

RECORD OF PROCEEDINGS  
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXX  
CASE NUMBER: PD1200160  
BOARD DATE: 20121106

BRANCH OF SERVICE: ARMY  
SEPARATION DATE: 20070518

**SUMMARY OF CASE:** Data extracted from the available evidence of record reflects that this covered individual (CI) was a mobilized Reserve SPC/E-4 (21J10/Construction Equipment Operator), medically separated for chronic back pain. The CI initially injured his back during basic training and did well after an initial surgery. However, during a deployment to Iraq, the CI reinjured his back and his back pain persisted despite a second surgery and use of multiple treatment modalities. The CI did not improve adequately with treatment and was unable to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent P3, U2, L3, and S2 profile and referred for a Medical Evaluation Board (MEB). Posttraumatic Stress Disorder (PTSD) and hyperlipidemia (mild) conditions, identified in the rating chart below, were also identified and forwarded by the MEB. The Physical Evaluation Board (PEB) adjudicated the chronic back pain condition as unfitting, rated 10%, with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The remaining conditions were determined to be not unfitting. Although the CI originally requested a formal hearing, he later withdrew the request and was medically separated with a 10% disability rating.

**CI CONTENTION:** “Conditions for which the Medical Board determined for disability were/are much more severe than rating established.”

**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 PTSD and hyperlipidemia conditions meet the criteria prescribed in DoDI 6040.44 for Board purview, and are accordingly addressed below along with the unfitting condition of chronic back pain. 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:**

Service IPEB – Dated 20070320			VA (~1 Mo. Post-Separation) – All Effective Date 20070518			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Back Pain	5241	10%	Lumbar Spine Disc Replacement	5299-5241	20%*	20070625
Post Traumatic Stress Disorder	Not Unfitting		Post Traumatic Stress Disorder	9400	30%**	20070625
Hyperlipidemia	Not Unfitting		NO VA ENTRY			
↓No Additional MEB/PEB Entries↓			Not Service-Connected x 11			20070625
<b>Combined: 10%</b>			<b>Combined: 40%***</b>			

\*Effective 20110912: 5299-5241 changed to 5237-5243 and increased to 40% with 8520 (Right Sciatic Radiculopathy) added at 40%, and 8520 (Left Sciatic Radiculopathy) added at 20%.  
 \*\*Increased to 50% effective 20091227.  
 \*\*\*Increased to 60% effective 20091227 and increased to 90% effective 20110912.

**ANALYSIS SUMMARY:** The Board acknowledges the sentiment expressed in the CI's application, i.e., that the gravity of his condition and predictable consequences merit consideration for a higher separation rating. The Board wishes to clarify that it is subject to the same laws for service 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 Veteran 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 the 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. 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 Back Pain Condition.** There were three goniometric range-of-motion (ROM) 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	Med Holdover ~17 Mos Pre-Separation	MEB ~3 Mos Pre-Separation	VA C&P ~1 Mo Post-Separation
Flexion (90° Normal)	60°/65° (60, 65, 65)	40° (50, 40, 38)	0-60°
Ext (0-30)	20°/25° (20, 20, 25)	15° (13, 13, 13)	0-25°
R Lateral Flex (0-30)	15° (15, 15, 15)	25°/30° (26, 28, 28)	0-30°
L Lateral Flex 0-30)	15° (15, 15, 15)	30° (31, 33, 33)	0-30°
R Rotation (0-30)	30° (45, 45, 45)	30° (32, 34, 34)	0-30°
L Rotation (0-30)	30° (45, 45, 45)	30° (30, 30, 35)	0-30°
Combined (240°)	170°/180°	170°/175°	205°
Comment	Limitation of motion due to pain and stiffness. Repeated trunk flexion increased radicular pain. All Waddell's signs negative. Reflexes symmetric and normal.	Limitations of extension and lateral flexion were mechanical, motion in other planes limited by pain. Reflexes all symmetric and normal. Waddell's all negative.	Pain at termination of flexion and extension. No decrease with repetitive use. Intermittent radiation of pain and numbness of right lower extremity, none on day of exam. Normal gait. Reflexes 2+ equal bilaterally, motor 5/5 bilaterally.
\$4.71a Rating	20%/10%	20%	20%

The MEB narrative summary (NARSUM) was completed in March 2007, approximately 2 months prior to separation. No ROM measurements were measured at that time and the examiner referred to the measurements from physical therapy, presumably from the February 2007 examination. The CI initially injured his back during Basic Training and underwent an L5-S1 micro-laminectomy with discectomy, right in May 2004. He apparently did well after the surgery and was returned to full duty. The NARSUM states this occurred in May 2004, however, a pre-operative letter from the orthopedic surgeon noted the CI would have activity restrictions for at least 3 months after surgery and in a letter dated 23 July 2004, the surgeon noted the CI could return to work without restrictions on 26 July 2004. A physical therapy note from July 2005 noted the CI had deployed in September 2004 and the increased activity had been accompanied by increased back pain with radiating pain, numbness, and tingling in the right lower extremity that had been present ever since. The record contains various reports of injury while deployed and the CI apparently was returned to CONUS early for back pain. Magnetic resonance imaging (MRI) from July 2005 noted a right sided L5-S1 disc protrusion

with right lateral recess stenosis and bilateral neural foraminal stenosis. An orthopedic evaluation from August 2005 noted pain radiating down both legs, with the left worse than the right. Examination at that time revealed a positive straight leg raise bilaterally but no weakness, altered reflexes, or decreased sensation. Bilateral S1 nerve root injection brought little relief. Electromyogram (EMG) testing in September 2005 was normal. He continued to have back and bilateral leg pain and in October 2005, the right leg pain was worse than the left. In February 2006, the CI underwent an L5-S1 anterior lumbar discectomy with insertion of an L5-S1 artificial disc. His pain did not resolve and he continued physical therapy and was treated in a pain clinic with a trial of nerve block and joint injections. Although he had some transient improvement, the injections did not provide relief and he was referred for an MEB.

