RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXX
BRANCH OF SERVICE: ARMY (& NAVY)
SEPARATION DATE: 20061017

CASE: PD 1100823
BOARD DATE: 20121106

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (52D20/Power Generator Equipment Repairman), medically separated for chronic lower back pain. The CI served approx. 20 years of service (9 yrs, 7 months active duty; 7 months prior active duty; 10 yrs, 2 months prior inactive service). In 1998, the CI developed lower back pain (LBP) due to bulging discs at L4-L5-S1 and was granted a permanent L2 profile. During a 2003 deployment, the CI's condition worsened due to work requirements causing left leg radicular pain and weakness. He was evacuated to Germany where he underwent microdiscectomy surgery in April 2004. Despite this surgery and a full discectomy with lumbar decompression surgery 5 months later along with physical therapy, nerve block, and medications, the CI continued to have severe back and left leg radicular pain and could not meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent L3 profile in April 2006 and referred for a Medical Evaluation Board (MEB). The MEB forwarded "degenerative disc disease of the lumbar spine with herniated nucleus pulposus requiring two previous surgeries complicated by recurrent pain and left leg weakness, unresponsive to all available treatment modalities" for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated chronic LBP with associated radicular symptoms of weakness in the left lower extremity as unfitting, rated 10% with application of the AR 635-40. Although the CI initially requested a formal hearing, he withdrew this request and was medically separated with a 10% disability rating.

CI CONTENTION: "Evaluation of degenerative arthritis of the spanie (*sic*) post discectomy and laminectomy L4-L5 army medical board awarded 10% VA awarded 40% and an extra 20% for service connected for L5-S1 lef (*sic*) lumbar radiculopathy as neurological manifestation of service-connected disability of Degenerative Arthritis of the spine See atach (*sic*) VA documents"

SCOPE OF REVIEW: The Board's scope of review is defined in DoDI 6040.44, Enclosure 3, paragraph 5.e.(2). It is limited to those conditions determined by the PEB to be unfitting for continued military service and those conditions identified but not determined to be unfitting by the PEB when specifically requested by the CI. Ratings for unfitting conditions will be reviewed in all cases. The contended condition of left radiculopathy meets the criteria prescribed in DoDI 6040.44 for Board purview and is addressed below, in addition to a review of the rating for the chronic LBP condition. Although the PEB did not separately adjudicate the radiculopathy condition, it was presented in the MEB evidence before the PEB and noted by the PEB as associated with or part of the unfitting condition. 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 respective Army Board for Correction of Military Records.

RATING COMPARISON:

Service IPEB – Dated 20060601		
Condition	**Code**	**Rating**
Chronic Low Back Pain	5243	10%
↓No Additional MEB/PEB Entries↓		
Combined: 10%		

VA (2 Mos. Pre-Separation) – All Effective Date 20061018			
Condition	**Code**	**Rating**	**Exam**
Status Post Discectomy and Laminectomy L4-L5	5242	40%*	20060816 20080228
Hypertension	7101	10%	20060816
Not Service-Connected x 8			20060816
Combined: 50%**			

*Initial C&P did not include any ROM measurements. After ROM were available, rating was increased to 40% effective 20061018 ON VARD dated 20080403.
**8520 L5-S1 Left Lumbar Radiculopathy added at 20% effective 20080219 (date of claim) and combined rating increased to 60%.

