

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1100697
BOARD DATE: 20130124

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20090312

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a troop unit active drilling National Guard CPT/O-3 (15A00/Chinook Pilot), medically separated for degenerative arthritis lumbar spine and left lower extremity S1 radicular pain. The CI noted increasing back pain while activated and deployed to Afghanistan as a Chinook pilot, without an inciting event. After redeployment, he underwent extensive therapy, treatment and microdiscectomy surgery in July 2006. His degenerative arthritis lumbar spine (back pain) condition did not improve adequately to meet the physical requirements of his Military Occupational Specialty (MOS) or to satisfy physical fitness standards. He was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded no other conditions for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated the degenerative arthritis lumbar spine and left lower extremity S1 radicular pain conditions as unfitting, rated 10% and 10% respectively, with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 20% disability rating.

CI CONTENTION: The CI attached a 2 page memorandum to his application which was prepared by his legal counsel asserting a variety of issues. It was reviewed by the Board and considered in its recommendations.

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in DoDI 6040.44, Enclosure 3, paragraph 5.e.(2) 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 ratings for unfitting conditions will be reviewed in all cases. The unfitting conditions of degenerative arthritis lumbar spine and left lower extremity S1 radicular pain meet the criteria prescribed in DoDI 6040.44 for Board purview, and are accordingly addressed below. The requested conditions of PTSD (rated by the VA), radiculopathy right extremity and migraine headaches are not within the Board’s purview. Any conditions or contention not requested in this application, or otherwise outside the Board’s defined scope of review, remain eligible for future consideration by the Army Board for Correction of Military Records (ABCMR).

RATING COMPARISON:

Service IPEB – Dated 20081104			VA (7 Mo. After Separation) – All Effective Date 20090304			
Condition	Code	Rating	Condition	Code	Rating	Exam
Degenerative Arthritis Lumbar Spine	5242	10%	S/P Partial Discectomy w/ Lumbar DDD	5242	20%	20091013
Lt Lower Extremity S1 Radicular Pain	8799-8720	10%	Radiculopathy, Lt Lower Extremity	8599-8529	0%	20091013

↓No Additional MEB/PEB Entries↓	PTSD	9411	30%	20090731
	0% x 3 (Includes Above)/Not Service Connected x 2			20090731
Combined: 20%		Combined: 40%		

ANALYSIS SUMMARY: The Board acknowledges the CI's contention in his legal counsel's memo concerning alleged unfair medical care and assistance. It is noted for the record that the Board has neither the jurisdiction nor authority to scrutinize, render opinions, or offer remedy in reference to decisions of this nature. That jurisdiction and authority resides with the ABCMR. IAW DoDI 6040.44, the Board's authority is limited to making recommendations on correcting disability determinations. The Board's role is thus confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to VASRD standards, based on severity at the time of separation.

Degenerative Arthritis Lumbar Spine (Back Pain) Condition. The range-of-motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation, with documentation of additional ratable criteria, are summarized in the chart below.

ROM - Thoracolumbar	MEB ~5 Mo. Pre-Sep	VA C&P ~7 Mo. After-Sep
Flex (0-90)	90°	50°
Ext (0-30)	20°	10°
R Lat Flex (0-30)	(30°) 34°	25°
L Lat Flex 0-30)	(30°) 36°	25°
R Rotation (0-30)	(30°) 45°	(30°) 45°
L Rotation (0-30)	(30°) 45°	(30°) 45°
COMBINED (240)	230°	170°
*Comment	Goniometer used; + pain with lumbar motion; + lumbar spasm; normal gait	+ Pain with motion; "no Deluca criteria"; + tender; normal curvature
§4.71a Rating	10%	20%

* VASRD Spine Notes (2) and (4) applied

At the MEB exam (5 months prior to separation), the CI reported chronic daily pain, especially with prolonged sitting and long walks. He used no medications. The MEB physical exam documented lumbar spasm and discomfort with motion of the lumbar spine, without fatigue, decreased endurance, nor incoordination. Gait and station was normal. The CI had no weakness and no abnormal spine contour. A 2008 X-ray revealed mild L4-5 disc space narrowing and mild facet sclerosis. A 2008 magnetic resonance imaging (MRI) revealed mild disc bulges at L4-5 and L5-S1. The exam and ROMs are summarized in the chart above; sensory and motor findings are summarized in the discussion of the CI's unfitting peripheral neuropathy condition below. At the VA Compensation and Pension (C&P) exam, 7 months after separation, the CI reported chronic daily pain, numbness and weakness with radiation to both lower extremities. He described flares of being "unable to move...for 15 seconds" after sneezes. The VA physical exam documented no weakness and no abnormal spine contour. The exam is summarized above with motor and neurologic exams discussed below.

