RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXX
CASE NUMBER: PD1200362
BOARD DATE: 20121204

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20020426

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SFC/E-7(71L4O/Administrative Supervisor) medically separated for chronic, recurrent back pain and intermittent leg pain after history of back injuries and L5/S1 partial discectomy. Despite extensive rehabilitation, the CI did not improve adequately with treatment 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 determined that recurrent lumbar HNP (herniated nucleus pulposus) after partial discectomy did not meet retention standards and referred the CI for a Physical Evaluation Board (PEB). Gastroesophageal reflux disorder (GERD) and migraine headache conditions, identified in the rating chart below, were forwarded by the MEB as not disqualifying (for retention). The PEB adjudicated recurrent back pain and intermittent leg pain as a single unfitting condition, rated 20%, with probable application of the US Army Physical Disability Agency (USAPDA) pain policy. The remaining conditions were not addressed by the PEB. The CI made no appeals and was medically separated with a 20% disability rating.

CI CONTENTION: "Since being separated from the service I have had to undergo further surgery and continue to take prescribed medications for conditions for which I was separated for (sic). Some conditions have become chronic."

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. Based on the CI's contention of "conditions," the Board determined that the GERD and migraine headaches were 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 20020124			**VA (2 Mos. Pre -Separation) – All Effective Date 20020427**			
Condition	**Code**	**Rating**	**Condition**	**Code**	**Rating**	**Exam**
Recurrent back pain & intermittent leg pain	5293	20%	Lumbar DDD & DJD	5003-5293	40%	20020308
			Residuals, Pelvic Injury	5299-5294	0%*	20020308
GERD*	Not disqualifying		Hiatal Hernia w/ GERD	7346	0%*	20020308
HAs*	Not disqualifying		Migraine HAs	8100	30%	20020308
↓No Additional MEB/PEB Entries↓			0% X 2* / Not Service-Connected x 0			
Combined: 20%			**Combined: 60%**			

*MEB noted as "not disqualifying;" conditions not addressed by PEB.

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 Veteran's Affairs Schedule for Rating Disabilities (VASRD) standards, based on severity at the time of separation.

Recurrent Back Pain and Intermittent Leg Pain 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. The Board recognized that ROM measurements were not formally used in the VASRD at the time of separation, but included the values for the rating discussion (below).

Thoracolumbar ROM Degrees	PT (for MEB) ~7 Mo. Pre-Sep	VA C&P ~2 Mo. Pre-Sep
Flexion (90 Normal)	75	45
Combined (240)	205	195
Comment	Normal neurological examination	No spasm or atrophy
§4.71a Rating Current spine rules	10%	20%

The CI had a history of low back pain (LBP) dating to 1992, 10 years prior to separation. He was initially managed conservatively, but then underwent an L5-S1 discectomy on 3 August 1998. He initially did well post-operatively, but developed right leg pain and recurrent LBP. Per the MEB narrative summary (NARSUM), the CI met a MOS Medical Retention Board (MMRB) in June 1998 and reclassification was recommended. A magnetic resonance imaging (MRI) exam performed on 21 January 1999 was significant for an enhancing scar surrounding the left S1 nerve root, degenerative disc disease (DDD) at the L5-S1 level and lumbar straightening consistent with spasm. He was managed conservatively for his persistent pain, thought to be secondary to scarring vice a recurrent herniated disc, and remained on "jump" status. He injured himself in a parachute accident on 19 June 1999 when he suffered a pelvic fracture. He healed, but was removed from airborne duties. He continued to have pain, but was able to "soldier on" until May 2001 when he was given a permanent L3 profile and referred to MEB. Both MRI and X-rays were consistent with DDD at L5-S1. The CI was seen on 9 August 2001 in Physical Medicine and Rehabilitation (PM&R) and noted to have reduced ROM in extension, decreased strength for plantar flexion and eversion at 4/5 and reduced sensation in a S1 distribution. Electrodiagnostic studies showed evidence of a S1 radiculopathy. A CT lumbar myelogram on 19 September 2001 showed focal extrusion of disc material at L5-S1 which completely obliterated the left S1 nerve root. He was referred to neurosurgery and seen a month later 12 October 2001. His leg pain had resolved and a straight leg raise (SLR), testing for nerve root irritation, was negative. Surgery was not indicated. At the MEB examination on 10 October 2001, 6 months prior to separation, the CI reported continued LBP and tingling and numbness in the left foot. The MEB physical examiner noted tenderness at L4-S1 along the scar line and both sacroiliac joints. The neurological examination including reflexes, sensation and strength, was intact. A SLR was positive. The NARSUM was dictated on 7 December 2001, 4 months prior to separation. It referred back to the MEB examination for the physical findings.

At the VA Compensation and Pension (C&P) exam performed on 8 March 2002, 6 weeks prior to separation, the CI reported constant back pain which radiated down the back of the left leg. He was unable to stand or sit for long periods of time, walk more than two miles or climb more than two flights of stairs without difficulty. However, the examiner also noted that the CI could "sustain heavy physical activities without immediate distress" and was without bowel or bladder incontinence. On examination, he was noted to have normal gait and posture. Sensation and strength were normal. Reflexes were normal other than the left ankle jerk (S1) which was diminished. The Board noted that the reflex may not fully recover after surgery and that this has no functional implications. The CI had degenerative disc and joint disease on lumbar X-rays. No spasm or atrophy was noted. The ROM is above. No episodes of incapacitation were noted. The Board directs attention to its rating recommendation based on the above evidence. The PEB coded the back condition as 5293, intervertebral disc syndrome, and rated it at 20% for moderate recurring attacks. The VA coded the back condition analogous to 5293, but rated it at 40% for a severe disability citing a marked limitation in motion, left leg radiculopathy and decreased left ankle jerk. The Board noted that the code 5293 is no longer used and that this case was adjudicated under the 2002 spine rules which have been superseded. The Board must use the VASRD in effect at the time of separation, though. The Board then considered the VA adjudication. As noted, the diminished left ankle jerk has no functional implications and it is not uncommon for the diminished reflex to persist after surgery even in the face of an otherwise full recovery. The left leg neuropathy was noted on electrodiagnostic testing and examination over 8 months prior to separation. However, the examinations by both the MEB and VA clinicians, both more proximate to separation, showed a normal neurological examination, inconsistent with a significant radiculopathy. The ROM testing was reduced. The current spine rules do utilize ROM measurements for rating purposes and under the current VASRD, the limitation in flexion would warrant a 20% disability rating. The Board determined that the disability in evidence would warrant no more than a moderate disability under the 5293 coding option and that no other coding option would provide a more favorable rating to the CI under either the old or new spine rules in the VASRD. 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. As discussed above, PEB reliance on the USAPDA pain policy for rating the back condition was probably operant in this case and the condition was adjudicated independently of that policy by the Board. 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:

UNFITTING CONDITION	VASRD CODE	RATING
History of back injuries and L5-S1 partial discectomy	5293	20%
	COMBINED	**20%**

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120411, w/atchs
Exhibit B. Service Treatment Record
Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXX, 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 XXXXXXXXXXXX, AR20120022693 (PD201200362)

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