

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXX
CASE NUMBER: PD1101074
BOARD DATE: 20121010

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20030228

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty CPL/E-4 (13M/MLRS Crewmember), medically separated for chronic low back pain (LBP). The CI initially injured his back when he fell in a shower at his home, but later he reinjured the back in a motor vehicle accident. Despite L3 back fusion surgery, wearing an external orthotic for 3 months, medications, TENS unit and physical therapy (PT) the CI failed to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued an L3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded lumbar degenerative disc disease (DDD) with LBP to the Informal Physical Evaluation Board (IPEB) on DA Form 3947 as medically unfitting. The MEB forwarded no other conditions for PEB adjudication. The PEB adjudicated the chronic LBP status post (s/p) L3-S1 fusion condition as unfitting, rated 10% with specified application of Department of Defense Instruction (DoDI) 1332.39 and AR 635-40. The CI appealed to the Formal PEB (FPEB) and the U. S. Army Physical Disability Agency (USAPDA) reviewed the entire case file and reaffirmed the IPEB and FPEB’s findings. The CI was then medically separated with a 10% disability rating.

CI CONTENTION: The CI elaborated no specific contention in his application.

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 unfitting chronic LBP S/P L3-S1 fusion condition meets the criteria prescribed in DoDI 6040.44 for Board purview, and is accordingly addressed below. 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 Medical Records.

RATING COMPARISON:

Service FPEB – Dated 20021219			VA (1 Mos. Post-Separation) – All Effective Date 20030301			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic LBP, Status Post L3-S1 Fusion	5299-5295	10%	Residuals, Lumbar Spine Postoperative with DDD	5293-5295	20%*	20030310
↓ No Additional MEB/PEB Entries ↓			Environmental Allergies Disease	6522	10%	20030310
			0% X 5 / Not Service-Connected x 1			
Combined: 10%			Combined: 30%*			

*Per VARD dated 20070302 Lumbar Spine condition increased to 40% effective 20050126, Bilateral Plantar Fasciitis increased to 10% effective 20060928 (combined 60%)

ANALYSIS SUMMARY:

Chronic LBP, Status Post L3-S1 Fusion Condition. The 2003 Veterans' Administration Schedule for Rating Disabilities (VASRD) coding and rating standards for the spine, which were in effect at the time of separation, had been modified on 23 September 2002 to add incapacitating episodes (5293 Intervertebral disc syndrome), and were changed to the current §4.71a rating standards on 26 September 2003. The 2003 standards for rating based on range-of-motion (ROM) impairment were subject to the rater's opinion regarding degree of severity, whereas the current standards specify rating thresholds in degrees of ROM impairment. For the reader's convenience, the 2003 rating codes under discussion in this case are excerpted below.

5292 Spine, limitation of motion of, lumbar:
 Severe..... 40
 Moderate..... 20
 Slight..... 10

5293 Intervertebral disc syndrome: *(extracted)*

Evaluate intervertebral disc syndrome (preoperatively or postoperatively) either on the total duration of incapacitating episodes over the past 12 months or by combining under Sec. 4.25 separate evaluations of its chronic orthopedic and neurologic manifestations along with evaluations for all other disabilities, whichever method results in the higher evaluation.

Note (1): For purposes of evaluations under 5293, an incapacitating episode is a period of acute signs and symptoms due to intervertebral disc syndrome that requires bed rest prescribed by a physician and treatment by a physician. "Chronic orthopedic and neurologic manifestations" means orthopedic and neurologic signs and symptoms resulting from intervertebral disc syndrome that are present constantly, or nearly so.

5294 Sacro-iliac injury and weakness:

5295 Lumbosacral strain:

Severe; with listing of whole spine to opposite side, positive Goldthwaite's sign, marked limitation of forward bending in standing position, loss of lateral motion with osteoarthritic changes, or narrowing or irregularity of joint space, or some of the above with abnormal mobility on forced motion..... 40
 With muscle spasm on extreme forward bending, loss of lateral (side bending) spine motion, unilateral, in standing position..... 20
 With characteristic pain on motion..... 10
 With slight subjective symptoms only..... 0

There were three back evaluations in evidence with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation; as summarized in the chart below.