The Board directs attention to its rating recommendation based on the above evidence. The PEB and the VA assigned the same VASRD code 5242 (degenerative arthritis of the spine), but at different ratings on different exam findings. The PEB based its 10% rating on the finding of muscle spasm not resulting in abnormal gait or abnormal contour, under the general spine

formula. The VA based its rating on its examiner's observed flexion of 50 degrees which met the 20% rating criteria. There is a disparity between these ROM examinations, with implications for the Board's rating recommendation. The Board thus carefully deliberated the probative value of these conflicting evaluations, and thoroughly reviewed the service treatment record for corroborating evidence from the period preceding separation. The Board discussed the fact that the MEB exam was prior to, and closer to, the date of separation. The Board noted that the sequence of exam findings suggested a worsening trend toward after the MEB examination, without evidence of further trauma or injury. The Board therefore assigned higher probative value to the MEB exam as the best representation of the pathology and disability that resulted in the termination of the CI's military career. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the lumbar spine condition.

Left Lower Extremity S1 Radicular Pain (Radiculopathy). At the MEB exam, the CI reported that he experienced exertional radiating pain to his left lower extremity primarily in the calf and the top of the left foot. The MEB physical exam documented straight leg raise caused pain near 45 degrees on each side. Sensory exam indicated no deficit for light touch and pinprick. Deep tendon reflexes (DTR) were bilaterally symmetric, but grossly hyporeflexic at the ankles (Achilles). Motor examination was normal and symmetric with strength 5/5. Multiple office visits and examinations proximate to the date of separation support the diagnosis of left lower extremity radicular symptoms. Electrodiagnostic testing in July 2008 demonstrated left S1 radiculopathy including abnormal muscle activity in the left calf (soleus). Later testing in December 2008 (3 months prior to separation) after dictation of the MEB narrative summary (NARSUM) documented L4 radiculopathy of the left leg with moderate axonal tibial motor neuropathy and plantar neuropathy. At the C&P exam, 7 months after separation, the CI reported that he occasionally has pain in both legs, with numbness and weakness and that this caused his inability to weightlift and to fly a helicopter. He did not use a brace, cane or crutch. The VA exam documented decreased sensation in the left lateral and posterior left calf and thigh, without atrophy or decreased motor strength. Flexion and extension caused back pain without radiation.

The Board directs attention to its rating recommendation based on the above evidence. The PEB rated the CI's radiculopathy condition at 10% coded 8799-8720, analogously to sciatic nerve neuralgia (mild). The VA rated the radiculopathy at 0% coded 8599-8529, analogously to external cutaneous nerve of thigh, paralysis (mild to moderate). The pain-only component of the radiculopathy is considered under the CI's unfitting low back condition IAW VASRD §4.71a since the general spine rating formula specifies that the rating is "with or without symptoms such as pain (whether or not it radiates), stiffness, or aching in the area of the spine affected by residuals of injury or disease." The Board noted that the CI did not have motor impairment at either examination, but agreed that the sensory component of his left lower extremity pain could have functional limitations in MOS duties as a helicopter pilot. The evidence at the time of separation supported coding under the sciatic nerve code. The Board considered the provisions of VASRD §4.120 (evaluations by comparison), §4.123 (Neuritis, cranial or peripheral) and §4.124 (Neuralgia, cranial or peripheral). There were no organic changes of the left leg documented. The Board determined that, in light of the CI's lack of motor dysfunction, lack of medication use, and since his radiculopathy impairment consisted mainly of sensory and pain components it was most representative of mild (10%) impairment. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the left lower extremity S1 radicular pain condition IAW VASRD §4.124a.

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 degenerative arthritis lumbar spine condition, and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the left lower extremity S1 radicular pain condition and IAW VASRD §4.124a, 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
Degenerative Arthritis Lumbar Spine	5242	10%
Lt Lower Extremity S1 Radicular Pain	8799-8720	10%
	COMBINED	20%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20110822, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

xxxxxxxxxxxxxxxxxxxxxx, DAF
Director
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 xxxxxxxxxxxxxxxxxxxx, AR20130002259 (PD201100697)

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

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Deputy Assistant Secretary
(Army Review Boards)