

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1200165
BOARD DATE: 20121116

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20041105

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a National Guard PV2/E-2 (15T/Blackhawk Helicopter Mechanic), medically separated for mechanical low back pain. The low back pain condition did not improve adequately with treatment and the CI was unable to meet the physical requirements of his Military Occupational Specialty (MOS), or 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 low back pain condition as unfitting, rated 10% with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: "The Army only rated me for my back. My bilateral knee condition was also well documented in my file and led just as much to my inability to perform as a soldier. My initial rating from the VA after separation was 20% for my back, 20% for my right knee, and 20% for my left knee. "

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 low back pain condition meets the criteria prescribed in DoDI 6040.44 for Board purview, and is accordingly addressed below. The other requested conditions of right and left knee conditions 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.

RATING COMPARISON:

Service IPEB – Dated 20040908			VA 1 Month After Separation – All Effective Date 20041106			
Condition	Code	Rating	Condition	Code	Rating	Exam
Mechanical Low Back Pain	5237	10%	Herniated Disk, Lumbar Back Pain	5242	20%	20051207
↓No Additional MEB/PEB Entries↓			Left Knee Strain	5261	20%	20051207
			Right Knee Strain	5261	20%	20051207
Combined: 10%			Not Service-Connected x 1			
			Combined: 50%			

*80% from 20101109 per VARD 20111110

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. 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. The DES

has neither the role nor the authority to compensate members for anticipated future severity or potential complications of conditions resulting in medical separation nor for conditions determined to be service connected by the Department of Veterans Affairs (DVA) but not determined to be unfitting by the PEB. However the DVA, operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions and to periodically re-evaluate said conditions for the purpose of adjusting the Veteran's disability rating should his degree of impairment vary over time. The Board's role is 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. 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 6044.40, 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.

Mechanical Low Back Pain Condition. There were four goniometric ranges-of-motion (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation. A physical therapy examination reported lumbar ROM using a dual inclinometer method and is not recorded in the chart but described in the text below. Three examinations reporting thoracolumbar ROM are summarized in the chart below.

Thoracolumbar ROM (Degrees)	MEB ~3 Mo. Pre-Sep (20040804)	VA General C&P ~ 12 Mo. Post-Sep (20051128)	VA Spine C&P ~13 Mo. Post-Sep (20051207)
Flexion (90 Normal)	70	55	80
Extension (30)	15	10	25
R Lat Flex (30)		25	25
L Lat Flex (30)		25	30
R Rotation (30)		30	40
L Rotation (30)		30	35
Combined (240)		175	220
Comment	Limited by pain. Tenderness. No muscle spasm. Normal appearance. See text for PT exam same date.	ROM after repetition. Tight muscles Abnormal gait. Abnormal contour.	Pain at end range. No change with repetition. Tenderness. No muscle spasm. Limp on the left.
§4.71a Rating	10%	20%	10%

At the orthopedic MEB narrative summary (NARSUM) exam performed on 04 August 2004, 3 months before separation, the CI reported acute onset of low back pain in February of 2004 when he fell on a Leadership Development Course in AIT. The CI fell flat on his back not from a height and had the onset of pain since that time. He underwent physical therapy, activity modification and time with no improvement in his symptoms and had significant duty limitations because of his pain. Magnetic resonance imaging (MRI) of the lumbar spine performed on 21 May 2004 demonstrated a disc protrusion at L5-S1 without evidence of impingement on any nerves. The orthopaedic MEB NARSUM stated the majority of the CI's pain, 80 to 90%, was in his lower back with occasional radiation bilaterally to legs extending down primarily the posterior aspect of the legs to the knees, left side worse than right. The NARSUM physical exam revealed tenderness of midline spinous processes L3 to S1 and minimal paraspinal tenderness. No noted paraspinal muscle spasm. ROM (in chart) was limited by pain. There was pain into the posterior left thigh with straight leg rising, however reflexes and strength were normal. Pain on axial loading was documented on this examination, a maneuver