Thoracolumbar ROM	MEB ~ 7 Mo. Pre-Sep	DDF 2808 ~5 Mo. Pre-Sep	VA C&P ~1 Mo. Post-Sep	
Flexion (90° Normal)	NO ROM's	80°*	50° (30°-50°)*	
Ext (0-30)		30°*	20° (10°-20°)*	
R Lat Flex (0-30)		-	-	30° (20°-30°)*
L Lat Flex 0-30)				30° (20°-30°)*
R Rotation (0-30)				No ROM's
L Rotation (0-30)		-	-	N/A
Combined (240°)				
Comment: Fusion surgery ~11 Mo. Pre-Sep	minimal myofascial TTP; "radiating bilateral sciatic pain with ambulation and bilateral paresthesias"; motor/sensory intact; normal gait; reflexes nml	*With tenderness; TTP; pain to knee joint; muscle strength 5/5 with 4/5 Rt leg flexion	*(Painful motion); Joints weaker throughout ROM when resistance was applied; fatigability with repetitive use; TTP; no muscle atrophy; nml gait; DTR's 2+; sensation intact	
§4.71a Rating	10%	10%	20 %	

* TTP = Tenderness to palpation

The CI's back pain was well documented in the service treatment record (STR). A magnetic resonance imaging (MRI) performed in February 2000 demonstrated a moderate disc extrusion

at L5-S1 with spinal stenosis and nerve root impingements on the right at L4-5. The CI underwent orthopedic evaluations and extensive PT with poor results. He underwent a posterior lumbar interbody fusion (PLIF) in March 2002, 11 months prior to separation. The CI's back pain post-operatively showed minimal improvement. The MEB examination performed 7 months prior to separation noted that PT had caused a 50% improvement with symptoms; however, there were still complaints of occasional sciatic pain, paresthesias with ambulation, and constant dull LBP with intermittent throbbing sharp pain. The exams are summarized above with a noted disparity in right leg strength between the MEB and DD Form 2808 exams. Both indicated normal straight leg raise. Records did not demonstrate any periods of physician prescribed bed rest (incapacitation).

The VA Compensation & Pension (C&P) examination performed one month after separation indicated complaints of weakness, stiffness, fatigability, lack of endurance, pain on a daily basis requiring use of a TENS unit and narcotic medication on an intermittent basis. The CI's functional limitations were an inability to participate in recreational activities and an inability to do extended driving. Although the CI complained of an intermittent right leg radiculopathy (pain and paresthesias), an electrophysiological study (NCV/EMG) "did not reveal significant abnormal electrical signs...there is no electromyography evidence of radiculopathy." The exam summarized above indicated normal motor strength and normal gait.

The Board directs attention to its rating recommendation based on the above evidence. The Board noted that the CI's overall condition and described history were congruent between all exams. The Board considered the PEB's rating under the 5295 code. All exams documented characteristic pain on motion. The VA exam had findings that demonstrated deterioration of the ROM in flexion and extension, especially on repetition with increased fatigue and weakness. There was little indication of repetitive motion assessment in the STR. Continued use of TENS, episodic narcotic use and radiating pain were well documented. The VA exam was closest to separation and adjudged to have the higher probative value. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt) and §4.7 (higher of two evaluations), the Board recommends a disability rating of 20% for the chronic LBP, status post (s/p) L3-S1 fusion condition.

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. As discussed above, PEB reliance on DoDI 1332.39 and AR 635-40 for rating the back condition was operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the chronic LBP s/p L3-S1 fusion condition, the Board unanimously recommends a disability rating of 20%, coded 5293-5295 IAW VASRD §4.71a. 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, effective as of the date of his prior medical separation:

UNFITTING CONDITION	VASRD CODE	RATING
Chronic LBP Status Post(s/p) L3-S1 Fusion	5293-5295	20%
	COMBINED	20%

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110909, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXXXXXXXX

President

Physical Disability Board of Review

SFMR-RB

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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation
for XXXXXXXXXXXXXXXXXXXX, AR20120019252 (PD201101074)

1. 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 to modify the individual's disability rating to 20% without recharacterization of the individual's separation. This decision is final.

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.

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

XXXXXXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
() DoD PDBR
() DVA