified for painful motion and/or combined ROM (greater than 170 degrees but not greater than 335 degrees), as reported on the NARSUM 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 intervertebral disc syndrome 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 cervical spine condition.

BOARD FINDINGS: In the matter of the mild cervical DDD 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 20230414, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans Affairs Record



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: 001
28 Dec 2023

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

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 21 December 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.

Date: 2023.12.28
09:02:05 -05'00'