

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXX
CASE NUMBER: PD1200310
BOARD DATE: 20121205

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20041010

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a SSG/E-6 (88M, Light Wheel Vehicle Operator) medically separated for chronic pain in his neck and left shoulder. He was treated, but did not respond adequately to fully perform his military duties or meet physical fitness standards. He was issued a permanent profile and underwent a Medical Evaluation Board (MEB). Chronic neck pain and chronic left shoulder pain were both found medically unacceptable IAW AR 40-501. The CI was referred to a Physical Evaluation Board (PEB) for his two chronic pain conditions. No other conditions were listed on the DA Form 3947. The PEB found both chronic pain conditions unfitting, and rated them 10% each. The CI did not concur with the PEB findings, but he waived a formal hearing and was medically separated with a 20% combined disability rating.

CI's CONTENTION: "The VA rated me on a predischarge exam a combined rating of 60%. My neck was rated at 20%, left shoulder 10%, then I was rated 10% for the left arm radiculopathy caused by the left shoulder and 10% for Paralumbar Muscle Spasms."

SCOPE OF REVIEW: The Board's scope of review as defined in DoDI 6040.44, 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 two unfitting conditions (chronic neck pain & chronic left shoulder pain) meet the criteria prescribed in DoDI 6040.44, and are accordingly addressed below. Other conditions rated by the VA are not within the Board's purview. Any condition outside the Board's defined scope of review may be eligible for future consideration by the Army Board for the Correction of Military Records (BCMR).

RATING COMPARISON:

Army PEB – dated 20040728			VA (1 mo. Pre-Separation) – All Effective 20041011			
Condition	Code	Rating	Condition	Code	Rating	Exam
Neck pain	5237	10%	Cervical spine condition (C6-C7)	5243	20%	20040916
Left shoulder pain	5099-5003	10%	Left shoulder, anterior labral tear	5299-5203	10%	20040916
			Left arm radiculopathy	8515	10%	20040916
			Paralumbar muscle spasms	5237	10%	20040916
			Tinnitus	6260	10%*	20060113
			Right shoulder tendonitis	5024	10%*	20040916
			0% x 2 / Not Service-Connected x 3			20040916
↓No Additional MEB/PEB Entries↓						
Combined: 20%			Combined: 60%			

*VA ratings for Tinnitus and Right shoulder tendonitis were added later, by a VA Rating Decision dated 20060314

ANALYSIS SUMMARY:

Chronic neck pain. The CI was injured in August 2003 when he fell from a vehicle with full gear on. Magnetic resonance imaging (MRI) of the spine showed a disc bulge (protrusion) at C6-C7. He was treated with injections and physical therapy (PT), but did not significantly improve so an

MEB was initiated. The MEB clinical evaluation was on 23 June 2004, at Fort Drum, NY. At that exam, he had a mildly positive Spurling maneuver to the left side. Deep tendon reflexes (DTRs) and muscle strength in both arms was normal. One month later, his cervical range of motion (ROM) was measured by PT (see chart below). On 16 September 2004, the CI had a VA compensation and pension (C&P) examination, and cervical ROM was again measured. The data from both ROM exams is summarized below.

Cervical ROM	MEB PT – 4 mo. Pre-Sep (20040721)	VA C&P – 1 mo. Pre-Sep (20040916)
Flexion (45° is normal)	55°	40°
Combined (340° is normal)	230°	205°
§4.71a Rating	10%	10%

The Army PEB and the VA chose different coding and rating options for the cervical spine. The PEB used diagnostic code (DC) 5237 and rated it 10%. The VA chose DC 5243 and assigned a rating of 20%, possibly confusing the neck condition with a thoracolumbar spine condition. The Board carefully reviewed all evidentiary information available, and directs attention to its rating recommendation based on the above evidence. After consideration of the cervical spine examinations noted above, the Board determined that the September 2004 C&P exam had greater probative value since it was conducted just one month prior to separation. Based on the September 2004 C&P exam, and IAW the VA Schedule for Rating Disabilities (VASRD) §4.71a, a rating of 10% is warranted due to forward flexion >30° but not >40°; and, combined cervical ROM >170° but not >335°.

A higher rating of 20% would be warranted if forward flexion was not greater than 30°, or combined cervical ROM was not greater than 170°. As noted above, the CI's cervical ROM exceeded those thresholds. Therefore, the evidence in the treatment record shows insufficient justification for a rating greater than 10%. The Board then directed its attention to the matter of cervical radiculopathy. Although the CI reported radicular symptoms, there was no objective evidence of a ratable neurologic deficit. At the September 2004 C&P exam, just one month prior to separation from service, there was no muscle atrophy, and basically normal physical findings on exam. The examiner stated, "It does not appear to give him any physical impairment." The Board unanimously agreed that the radiculopathy was not unfitting at the time of separation and therefore does not warrant consideration as a separately unfitting 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 adjudication for the chronic neck pain.

Left shoulder pain. When the CI fell in August 2003, he also injured his left shoulder. MRI showed a small nondisplaced tear of the anterior glenoid labrum. At his June 2004 MEB evaluation, he reported pain in the left shoulder due to the labral tear. Examination of the left shoulder showed 130° of forward flexion and 120° of abduction. Shoulder ROM was also measured in July 2004 and September 2004. Results from these two later ROM exams are summarized in the chart below.

Shoulder ROM	MEB PT – 4 mo. Pre-Sep (20040721)		VA C&P – 1 mo. Pre-Sep (20040916)	
	Left	Right	Left	Right
Flexion (0-180°)	117°	128°	175°	170°
Abduction (0-180°)	128°	140°	170°	160°
Comment	with pain		slight tenderness	
§4.71a Rating	10%*		10%*	

*10% based on VASRD §4.40 (Functional loss), §4.45 (The joints), and §4.59 (Painful motion)

Once again, the Board carefully reviewed all the evidence, and determined that the September 2004 C&P exam had greater probative value since it was conducted just one month prior to separation. Using clinical data from the September 2004 C&P exam, his left shoulder was essentially non-compensable based on the VASRD §4.71a codes for loss of shoulder/arm motion (5200 and 5201). However; IAW VASRD §4.40, §4.45, and §4.59, a 10% rating is warranted when there is satisfactory evidence of functional limitation due to painful motion of a major joint. There was no path to a rating higher than 10% for the left shoulder since there was no documented evidence of motion limited to shoulder level. 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 chronic left shoulder pain.

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 neck pain and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the chronic left shoulder pain, the Board unanimously recommends no change in the PEB adjudication; IAW VASRD §4.40, §4.45, §4.59, and §4.71a.

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
Chronic neck pain	5237	10%
Chronic left shoulder pain	5099-5003	10%
	COMBINED	20%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120322, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXX, DAF
President
Physical Disability Board of Review

SFMR-RB

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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for
XXXXXXXXXXXXXXXXXX, AR20120022697 (PD201200310)

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

XXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
 DoD PDBR
 DVA