ANALYSIS SUMMARY: The Board acknowledges the CI's contention that suggests ratings should have been conferred for other conditions documented at the time of separation. The Board also acknowledges the sentiment expressed in the CI's application regarding the significant impairment with which his service-incurred condition continues to burden him. The Board wishes to clarify that it is subject to the same laws for disability entitlements as those under which the Disability Evaluation System (DES) operates. While the DES considers all of the member's medical conditions, compensation can only be offered for those medical conditions that cut short a member's career, and then only to the degree of severity present at the time of final disposition. However the Department of Veterans Affairs (DVA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions and to periodically reevaluate said conditions for the purpose of adjusting the Veteran's disability rating should his degree of impairment vary over time. The Board utilizes DVA evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12-month interval for special consideration to post-separation evidence. The Board's authority as defined in DoDI 6040.44, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation and is limited to conditions adjudicated by the PEB as either unfitting or not unfitting. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Chronic Low Back Pain Condition. The narrative summary (NARSUM) completed approximately 6 months prior to separation described a long history of back pain. The CI first developed back pain in 1998 and a magnetic resonance imaging (MRI) exam at that time noted bulging discs in the lumbar spine. He did well with conservative treatment and an L2 profile prohibiting sit-ups, limiting running to his own pace and distance and lifting to 40 pounds and an alternate physical fitness test. However, while deployed to Iraq in 2003, he was required to perform activities that were much more physically demanding. His back pain became severely worse and was associated with left leg radicular pain, numbness, and weakness manifested by the CI dragging his leg while ambulating. He did not respond to treatment that included a pain injection and 48 hours quarters. He was MEDEVACed out of theater in June 2003 due to his back pain. An MRI documented herniated disc with nerve root compression but surgery was postponed due to severe hypertension. In April 2004, a L4-5 microdiscectomy was performed and the CI initially improved. However, he then developed severe back pain accompanied by bladder incontinence and a full discectomy and lumbar decompression was performed in September 2004. He continued to have back pain and radicular symptoms and weakness of the left leg despite conservative treatment and a posterior ramus block in the pain management clinic in June 2005. At the time of the NARSUM the CI was taking multiple medications but continued to have back pain that radiated into his left leg and left leg weakness. The pain averaged 7-8/10 and was as low as 4/10 on a good day and 10/10 on a bad day. The pain awakened the CI at night and interfered with activities of daily living such as putting on his boots. Outpatient visit

records document flexion as limited at 45 degrees and as good as “approximately” 75 degrees with pain on motion. Multiple MRI and a discogram documented multiple level degenerative disc disease from L3-4 to L5-S1 with severe central canal stenosis, a right paracentral disc protrusion at L4-5 and multi-level mild neural foraminal narrowing. Neurosurgical consult in November 2005 noted that the CI probably needed a fusion but that his symptoms were not yet severe enough to consider such a “drastic move.” Range-of-motion (ROM) measurements are noted in the chart below. The CI’s permanent profile was updated to an L3 with significant restrictions and the MEB process was then started. Examination by neurosurgery in February 2006 noted 4/5 muscle strength in the left tibialis anterior, extensor hallucis longus, and gastrocsoleus muscles with 1+ deep tendon reflexes on the left as opposed to 2+ on the right, and a positive straight leg raise on the left with an equivocal test on the right. A VA Compensation and Pension (C&P) exam was completed in Germany approximately 2 months before separation and it does not include any ROM measurements. It also contains internal inconsistencies as well as some inconsistencies in history and examination findings as compared to the NARSUM. Gait is documented as normal in the musculoskeletal and neurological examination sections but in a separate section devoted to the lower back injury, a marked limp was documented. This examiner noted that soon after the second spinal surgery in September 2004 the left sided radiculopathy resolved. However both the NARSUM and the treatment record document the radicular pain and weakness continued at the same level of severity after the second surgery and at least until the time of the MEB NARSUM in April 2006. The examiner later noted the two surgeries afforded slight improvement and that the CI’s activity was severely curtailed. An undated letter explained that ROM measurements were not included because no physical therapist was provided for the VA physical exam clinic. A second VA C&P examination completed approximately 16 months after separation did include ROM measurements and these are noted in the chart below. This examination was completed in Puerto Rico and it included a similar clinical history to that described in the MEB NARSUM. The clinical findings involve the same abnormalities but document progression of disease and worsening of symptoms over time.

The goniometric 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.

