

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXX
CASE NUMBER: PD1101123
BOARD DATE: 20130108

BRANCH OF SERVICE: ARMY
DATE OF PLACEMENT ON TDRL: 20041214
DATE OF PERMANENT SEPARATION: 20060613

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty, SGT/E-5, (73D/Accounting Specialist) medically separated for a cervical spine condition. She had a history of neck pain with radicular symptoms dating to 2003, without a distinct injury. She was diagnosed with disc disease and underwent surgical intervention in 2004, with improvement of symptoms. She still suffered residual impairments, however, which rendered her incapable of meeting the demands of her Military Occupational Specialty (MOS). She was consequently issued a permanent U3 profile and referred for a Medical Evaluation Board (MEB). The cervical spine condition was forwarded to the Physical Evaluation Board (PEB) IAW AR 40-501; and, no other conditions were submitted by the MEB. The Informal PEB (IPEB) adjudicated the condition as unfitting, rated 30%, citing criteria of the Veterans Administration Schedule for Rating Disabilities (VASRD); and, the CI was placed on the Temporary Disability Retired List (TDRL). After 18 months on TDRL, the condition was considered to be stable but still unfitting. The IPEB at this time rated the cervical spine condition at 20% under VASRD criteria; and, the CI was permanently separated, without appeal, with that disability rating.

CI CONTENTION: The application does not elaborate any specific comments or requests.

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in Department of Defense Instruction (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 rating for the unfitting cervical spine condition is addressed below; and, no additional conditions are within the DoDI 6040.44 defined purview of the Board. 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.

RATING COMPARISON:

Final Service PEB - 20060613				VA (~20 Mo. Prior to Adjudication Date*) – All Effective 20041214			
On TDRL - 20041214	Code	Rating		Condition	Code	Rating	Exam
Condition		TDRL	Sep.				
Neck Pain, S/P C4-6 Discectomy & Fusion	5243 (TDRL) 5241 (Final)	30%	20%	Surgical Residuals, Cervical Spine	5241	30%	20040929
No Additional MEB/PEB Entries.				Total Abdominal Hysterectomy	7617	50%	20061007
				Lumbar Disc Disease	5243	10%	20040929
				Adjustment Disorder/Depression	9440	10%	20040920
				0% X 10 / Not Service Connected X 9			20040929
Combined: 30% → 20%				Combined: x0%			

*Reflects VA rating exam 10 weeks prior to commencing TDRL; no VA rating evidence proximate to permanent separation.

ANALYSIS SUMMARY: The Board clarifies that its recommendations for permanent disability rating in TDRL cases are dependent on the probative evidence for the date of final separation (at the conclusion of TDRL). The clinical evidence rated by the VA at the time of temporary retirement was >20 months before final separation; and, DoDI 6040.44 specifies a 12-month interval for special consideration to VA findings. Since there was no service or VA outpatient evidence proximate to the date of permanent separation, the Board must rely heavily on the TDRL reevaluation of 26 April 2006 (7 weeks prior to final separation) to assess the degree of disability relevant to permanent rating.

