

RECORD OF PROCEEDINGS PHYSICAL
DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX
CASE NUMBER: PD1200373
BOARD DATE: 20121127

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20090307

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a National Guard SSG/E-6 (68W3C/Medic), medically separated for spinal stenosis of the lumbar spine. The CI developed atraumatic back pain after increased tempo of being in Iraq. Despite one epidural spinal injection, three facet joint injections at L5/S1, Neurontin for neurogenic pain, narcotics, home traction, transcutaneous electrical nerve stimulation (TENS) unit, physical therapy (PT), chiropractor and neurology consultations the CI failed to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent L3 and referred for a Medical Evaluation Board (MEB). The MEB forwarded chronic low back pain (LBP) secondary to degenerative disk disease (DDD) on the DA Form 3947 to the Physical Evaluation Board (PEB). Anxiety disorder, obstructive sleep apnea (OSA), left shoulder pain, right carpal tunnel syndrome and hypercholesteremia conditions, identified in the rating chart below, were also identified and forwarded by the MEB as medically acceptable. The PEB adjudicated spinal stenosis of the lumbar spine condition as unfitting rated 10%, with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD). The remaining conditions were determined to be not unfitting. The CI appealed to the U.S. Army Physical Disability Agency for reconsideration, which affirmed the PEB findings. The CI was then medically separated with a 10% disability rating.

CI CONTENTION: "My condition was worse than previously thought. I had surgery on my back due to nothing else helping i.e., shots, medication, physical therapy, and chiropractic care. Along with the back pain, I was having numbness in my left foot with some foot drop while walking. Initially the surgeon was going to do 1-3 discs. He ended up doing 5 (L2-S1) due to it being worse than what he thought it was. Since the surgery, I have had pain and numbness on the inside of my left knee along with back pain, from walking and standing on concrete, tile or any other hard floor surface."

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 low back pain condition requested for consideration meets the criteria prescribed in DoDI 6040.44 for Board purview, and is accordingly addressed below. The other requested conditions (left knee and left foot drop) 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:

Admin Correction Service PEB– Dated 20090211			VA (2 Mos. Post-Separation) – All Effective Date 20090308			
Condition	Code	Rating	Condition	Code	Rating	Exam
Spinal Stenosis Lumbar Spine ...	5238	10%	DDD Lumbosacral Spine	5243	20%*	20090528
Anxiety Disorder	Not Unfitting		PTSD	9411	30%	20090528
OSA	Not Unfitting		Sleep Apnea	6847	50%	20090528
Left Shoulder Pain	Not Unfitting		Degenerative Joint Disease (DJD) Left Shoulder	5010-5203	10%	20090528
Right Carpal Tunnel Syndrome	Not Unfitting		Right Carpal Tunnel Syndrome	8515	10%	20090528
Hypercholesteremia	Not Unfitting		High Cholesterol	7099-7005	NSC	20090528
No Additional MEB/PEB Entries			0% X 1 / Not Service-Connected x 3 (Include above)			
Combined: 10%			Combined: 80%			

*Prior L-spine, 5243 at 10% from 2007 to 2008 entry on AD. No change to L-Spine rating effective 20090528; * Temporary 100% rating assigned effective 20090909 thru 20091031 based on surgical or other treatment necessitating convalescence- reverts to prior 20% rating effective 20091101.

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI's application regarding the significant impairment with which his service-incurred condition continues to burden him. It is a fact, however, that the Disability Evaluation System (DES) has neither the role nor the authority to compensate members for anticipated future severity or potential complications of conditions resulting in medical separation. This role and authority is granted by Congress to the Department of Veterans' Affairs (DVA). 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.

Spinal Stenosis of the Lumbar Spine Condition. The goniometric range-of-motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation, with documentation of additional ratable criteria, are summarized in the chart below.