Thoracolumbar ROM (Measurements in Degrees)	MEB ~ 6 Months Pre-Separation	VA C&P ~ 2 Months Pre-Separation	VA C&P ~ 16 Months Post-Separation
Flexion (90 Normal)	55° (55, 55, 55)	NA	20°
Ext (0-30)	30° (35, 30, 35)	NA	10°
R Lat Flex (0-30)	20° (20, 20, 20)	NA	10°
L Lat Flex 0-30)	20° (20, 20, 20)	NA	10°
R Rotation (0-30)	20° (20, 20, 20)	NA	10°
L Rotation (0-30)	25° (25, 25, 25)	NA	10°
Combined (240)	170°	NA	70°
Comment	(Inclinometer used) Moderate pain that restricted motion during flexion and bilateral bending. Motor 4+/5 left quadriceps, 4/5 left calf and decreased sensation left leg. In February 2006: (+) SLR on left & (+) femoral stretch, left greater than right. Deep tendon reflexes were 1+ on left & 2+ on right. Left tibialis anterior, extensor hallucis longus, and gastrocsoleus were all 4/5.	Marked limp & extensive subjective pain & discomfort to all manipulations & movement. No tenderness. Well healed low back scar noted. Marked weakness BLE. Reflexes are brisk & equal to ankle and knees. SLR normal on right & not possible on left secondary to pain. No sensory loss in either lower appendage.	Pain present from 0° throughout entire range of motion both passive and active. Pain and additional loss of motion with repeated motion due to pain. Bilateral paraspinal spasm, guarding, and pain with motion, left sided tenderness and weakness but no associated abnormal gait or spinal contour. Antalgic gait. Motor 4/5 in entire LLE and 5/5 on RLE. Sensation: vibration, light touch, pinprick, position sense all 1/2 on left L5-S1 dermatome and 2/2 on right. Reflexes 2+ and equal bilaterally. (+) Lasegue's on left; one Waddell sign present (tenderness), others absent
§4.71a Rating	20%	10% for painful motion	40%
8520	10%	10%/20%	20%

The Board directs attention to its rating recommendation based on the above evidence. The PEB included the passive thoracolumbar flexion measurement of 60 degrees on the DA Form 199 and applied a 10% rating. While the active flexion was limited to 55 degrees, both 60 and 55 degrees warrant a 20% rating IAW the VASRD General Rating Formula for Diseases and Injuries of the spine which requires "forward flexion of the thoracolumbar spine greater than 30 degrees but not greater than 60 degrees" for a 20% rating. It is not clear why the PEB did not apply the 20% rating. The VA rating of 10% is based on the VA C&P examination finding of painful motion. No ROM measurements were included in that examination and the VA apparently did not have access to the CI's service treatment record (STR) or PEB documents. After the second VA C&P examination that did have ROM measurements, the VA increased its rating and made it effective the day after separation. This VA rating decision noted the STR had been reviewed. As the initial VA C&P examination was incomplete and did not contain any ROM measurements and also contained inconsistencies, greater probative value is placed on the MEB NARSUM examination. A 20% rating is therefore warranted based on the thoracolumbar flexion limited to 55 degrees. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 20% for the chronic LBP condition.

Contended Left Lower Extremity Radiculopathy Condition. Although the PEB did not separately adjudicate the left lower extremity radiculopathy condition, it was presented in the MEB evidence before the PEB and noted by the PEB as associated with or part of the unfitting condition on the DA Form 199. The Board's main charge is to assess the fairness of the PEB's determination that this condition was not separately unfitting. This condition was not specifically mentioned in the commander's statement but many, if not most of, the functional

limitations noted in the record and on the permanent profile could be attributed to the low back pain, the radiculopathy or to both conditions. Board precedent is that a functional impairment tied to fitness is required to support a recommendation for addition of a peripheral nerve rating at separation. Significant radicular pain was present, however the pain component of a radiculopathy is subsumed under the general spine rating as specified in §4.71a. Multiple evaluations by different physicians, including the MEB NARSUM, MEB history and physical, and orthopedic and neurosurgery evaluations noted radicular pain but more importantly, decreased muscle strength, deceased sensation, and decreased deep tendon reflexes as well as a positive straight leg raise on the left. Strength in the left lower extremity was noted at 4 and 4+/5. Sensory deficits were only noted as present in the left lower extremity and were not further described. No formal electromyogram (EMG) or nerve testing was completed as the CI had herniated discs and testing was not required for clinical diagnosis. The later VA C&P exam is outside the 12-month window and clearly shows worsening symptoms, but it documents sensory changes limited to the L5-S1 dermatome. The CI had difficulty putting on his boots and his activity was severely limited near the time of separation.