At the VA Compensation and Pension (C&P) exam completed approximately a month after separation, the CI reported current back pain rated at 7 or 8/10 even after taking narcotic pain medication that morning. He also noted his back pain often kept him awake at night and that he had intermittent paresthesias and numbness of the right leg that was associated with spasm. He had been receiving treatment at a pain clinic and treatment included use of a transcutaneous electrical nerve stimulation (TENS) unit, epidural injections every 6 weeks, and at home exercises. His back pain would flare at least twice a day with increased limitation of function. He noted he was able to walk a half a mile. If he walked further or if he sat for long periods of time, his pain would increase.

The PEB applied a 10% disability rating for pain-limited motion and some paraspinal muscle tenderness. The VA assigned a 20% rating based on forward flexion of the thoracolumbar spine greater than 20 degrees but not greater than 60 degrees. The VA continued the 20% rating after an October 2008 C&P examination. The VA did later increase the spine rating to 40% and add additional ratings of 40% for right sciatic radiculopathy and 20% for left sciatic radiculopathy after a March 2012 C&P examination. This was clearly due to worsening of symptoms over time. It is not clear why the PEB did not assign a 20% rating based on the reported ROM measurements. The Board directs attention to its rating recommendation based on the above evidence. The ROM measurements obtained by physical therapy for the MEB document thoracolumbar flexion as 50 degrees, 40 degrees, and 38 degrees. Not only does this show decreased ROM after repeated movements, each of these measurements supports a rating of 20% IAW the VASRD General Rating Formula for Diseases and Injuries of the Spine for thoracolumbar spinal flexion greater than 30 degrees but not greater than 60 degrees. Both the NARSUM and VA C&P examinations support a 20% rating based on limitation of flexion. 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 back pain condition.

The record contains documentation of radicular pain and paresthesias. 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. The CI had significant pain in both lower extremities but the pain component of a radiculopathy is subsumed under the general spine rating as specified in §4.71a. Although the CI reported numbness, he had repeatedly normal neurologic examinations without any evidence of motor, sensory, or reflex abnormality and had normal EMG testing in September 2005. Since no evidence of functional impairment exists in this case, the Board cannot support a recommendation for additional rating based on peripheral nerve impairment.

Contended PEB Conditions. The contended conditions adjudicated as not unfitting by the PEB were PTSD and hyperlipidemia (mild). The Board's first charge with respect to these conditions is an assessment of the appropriateness of the PEB's fitness adjudications. The Board's threshold for countering fitness determinations is higher than the VASRD §4.3 (reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 "fair and equitable" standard.

Although the PTSD condition was profiled, it was an S2 profile and this alone is insufficient cause for an MEB referral. However, since the CI was undergoing an MEB for chronic back pain, this condition was evaluated to determine fitness. A psychiatric MEB NARSUM addendum was completed 3 months prior to separation and while it did document a diagnosis of PTSD that was being treated with therapy and medication, the CI had improved to the point where he had minimal symptoms and the examiner opined he was in full remission with a Global Assessment of Functioning (GAF) of 80 and had no military or psychiatric impairment. The examiner noted the condition was medically acceptable. The commander's letter makes no mention of any mental health condition or ability to perform in assigned MOS due to mental illness. The CI was in medical holdover and was performing administrative tasks without difficulty. Hyperlipidemia is an abnormal lab value and not a disorder and therefore cannot be determined to be unfitting. Both conditions were reviewed by the action officer and considered by the Board. There was no indication from the record that either of these conditions significantly interfered with satisfactory duty performance. After due deliberation in consideration of the preponderance of the evidence, the Board concluded that there was insufficient cause to recommend a change in the PEB fitness determination for the either of the contended and therefore, no additional disability ratings can be recommended.

**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 chronic back pain condition, the Board unanimously recommends a disability rating of 20%, coded 5241 IAW VASRD §4.71a. In the matter of the contended PTSD and hyperlipidemia conditions, the Board unanimously recommends no change from the PEB determinations as not unfitting. 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:

<b>UNFITTING CONDITION</b>	<b>VASRD CODE</b>	<b>RATING</b>
Chronic Back Pain	5241	20%
	<b>COMBINED</b>	<b>20%</b>

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120103, 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 / XXXXXXXX), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation  
for XXXXXXXXXXXXXXXX, AR20120022705 (PD201200160)

1. I have reviewed the enclosed Department of Defense Physical Disability Board of Review (DoD PD BR) 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

XXXXXXXXXXXXX  
Deputy Assistant Secretary  
(Army Review Boards)

CF:  
( ) DoD PD BR  
( ) DVA