not expected to cause pain. Physical therapy performed a lumbar ROM examination on the same date as MEB NARSUM, 4 August 2004, using the dual inclinometer method that measures isolated lumbar spine motion, not thoracolumbar ROM used by the VASRD for rating purposes. Lumbar flexion was recorded as 60, 60, and 64 degrees limited by pain. The normal lumbar ROM by the dual inclinometer method is 60 degrees. When combined with a normal thoracic ROM, this would represent normal thoracolumbar flexion. The orthopedic surgeon documented a thoracolumbar flexion of 70 degrees on the same date. The physical therapist reported that lumbar extension was 14, 10, 10 degrees; right lateral flexion 30, 26, 28 degrees; left lateral flexion 24, 26, 26 degrees; right rotation 40, 40, 40 degrees; and left rotation 45, 45, 45 degrees (rotation measured with goniometer and consistent with VASRD ROM requirements), all limited by report of pain. The physical therapist noted an abnormal posture while the orthopedic surgeon reported a normal appearing spine on the same date. At the VA Compensation and Pension (C&P) general medical examination exam 28 November 2005, 12 months after separation, the CI reported constant daily back pain with daily flares of pain due to activity, bending, stooping and lifting. However, the CI reported only occasionally taking Motrin and Tylenol. The CI stated he fell off a platform during AIT course. Examination revealed tightness of the paravertebral muscles, no tenderness. Physical exam revealed an antalgic gait with normal station. A modest levoscoliosis with increased kyphosis and decreased lordosis, and a 10 degree list of the pelvis to the left. There was no pain with straight leg raising. ROM were decreased compared to prior examinations (see chart) and the CI was noticeably uncomfortable and fatigued with repetitive motion of the lumbar spine. At the spine C&P examination on 7 December 2005, 13 months after separation. The CI stated he fell about 10 feet onto his back. He denied any back injuries prior or subsequent to that. Pain was 7/10; no radiating symptomatology to the lower extremities; no flare ups; no current treatment; no treatment by a doctor in the past 12 months; can walk half a mile and sit for 30 minutes at a time. Physical examination revealed a left limp, level pelvis, slight tenderness to palpation of the right and left paralumbar muscles, and no muscle spasm. Thoracolumbar ROM was improved from the month before, did not change after repetition and was consistent with the MEB NARSUM examination 3 months before separation. Straight leg raising was negative, sensation and reflexes intact, and strength normal (except for mild weakness of the left quadriceps associated with complaint of knee pain). The Board directs attention to its rating recommendation based on the above evidence. The MEB NARSUM examination was consistent with the 10% rating adjudicated by the PEB and was in accordance with the general rating formula for rating diseases and injuries of the spine. The Board noted the subsequent C&P examinations 12 and 13 months after separation. The general C&P examination alone is consistent with the 20% rating adjudicated by the VA, while the spine C&P examination a month afterwards is consistent with a 10% rating. The Board noted the MEB examinations were more proximate to the time of separation, and that the VA spine examination was consistent with the MEB examination. While the total clinical picture may vary from date to date, the Board concluded the preponderance of evidence more nearly approximated the 10% rating at the time of separation. The Board also considered a rating using the VASRD formula based on incapacitating episodes due to intervertebral disc syndrome (as the CI was shown to have disc disease). The criteria are based on the number of incapacitating episodes in the prior 12 months requiring bed rest prescribed by a physician. No service treatment records (STR) were identified that documented physician directed bed rest. Thirteen months after separation, the C&P examination documented the CI did not seek medical treatment for this condition and only occasionally took over the counter medications for pain. The Board concluded the preponderance of evidence did not support a higher rating using this alternate formula providing no additional benefit to the CI. There was no associated radiculopathy for separate peripheral nerve rating. Although the CI experienced radiating pain, there was no objective evidence of a radiculopathy or functional impairment with a direct impact on fitness. While the CI may have experienced radiating pain from the back condition, this is subsumed under the general spine rating criteria, which specifically states "with or without symptoms

such as pain (whether or not it radiates).” There is no evidence in this case that there was radiculopathy with associated functional impairments separately functionally impairing. The Board therefore concludes that additional disability rating was not justified on this basis. 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 mechanical low back pain 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. In the matter of the mechanical low back pain condition and IAW VASRD §4.71a, 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.

UNFITTING CONDITION	VASRD CODE	RATING
Mechanical Low Back Pain	5237	10%
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120214, 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 / XXXXXXXXXXXX), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for
XXXXXXXXXXXXXX, AR2013000035 (PD201200165)

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