

RECORD OF PROCEEDINGS  
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXX  
CASE NUMBER: PD1200252  
BOARD DATE: 20130110

BRANCH OF SERVICE: ARMY  
SEPARATION DATE: 20040901

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**SUMMARY OF CASE:** Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty 1LT/O2 (Student/Flight School), medically separated for chronic low back pain due to degenerative disk disease. In March 2003, CI developed low back pain (LBP) after a helicopter hard landing while he was in the back of the aircraft as a trainee. His pain progressed to the point that he required assistance to get out of the aircraft later on. He was removed from flying status in May 2003. He was treated with various modalities including epidural steroid injections (ESI) without resolution of his symptoms. Neurosurgical consultation was made and he was found to have no surgical condition. He was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded LBP and degenerative disk disease (DDD) without radiculopathy for Informal Physical Evaluation Board (IPEB) adjudication. The IPEB adjudicated chronic LBP due to DDD without neurologic abnormality condition as unfitting, rated at 10%, with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD). The CI appealed to the Formal PEB (FPEB) and it affirmed the IPEB findings; and the CI was then medically separated with a 10% disability rating.

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**CI CONTENTION:** "I was rated at 30% immediately following separation by the VA. I am now rated at 90% total schedule and paid at 100% rate due to individual unemployability. 40% of the 90% is due to degenerative disc disease of the same discs as rated 20% by the Army."

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**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 remaining conditions rated by the VA at separation and listed on the DA Form 294 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 FPB – Dated 20040507			VA ~3 Months Post-Separation – All Effective Date 20040902			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Low Back Pain due to Degenerative Disc Disease	5299	10%	Degenerative Joints and Disc Disease, Strain and Disc Bulging, Thoracolumbar Spine and History of Bilateral Peripheral Neuropathy	5010	20%*	20041217
	5237			5237		
↓ No Additional MEB/PEB Entries ↓			Bilateral Tinnitus	6260	10%	20041217
<b>Combined: 10%</b>			0% X 3 / Not Service-Connected x 5			
			<b>Combined: 30%**</b>			

\*Initially rated as Lumbosacral Strain 5237 at 0%, although initial VA rating Decision (VARD) text stated 10% based on flexion limited to 60 degrees. Later VARD (20051201) changed to above rating with same effective date. The rating was later increased to 40% effective 20100819, the date of claim for increased evaluation.

\*\*Increased to 80% effective 20100819 with increase of 5010-5237 to 40% and addition of bipolar disorder 9434 at 70%. Increased to 90% with bilateral factor of 1.9% effective 20110928 with addition of Right and Left Leg Radiculopathy, each 8520 at 10%.

**ANALYSIS SUMMARY:** The Board’s authority as defined in DoDI 6040.44, resides in evaluating the fairness of Disability Evaluation System (DES) fitness determinations and rating decisions for disability at the time of separation. The Board utilizes VA 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. Post-separation evidence is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

**Back Condition:** There were two 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	MEB ~7 Months Pre-Separation	VA C&P ~3 Months Post-Separation
Flexion (90° Normal)	70° (72)	60°
Ext (0-30)	30°	20°
R Lat Flex (0-30)	15° (no pain)	25°
L Lat Flex 0-30)	15° (no pain)	25°
R Rotation (0-30)	30° (40)	30°
L Rotation (0-30)	30° (40)	30°
Combined (240°)	190°	190°
Comment	No tenderness; negative straight leg raise and seated straight leg raise bilaterally; sensation to light touch intact in bilateral lower extremities; strength 5/5 in bilateral lower extremities; reflexes 1+ in bilateral lower extremities; negative clonus	Pain at extremes of all motions except rotations; no additional limitation with repeated motion; no spasm or tenderness; normal posture and gait; intact motor and reflexes; decreased sensation with monofilament testing of bilateral lower extremities
§4.71a Rating	10%	20%

The MEB narrative summary (NARSUM) completed approximately 7 months prior to separation indicated that treatment with nonsteroidal anti-inflammatory medications (NSAIDs) and ESI did not lead to resolution of the CI’s LBP. Physical examination findings are noted in the chart above. Measurements were reportedly made with a goniometer and averaged and the raw values are not available for review. A nerve conduction study completed in June 2003 was normal with no evidence of to suggest significant neuropathy in any of the four extremities. A lumbar spine magnetic resonance imaging (MRI) exam performed in June 2003 noted a degenerated disc bulge at L4-5 without focal herniation or canal stenosis. It showed some degenerative changes and some desiccation at L4-5. It was concluded that CI had LBP with DDD and without radiculopathy. An orthopedic outpatient visit in February 2004 noted flexion limited by pain to 75 degrees and extension limited by pain to 20 degrees. The VA compensation and pension (C&P) exam completed approximately 3 months after separation

reported a similar clinical history and indicated that CI had numbness in both legs in addition to his daily LBP rated as 7 out of 10. The numbness occurred two to three times a week with his usual activities of daily living and was aggravated by physical activity such as driving his car. The VA examiner reported CI had a single episode of incapacitation for a week in June 2003 following a round of ESI when he was ordered to be on bed rest. VA C&P examinations in December 2010 noted thoracolumbar flexion limited to 30 degrees and continued decreased sensation that was limited to medial aspect of both feet. A new finding of bilateral lower extremity decreased strength with 4/5 strength at knee flexors and extensors and ankle plantar flexion and 3/5 strength at ankle dorsiflexion. Knee reflexes were absent and ankle reflexes were 2+ and symmetrical.

The Board directs attention to its rating recommendation based on the above evidence. The PEB assigned a 10% rating based on thoracolumbar flexion greater than 60 degrees but not greater than 85 degrees. The VA assigned a 20% rating based on thoracolumbar flexion greater than 30 degrees but not greater than 60 degrees. While both VA and PEB chose to use 5237 code, the 5243 code for Intervertebral disc syndrome could also be used given the underlining pathology. Disability ratings for the 5243 code can be based on either incapacitating episodes or the criteria of the General Rating Formula for Diseases and Injuries of the Spine. The CI's single incapacitating episode had confined him to bed rest for 1 week and less than 2 weeks; any rating above 10% based on incapacitating episodes cannot be justified. Although the C&P exam was completed closer in time to the date of separation, both examinations are complete and the MEB narrative summary (NARSUM) examination was completed prior to separation. The CI's back pain condition appears to have worsened over time. It continued to worsen in the years after separation and the rating was increased to 40% 6 years after separation from service. However, there is no evidence in the record that supports a determination that thoracolumbar flexion was ever limited to 60 degrees or less prior to separation. 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 back 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 back 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, as follows:

<b>UNFITTING CONDITION</b>	<b>VASRD CODE</b>	<b>RATING</b>
Chronic Back Condition	5299-5237	10%
	<b>COMBINED</b>	<b>10%</b>

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120307, 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 / XXXXXXX), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for  
XXXXXXXXXXXXXXXXXX, AR20130000811 (PD201200252)

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

XXXXXXXXXX  
Deputy Assistant Secretary  
(Army Review Boards)

CF:  
 DoD PDBR  
 DVA