

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME:
BRANCH OF SERVICE: MARINE CORPS

CASE: PD-2023-00092
SEPARATION DATE: 20030930

SUMMARY OF CASE: Data extracted from the available evidence of record reflects this covered individual (CI) was an active duty E7, Data Chief, medically for “lumbar spondylosis at L4-L5 with small disc herniation at each level, causing low back pain [LBP]” with a disability rating of 10%.

CI CONTENTION: “I fell victim to the DoD avoiding having to pay disability retirement benefits. DoD used two main tactics to keep my rating below 30%. First, DoD created an illegal substitute disability rating criteria and refused to abide by the Title 10 requirement to rate per the VASRD. Second, in my case of multiple disabilities, DoD arbitrarily cherry picked which disability to deem unfitting and rated.” 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 Physical Evaluation Board (PEB) to be unfitting for continued military service, and when specifically requested by the CI, those conditions identified by the Medical Evaluation Board (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 - 20030602			VARD - 20030818			
Condition	Code	Rating	Condition	Code	Rating	Exam
Lumbar Spondylosis at L4-L5, with Small Disc Herniation at Each Level, Causing LBP	5295	10%	Degenerative Changes with Herniated Disc Lumbar Spine, Muscle Spasm and Radicular Pain	5293-5292	20%	20030624
Status Post Anterior Cervical Discectomy and Fusion at C6-7 with Some Residual Neck Pain	CAT III Not Unfitting		Cervical Spine Fusion, C6-C7 with Slight Decrease in Range of Motion	5293-5290	10%	20030624
			Cervical Spine Fusion C6-C7 with Sensory Nerve Root Dysfunction, Left Upper Extremity	5293-8515	10%	20030624
			Cervical Spine Fusion C6-C7 with Sensory Nerve Root Dysfunction, Right Upper Extremity	5293-8515	10%	20030624
COMBINED RATING: 10%			COMBINED RATING OF ALL VA CONDITIONS: 50%			

ANALYSIS SUMMARY:

Lumbar Spondylosis Causing LBP. According to the service treatment record (STR) and MEB narrative summary (NARSUM), the CI's LBP began in February 2002 when he was recovering from a November 2001 anterior cervical (C6-7) discectomy.

The 7 January 2003 MEB narrative summary (NARSUM) examination, 9 months before separation, noted the CI had made a good recovery from his neck surgery, but that his back pain had considerably worsened. He denied any leg weakness, numbness or tingling, but endorsed occasional shooting pains down the right leg, mostly when driving. Physical examination revealed normal motor strength and reflexes, and intact sensation. The examiner recorded "full range of motion (ROM) in his lower back." An MRI was significant for disc degeneration at L4-5 and L5-S1 with a foraminal disc herniation on the left at L5-S1 and on the right at L4-5.

At a neurology visit on 24 June 2003, the CI reported daily lumbar pain, especially with frequent sitting. The pain was mostly mid-line in the central lumbar area and radiated to the right buttock and anterior thigh. There was no lower extremity weakness, numbness or tingling. Motor strength testing was normal in all muscle groups, and sensation was intact in all extremities. The CI's gait was normal, as was his ability to rise and sit. Straight leg raise tests were negative bilaterally and active ROM was full. There was no lumbar spine tenderness or spasm.

During the 24 June 2003 VA Compensation and Pension (C&P) spine examination, 3 months prior to separation, the CI reported continued LBP with sharp shooting pain into the right leg. The pain was exacerbated by sitting too long and relieved somewhat by a non-steroidal anti-inflammatory drug. He also received a series of low back Botox injections, which helped for a few months. The CI did not require any assistive devices, but limited any lifting due his daily LBP. Upon examination, he had a normal gait and mild right paraspinal muscle spasms. Except for a slight decrease in extension, the back ROM was normal in all other planes. Motor strength, deep tendon reflexes, and sensation were normal, and straight leg raising showed no pain at 90 degrees on either side.

The panel directed attention to its rating recommendation based on the above evidence. The PEB rated the low back condition 10%, coded 5295 (lumbosacral strain). The VA rated the low back condition 20%, dual-coded 5293-5922 (intervertebral disc syndrome (IVDS)-limitation of lumbar spine) based on the C&P examination. Panel members first noted that the current VASRD spine rules went into effect on 26 September 2003, 4 days before the CI's separation date. According to DoDI 6040.44, the panel must apply these current criteria from the VASRD General Rating Formula for Diseases and Injuries of the Spine for its rating recommendation. Panel members agreed that the STR as well as the MEB and VA examinations provided no evidence of compensable ROM limitations or muscle spasms resulting in an abnormal spinal contour or gait to justify a higher 20% rating. There was also no evidence of IVDS which resulted in incapacitating episodes requiring physician-prescribed bed rest to warrant consideration of a higher rating that alternate VASRD formula. Thus, panel members agreed that a 10% rating, but no higher, was justified for muscle spasm and localized tenderness not resulting in abnormal gait or spinal contour. 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 lumbar spondylosis.

Contended PEB Condition: Status Post Anterior Cervical Discectomy and Fusion at C6-7 with some Residual Neck Pain. The panel's main charge is to assess the fairness of the PEB determination that the contended condition was not unfitting. While the contended condition was noted as the reason for two periods of limited duty in the year prior to separation, it was not implicated in the non-medical assessment. Based on STR, there were no cervical spine treatment notes in the 12 months prior to separation. Furthermore, the CI underwent an Informal PEB on 19 March 2003 that determined he was fit to continue on active duty for both the neck and back conditions. There was no performance-based evidence from the record that the condition

significantly interfered with satisfactory duty performance at separation. After due deliberation, the panel concluded there was insufficient cause to recommend a change in the PEB fitness determination for the contended condition, so no additional disability rating is recommended.

BOARD FINDINGS: In the matter of the low back condition and IAW VASRD §4.71a, the panel recommends no change in the PEB adjudication. In the matter of the contended neck condition, the panel recommends no change from the PEB determination as not unfitting. There are no other conditions within the panel's scope of review for consideration.

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20231216, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans Affairs Record



THE ASSISTANT SECRETARY OF THE NAVY
(MANPOWER AND RESERVE AFFAIRS)
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6040
Memo 00/01
OCT 02 2024

MEMORANDUM FOR DEPUTY COMMANDANT, MANPOWER AND RESERVE
AFFAIRS

Subj: PHYSICAL DISABILITY BOARD OF REVIEW RECOMMENDATIONS

Ref: (a) DODI 6040.44
(b) PDBR ltr dtd 1 May 24 ICO

1. Pursuant to references (a), the recommendation of the Physical Disability Board of Review set forth in references (b) are approved.

a. former USMC: No change.

2. Please take action and provide notification to the above individuals.