Cervical Spine Condition. The CI initially complained of pain in the left trapezial area after a painting detail in 2001. This pain persisted and was reported to have worsened after a hysterectomy performed in August 2003, now associated with right arm sensory symptoms and subjective weakness. A cervical magnetic resonance imaging (MRI) performed afterwards demonstrated C-4/5 and C-5/6 disc disease, but with lateralization of the latter to the opposite side of the symptoms. A neurosurgical consultant in December 2003 documented a non-anatomic distribution of sensory symptoms and “emotional overlay” with strength testing; and, a surgical decision was deferred. A subsequent electrodiagnostic study was “borderline abnormal”, suggesting a right C6 radiculopathy; and, a follow-up MRI noted worsening disc disease (same levels and locations) with some cord and *right* C-5/6 foraminal encroachment. Despite the lack of correlation with symptoms, surgical intervention was recommended because of the worsening objective findings; and, in March 2004 the CI underwent a bi-level (C4-6) discectomy and fusion. A post-operative note 3 months later documented “no neck pain and no new extremity symptoms”; and, follow-up imaging demonstrated good surgical results and alignment. An addendum to the narrative summary (NARSUM) preceding TDRL placement stated, “That [cervical] surgery was done just under 4 months ago and has made a great difference in how she feels. At present she has no need for pain medication. Her strength in the right arm and sensation have recovered.” The physical exam documented normal neurological findings and the absence of spasm, but referenced the significantly limited ROM findings charted below. These were the ROM findings cited by the PEB for the 30% TDRL rating. A VA Compensation and Pension (C&P) exam was performed 4 months after the NARSUM, but still preceding TDRL. Improving, but still significantly impaired, ROM was recorded as charted below; and, served as the basis for the 30% VA rating. The absence of radicular symptoms and normal neurologic findings were also documented by the VA examiner. Clinical entries through the period of TDRL document a favorable course, with the exception of a temporary escalation of symptoms with a lifting incident in early 2005. The final neurosurgical note releasing the CI from care in April 2005 stated, “She is doing well. She is pleased with the results of surgery. She has occasional neck ache, but certainly no pain and certainly no arm pain.” A physical therapy (PT) note from the same period documented flexion limited by 50% (i.e., ~22 degrees). The TDRL re-evaluation preceding the CI’s permanent separation noted residual “soreness in her neck and numbness in the fingers of both hands that is constant.” The physical exam noted paraspinal tenderness without spasm, and “stocking glove” subjective sensory deficits of both hands; but, 5/5 motor strength of all upper extremity muscle groups. The goniometric ROM measurements from the TDRL evaluation (as well as the previously referenced MEB and VA evaluations), which the Board weighed in arriving at its rating recommendations, are summarized in the chart below.

Cervical ROM	Pre-TDRL NARSUM 20040124	Pre-TDRL VA C&P 20040805	TDRL NARSUM 20060426 (6 Wk. Pre-Sep)
Flexion (45° Normal)	5°	15°	20°
Combined (340°)	105°	145°	155°
§4.71a Rating	30%	30%	20%

It is incidentally noted that the CI suffered lumbar disc disease in addition to her cervical condition. This followed a similar clinical course, and was likewise initially associated with a radiculopathy. The lumbar condition was initially submitted for a MEB, along with the cervical condition; but, improved considerably over the period during which the cervical symptoms worsened. Outpatient notes document near resolution of the lumbar symptoms (without surgical intervention); and, the lumbar condition was ultimately not submitted by the MEB.

The Board directs attention to its rating recommendation based on the above evidence. The PEB's TDRL rating was IAW the VASRD §4.71a general spine formula for the ROM's in evidence; and, were correlated by the VA findings from the same period. Thus all members agreed that the TDRL rating of 30% was appropriate. It is clear that the CI continued to suffer some permanent pain and ROM limitation after her successful surgical intervention; but, it is likewise clear that she was significantly improved at the conclusion of TDRL. Both the mid-TDRL PT evidence and the final TDRL ROM measurements are consistent with a §4.71a rating of 20%, as conferred by the PEB at permanent separation. There is no evidence after TDRL placement which supports a higher spine rating; and, there were no residual radicular findings which would provide a basis for additional rating under a peripheral nerve code (note the absence of a VA rating for neuropathy). The PEB's coding transition from 5243 (intervertebral disc syndrome) to 5241 (spinal fusion) is consistent with the clinical evolution of the condition. 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's TDRL or permanent rating determinations for the cervical spine 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. 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 cervical spine condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudications for the period of temporary retirement or permanently. 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	
		TDRL	PERMANENT
Surgical Residuals, Cervical Disc Disease	5243-5241	30%	20%
	COMBINED	30%	20%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20111117, w/atchs.
- Exhibit B. Service Treatment Record.
- Exhibit C. Department of Veterans Affairs Treatment Record.

XXXXXXXXXXXXXXXXXX, 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
XXXXXXXXXXXXXXXXXXXX AR20130000864 (PD201101123)

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