

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXX
CASE NUMBER: PD1100572
BOARD DATE: 20130122

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20090806

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a Reserve SSG/E-6 (68W/Health Medic) medically separated for low back pain (LBP) due to lumbar intervertebral disc syndrome (IVDS). He was treated, but did not improve adequately to fully perform his military duties or meet physical fitness standards. He was issued a permanent profile and underwent a Medical Evaluation Board (MEB). The MEB found his LBP condition medically unacceptable, and referred him to a Physical Evaluation Board (PEB). No other conditions were listed on the DA Form 3947. The PEB found the LBP condition unfitting, and rated it 20%, IAW the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with 20% disability.

CI CONTENTION: "Lower Back is still causing me problems along with the pain that runs down my left leg. I'm having numbness in the ball of my left foot that doesn't go away. Mornings are hard even to get out of bed and walking is getting more difficult. They are giving me stronger medication but not fixing the problem."

SCOPE OF REVIEW: The Board's scope of review as defined in DoDI 6040.44 is limited to those conditions which were determined by the PEB to be specifically unfitting for continued military service; or, when requested by the CI, those condition(s) "identified but not determined to be unfitting by the PEB." The unfitting back pain condition (lumbar intervertebral disc syndrome) meets the criteria prescribed in DoDI 6040.44, and is accordingly addressed below. No other conditions are within the Board's purview. Any condition outside the Board's defined scope of review may be eligible for future consideration by the Army Board for Correction of Military Records.

RATING COMPARISON:

Army PEB – dated 20090616			VA (4 mos. Post-Separation) – All Effective 20090807			
Condition	Code	Rating	Condition	Code	Rating	Exam
Lumbar IVDS	5243	20%	Lumbar Degenerative Changes	5242	10%	20091215
↓No Additional MEB/PEB Entries↓			Radiculopathy, Left Leg	8520	10%	20091215
			Left Shoulder Strain	5299-5203	10%	20091215
Combined: 20%			Combined: 30%			

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed by the CI regarding the impairment with which his back condition continues to burden him, and the significant impact that it has had on his quality of life. It is noted for the record that the Board is subject to the same laws for disability entitlements as those under which the military Disability Evaluation System (DES) operates. The DES has neither the role nor the authority to compensate the CI for future severity or potential complications of conditions. That role and authority is granted to the Department of Veterans Administration (DVA). The Board evaluates DVA evidence in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness and rating determinations at the time of separation. Compensation can only be granted

for the degree of severity present at separation. The DVA, however, is empowered to re-evaluate a CI's conditions for the purpose of adjusting the disability rating should the degree of impairment change over time.

Back Condition (Lumbar IVDS). The CI developed LBP in August 2007 while performing duties as a military medic. The pain radiated down both legs, but was greater on the left. Magnetic resonance imaging showed disc herniation at multiple levels. Numerous treatment options were attempted, but his LBP persisted and an MEB was initiated. The CI had an orthopedic evaluation in March 2009, 5 months prior to separation. At that exam, he reported pain 50% of the time, which required daily narcotic use. Physical exam (PE) noted normal gait, and mild tenderness to palpation (TTP) along the lumbosacral paraspinal muscles. Muscle strength was normal for all major motor groups in both lower extremities. Sensation was also normal in both lower extremities. Deep tendon reflexes were normal bilaterally. He had a weakly positive supine straight leg raise, but it was negative in the seated position. Range-of-motion (ROM) was measured by physical therapy, and is summarized in the chart below.

At his MEB evaluation on 11 May 2009, he had normal gait and a well-aligned spinal column. Heel-toe tandem walks were performed with ease. Neurological exam was normal. ROM was noted to be decreased, but was not actually measured. As noted above, the CI was medically separated from the Army on 6 August 2009. Four months later, the CI had a VA Compensation and Pension exam. He reported pain in the lower back, which radiated to the left leg and foot. He also complained of numbness and tingling in the left foot. He had difficulty climbing stairs, and inability to stand or walk for long periods. PE revealed normal gait, and normal spinal contour. There was no pain with motion, and no TTP of the paraspinal muscles. Tone, strength, sensation, and reflexes were all normal. Two ROM evaluations were weighed by the Board in arriving at its rating recommendation, and are summarized below.

ROM – Thoracolumbar	MEB – 20½ weeks Pre-Sep (20090316)	VA C&P – 19 weeks Post-Sep (20091215)
Flexion (90° is normal)	55°	75°
Combined (240° is normal)	180°	225°
§4.71a Rating	20%	10%

The Board carefully reviewed all evidentiary information available, and directs attention to its rating recommendation based on the above evidence. The Army PEB and VA used different coding and rating options for the CI's LBP condition. The PEB coded his back condition as 5243 (intervertebral disc syndrome) and rated it 20%. The VA used code 5242 and rated him at 10%. The Board unanimously agreed that the PEB had rated the LBP condition appropriately. The Board could not find objective evidence in the record that would justify a disability rating greater than 20%. All evidence was considered, and there is not reasonable doubt in the CI's favor supporting a change in the PEB's adjudication of the lumbar spine condition.

The Board then considered the matter of radiculopathy. On examination, motor strength testing had shown no objective evidence of muscle weakness. The CI's radiculopathy was subjective, and sensory only. After reviewing all of the information regarding the radicular findings, there was insufficient evidence of a clinically significant neuropathy that interfered with satisfactory performance of military duties. Therefore, his radiculopathy was not unfitting at the time of separation from service. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (Resolution of reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the back condition (lumbar IVDS).

BOARD FINDINGS: IAW DoDI 6040.44, provisions of DoD or Military Department regulations or guidelines relied upon by the PEB will not be considered by the Board to the extent they were

inconsistent with the VASRD in effect at the time of the adjudication. The Board did not surmise from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised. In the matter of the lumbar IVDS and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. There were no other conditions within the Board's scope of review for consideration.

RECOMMENDATION: The Board, therefore, recommends that there be no recharacterization of the CI's disability and separation determination, as follows:

UNFITTING CONDITION	VASRD CODE	RATING
Low Back Pain, due to Lumbar Intervertebral Disc Syndrome	5243	20%
	COMBINED	20%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20110802, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXX, DAF
President
Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency
(TAPD-ZB / XXXXXXXXXXXX), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for
XXXXXXXXXXXXXXXXX, AR20130001392 (PD201100572)

I have reviewed the enclosed Department of Defense Physical Disability Board of Review (DoD PDBR) recommendation and record of proceedings pertaining to the subject individual. Under the authority of Title 10, United States Code, section 1554a, I accept the Board's recommendation and hereby deny the individual's application. This decision is final. The individual concerned, counsel (if any), and any Members of Congress who have shown interest in this application have been notified of this decision by mail.

BY ORDER OF THE SECRETARY OF THE ARMY:

Encl

XXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
 DoD PDBR
 DVA