The VA did not add a separate rating for this condition until after the second C&P examination. However, as discussed above, the only information the VA used to make its initial determination was the initial C&P examination and this examination was incomplete and contained inconsistencies. By the time the second C&P examination was completed, the CI's symptoms had clearly worsened. However, these were the same symptoms that were documented in the STR, decreased strength, sensation, and deep tendon reflexes. The symptoms were present and significant at the time of separation and worsened during the intervening time.

After due deliberation, the Board agreed that the preponderance of the evidence with regard to the functional impairment of Left L5-S1 radiculopathy condition favors its recommendation as an additionally unfitting condition for disability rating. Rating under peripheral nerve codes entails a judgment call regarding the severity of incomplete paralysis, especially the mild versus moderate distinction. A rigid assessment could require 3/5 or worse strength testing to merit the moderate rating. More liberal rating applies any objective motor impairment or atrophy as a threshold for the moderate designation. By precedent, the Board threshold for a "moderate" peripheral nerve rating requires some functionally significant motor and/or sensory impairment. The Board determined that in this case muscle strength testing of 4 and 4+/5 is considered mild and the condition is appropriately rated at 10% for mild, incomplete paralysis. The Board therefore recommends a separate rating of 10% for Left L5-S1 radiculopathy coded 8620 IAW VASRD §4.123 and §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. In the matter of the chronic LBP condition, the Board unanimously recommends a disability rating of 20%, coded 5243 IAW VASRD §4.71a. In the matter of the contended Left L5-S1 radiculopathy condition, the Board unanimously agrees that it was separately unfitting and unanimously recommends a disability rating of 10%, coded 8620 IAW VASRD §4.123 and §4.124a. There were no other conditions within the Board's scope of review for consideration.

RECOMMENDATION: The Board recommends that the CI's prior determination be modified as follows; and, that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of his prior medical separation:

UNFITTING CONDITION	VASRD CODE	RATING
Chronic Low Back Pain	5243	20%
Left L5-S1 Radiculopathy	8620	10%
	COMBINED	**30%**

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110929, w/atchs
Exhibit B. Service Treatment Record
Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXX, DAF
President
Physical Disability Board of Review

SFMR-RB

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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXXXXXXX, AR20120022720 (PD201100823)

1. Under the authority of Title 10, United States Code, section 1554(a), I approve the enclosed recommendation of the Department of Defense Physical Disability Board of Review (DoD PDBR) pertaining to the individual named in the subject line above to recharacterize the individual's separation as a permanent disability retirement with the combined disability rating of 30% effective the date of the individual's original medical separation for disability with severance pay.

2. I direct that all the Department of the Army records of the individual concerned be corrected accordingly no later than 120 days from the date of this memorandum:

a. Providing a correction to the individual's separation document showing that the individual was separated by reason of permanent disability retirement effective the date of the original medical separation for disability with severance pay.

b. Providing orders showing that the individual was retired with permanent disability effective the date of the original medical separation for disability with severance pay.

c. Adjusting pay and allowances accordingly. Pay and allowance adjustment will account for recoupment of severance pay, and payment of permanent retired pay at 30% effective the date of the original medical separation for disability with severance pay.

d. Affording the individual the opportunity to elect Survivor Benefit Plan (SBP) and medical TRICARE retiree options.

3. I request that a copy of the corrections and any related correspondence be provided to the individual concerned, counsel (if any), any Members of Congress who have shown interest, and to the Army Review Boards Agency with a copy of this memorandum without enclosures.

BY ORDER OF THE SECRETARY OF THE ARMY:

Encl

XXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
( ) DoD PDBR
( ) DVA