

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXX
CASE NUMBER: PD1200351
BOARD DATE: 20121129

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20060306

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSGT/E-6 (11B/Infantry), medically separated for a low back condition. He did not respond adequately to surgical and post rehabilitative treatment and was unable to perform within his Military Occupational Specialty (MOS), meet worldwide deployment standards or meet physical fitness standards. He was issued a permanent L3 profile and underwent a Medical Evaluation Board (MEB). Post-Laminectomy syndrome was forwarded to the Physical Evaluation Board (PEB) IAW AR 40-501. No other conditions appeared on the MEB's submission. The PEB (PEB) adjudicated the low back condition as unfitting, rated 10% with likely application of the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: "Prior to leaving military the member was also diagnosed with nerve damage from L5-S 1. Member has had continuous issues with the injury since separation. Because of the fusion the member is unable to seek jobs which require lifting over 50 lbs, prolonged; sitting, walking, or standing".

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. 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 PEB – Dated 20051013			VA (6 Mos. Pre-Separation) – All Effective Date 20060307			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Back Pain S/P L5-S1 Fusion	5241	10%	Post Laminectomy Syndrome, S/P Laminectomy and L5-S1 Fusion with Residual L4-5 Herniated Nucleus Pulposus	5241-5243	20%	20051017
↓No Additional MEB/PEB Entries↓			Tinnitus	6260	10%	20051017
			Hiatal Hernia with Gastritis and Duodenitis	7399-7346	10%	20051017
			0% X 3 / Not Service-Connected x 3			
Combined: 10%			Combined: 40%			

ANALYSIS SUMMARY: The Board acknowledges the CI's contention that suggests ratings should have been conferred for other conditions diagnosed at the time of separation. The Board wishes to clarify that it is subject to the same laws for 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 Veterans 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.

Low Back Condition. The CI injured his back in 1994 which was treated conservatively as a low back strain. He continued to have intermittent pain and spasms but was able to function and perform his duties with use of nonsteroidal anti-inflammatory medications. In 2003 he had worsening pain and reported lack of movement of his right leg while in Kuwait and X-rays demonstrated spondylolisthesis (displacement of the vertebra) yet he continued to perform his driver duties of a Bradley Vehicle while in Iraq. Upon return redeployment he was evaluated and treated by physical therapy, chiropractic care, and neurosurgery for magnetic resonance imaging (MRI) confirmed L5-S1 spondylolisthesis and L4-5 disc bulge. In December 2003 he underwent a laminectomy and fusion of L5-S1 for definitive care and responded well to post rehabilitative care to return to duty in July 2004. However, during field training he experienced significant pain with the wearing of his gear. He was reevaluated for by all services and another MRI with no new diagnoses. The recommendations were to continue conservative management and he was subsequently placed on the pain modifier medication, Gabapentin, and narcotic based pain medication, Vicodin, by pain management. The profile documented chronic lumbar back pain, status post (s/p) laminectomy with fusion and L4-5 herniated nucleolus pulposus (HNP) as an L3 with the following limitations; no sit-ups, 2 mile run, lifting greater than 75 pounds, and marching with standard field gear greater than 5 miles. The commander's statement additionally documented the CI was totally incapable of performing duties in a combat environment or performing the duties of an Infantry Squad/Section Leader due to the 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 (Degrees)	MEB ~8 Mo. Pre-Sep	VA C&P ~6 Mo. Pre-Sep
Flexion (90 Normal)	65	60
Ext (0-30)	15	30
R Lat Flex (0-30)	30	30
L Lat Flex 0-30)	30	30
R Rotation (0-30)	25	30
L Rotation (0-30)	25	30
Combined (240)	190	210
Comment	Spasm, painful motion	Painful motion
§4.71a Rating	10%	20%

The MEB physical exam demonstrated a tender lower lumbar spine, 10 cm midline scar, paravertebral spasm that limited ROM, 7 of 10 in intensity for painful motion, and no demonstrable neurologic findings. The exam was silent to gait or spine contour findings. The most proximate MRI

of the lumbar spine revealed s/p posterior LS-S 1 fusion, 5 mm spondylolisthesis LS-S1 and L4-L5 disc herniation with new extrusion. The examiner opined the CI would require some activity modification to function on a normal daily basis, pain management including pain medications, pain modifiers, and muscle relaxants and may require future lumbar steroid injections and or further surgery for the L4-5 HNP. At the VA Compensation and Pension (C&P) exam performed prior to separation, the CI reported low back pain 7 of 10 in intensity with radiation to bilateral legs, left greater than right, worse with physical activity to include; heavy lifting, walking standing and running, relieved with rest, and the pain modifier medication, Gabitril, and the narcotic based medication, Hydrocodone. The CI reported he could function with medication and additionally reported 2 incapacitation episodes which required bed rest in the last year, lasting for 15 days with time lost from work. The C&P exam additionally demonstrated a normal gait, normal posture, no signs of intervertebral disc syndrome and no Deluca observations. X-rays revealed instrumented spinal fusion L5-S1 with anterolisthesis (anterior displacement) 5mm of L5 on S1.

The Board directs attention to its rating recommendation based on the above evidence. The PEB and VA applied different VASRD codes, but were subject to the same rating criteria IAW §4.71a—Schedule of ratings—musculoskeletal system under the general rating formula for diseases and injuries of the spine. The Board agreed the VA chosen analogous code 5241-5243 (spinal fusion-Intervertebral disc syndrome) best captures the clinical pathology in this case. The Board notes that both the MEB and VA exams were complete, well documented, and compliant with VASRD §4.46 (accurate measurement). However while the MEB and VA were similar in terms of ratable combined ROM data in which both meet the 10% criteria, the MEB flexion ROM data meets the 10% criteria and the VA meets the 20% criteria. The Board thus carefully reviewed the file for corroborating evidence in the 12-month period prior to and post separation and found one flexion ROM evaluation post separation which is significantly worse than either the VA or MEB exam before separation. There are no other ROM data in the file within the 12-month window specified in DoDI 6040.44 for Board consideration. The Board considered VASRD §4.7 (higher of two evaluations) during its deliberation which directs the evaluator to assign the higher of two valid ratings if the disability picture more nearly approximates the criteria. The Board also considered the pain intensity of 7 of 10 (moderately severe) documented in both exams, the reliance on chronic medication to function and the multiple clinical pathologies that could contribute to the pain impairment and agreed the low back condition more reasonably reflects a 20% disability at the time of separation. The Board considered the 5243 code under the formula for rating intervertebral disc syndrome based on incapacitating episodes and agreed the evidence did not support bed rest prescribed by a physician and treatment by a physician required under this formula for a higher rating. There is no evidence of ratable peripheral nerve impairment which would provide for additional or higher rating. 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 low 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. 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 low back condition, the Board unanimously recommends a disability rating of 20%, coded 5241-5243 IAW VASRD §4.71a. 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:

UNFITTING CONDITION	VASRD CODE	RATING
Chronic Back Pain S/P L5-S1 Fusion	5241-5243	20%
	COMBINED	20%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120409, 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 XXXXXXXXXXXXXXXXXXXX, AR20120022695 (PD201200351)

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

XXXXXXXXXX
 Deputy Assistant Secretary
 (Army Review Boards)

CF:
 DoD PDBR
 DVA