Thoracolumbar ROM	PM&R ~3 Mo. Pre-Sep (20081209)	MEB ~2.5 Mo. Pre-Sep (20081223)	PT ~1.5 Mo. Pre-Sep (20090123)	VA C&P ~2.5 Mo. Post-Sep (20090528)
Flexion (90° Normal)	Abn with pain	90° (110°)	75°	50°*
Ext (0-30)	Abn with pain	30° (28°)	30	10°*
R Lat Flex (0-30)	Nml With pain	30° (28°)	25°	25°
L Lat Flex 0-30)	Nml With pain	30° (32°)	25°	25°*
R Rotation (0-30)	Nml	30° (40°)		25°
L Rotation (0-30)	Nml	30° (38°)		25°
Combined (240°)		240° (APEB 236°)		160°
Comment: Notes 2 (truncate at VA normal) and 4 (round to nearest 5°) were applied	Tenderness on palpation; straight leg raise nml; Waddell's neg; no antalgic gait; "no limb weakness"; neurologic without deficits	Decreased ROM secondary to discomfort, pain limited; Gait nml; motor intact; no muscle spasms; (see text)	Tenderness; neg SLR; motor 5/5 BLE	*Pain flare with repetitive motion; Left IL tender to ROM/direct palpations; gait nml; reflexes nml; SLR nml; no great toe dorsiflexion weakness; no muscle spasms; sensory/motor nml
§4.71a Rating	10%	10%	10%	20%

The CI had complaints of left lower extremity radicular symptoms; however, an electromyogram (EMG) performed in October 2008 was normal. A lumbar spine magnetic resonance imaging (MRI) study demonstrated congenital lumbar stenosis, superimposed

lumbar stenosis at L2-3 through L5-S1, multilevel disk herniations in three lower levels demonstrating disc bulge or shallow disc herniation L2-L3. The CI was evaluated by Physical Medicine and Rehabilitation (PM&R) in December 2008, 3 months prior to separation, which indicated no difficulty writing, no limb weakness, no gait abnormality and no difficulty walking. The physical exam findings are summarized in the chart above. The MEB examination, performed 2 months prior to separation noted subjective Waddell signs of never being pain free, whole leg numbness, emergency room visits and the requirement for a back brace; and an inability to lift greater than 25 pounds; Objective Waddell 3/5: axial loading, simulated rotation, seated straight leg raise; pain limited motion. The physical exam findings are summarized in the chart above. An MRI performed in December 2008 found degenerative changes. PT exam performed a month prior to separation is summarized above. A treatment note indicated that the CI had started working out for the upper body, but also reported that the working out lifting weights for the upper body strength was an aggravating factor.

The VA Compensation & Pension (C&P) exam indicated daily low back pain with radiation to the left leg with intermittent numbness precipitated by long walking, standing or sitting. The physical exam findings are summarized in the chart above. There were no episodes of incapacitation in the last year. VA records and the CI's contention indicated lumbar spine surgery in September 2009 with improvement in spine ROM in VA exam in 2010 (forward flexion to 80 degree, which met the 10% rating criteria), with a continuation of a 20% rating IAW VA-specific rules regarding sustained improvement.

The Board directs attention to its rating recommendation based on the above evidence. The Army coded the spinal stenosis of the lumbar spine condition 5238 Spinal stenosis rated at 10%. "Rated IAW VASRD 4.59 for painful motion in the face of preserved range of motion and awarded the minimum compensable rating for the lumbar spine." The VA coded the condition as 5243 Intervertebral disc syndrome rated at 20%. The General Rating Formula for Diseases and Injuries of the Spine considers the CI's pain symptoms "With or without symptoms such as pain (whether or not it radiates), stiffness or aching in the area of the spine affected by residuals of injury or disease."

The MEB examination noted normal ROM with painful motion, and the PT exam which was after the MEB and closer to the date of separation, documented worsened pain limited motion at the 10% criteria range. The VA examination documented more limited ROM with flexion of 50 degrees with repetitive motion at the 20% criteria range. The Board noted that the VA exam, post-separation radicular symptoms and back surgery were within the 12-month period for special Board consideration. The service record documented pre-separation worsening following the MEB that combined with the VA exam near separation, led to reasonable doubt that the CI's worsening back symptoms and worsening ROM limitations continued following the PT ROMs, to the point where the back was closer to the disability picture envisioned by the 20% rating criteria. The Board majority therefore considered the VA exam to have the higher probative value for rating. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt) and §4.7 (higher of two evaluations), the Board majority recommends a separation rating of 20% for the chronic LBP condition coded 5238.

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 spinal stenosis of the lumbar spine condition, the Board by a vote of 2:1 recommends a disability rating of 20%, coded 5238 IAW VASRD §4.71a. The single voter for dissent (who recommended no recharacterization at 10%) did not elect to submit a

minority opinion. 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
Spinal Stenosis of the Lumbar Spine	5238	20%
	COMBINED	20%

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120413, w/atchs
Exhibit B. Service Treatment Record
Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXX, 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 XXXXXXXX, AR20120022683 (PD201200373)

1. 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 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

XXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
() DoD PDBR
() DVA