

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXX
CASE NUMBER: PD1200375
BOARD DATE: 20121205

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20030220

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSG/E-6 (68G/Patient Administration Specialist), medically separated for low back pain. The CI experienced chronic recurrent low back pain after a fall during training treated medically. 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). Gastroesophageal reflux disease (GERD), pes cavus and vision defect conditions, identified in the rating chart below, were also identified and forwarded by the MEB as meeting retention standards. The Physical Evaluation Board (PEB) adjudicated the low back pain 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 made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: "The severity of my symptoms were not properly rated or look at. My lower back pain, disk degeneration, spondylolisthesis the pain medication worsen my Gerd symptoms sciatica, claw fee, herniated disc, spasms, tingling numbness of part lower back. Been taking medications since service for Gerd OTC. Then oneprazole. My pain medication has increased by Gerd and Gastric complications. See current records. My pes cavus condition resulted in claw toes have pain in my toes joints see VA recs".

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 conditions GERD and pes cavus as requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview; and, are addressed below, in addition to a review of the ratings for the unfitting condition. 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 20021121			VA (2 Mos. Pre-Separation) – All Effective Date 20030221			
Condition	Code	Rating	Condition	Code	Rating	Exam
Low Back Pain	5295	10%	Deg. Disc Dis. L4-S1, ...Spondylolisthesis, Disc Herniation L5-S1 w/ Recurrent Radiculitis	5293	20%	20021206
GERD	Not Unfitting		Gastroesophageal Reflux Disease (GERD)	7346	0%	20021206
Pes Cavus	Not Unfitting		Pes Cavus	5278	0%	20021206
Vision Defect	Not Unfitting		NO VA ENTRY			
Combined: 10%			Combined: 20%			

ANALYSIS SUMMARY:

Low Back Pain Condition. There were three goniometric range-of-motion (ROM) evaluations and one examination 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)	Ortho MEB Consult ~4 Mo. Pre-Sep (20021030)	MEB NARSUM ~4 Mo. Pre-Sep (20021105)	Orthopedic exam ~4 Mo. Pre-Sep (20021114)	VA C&P ~2 Mo. Pre-Sep (20021206)
Flexion (90 Normal)	75	90	pain	60
Extension (30)	30	20	pain	20
R Lat Flex (30)	30 (40)	30		25
L Lat Flex (30)	30 (40)	30		25
R Rotation (30)		30 (35)		25
L Rotation (30)		30 (35)		25
Combined (240)		230		
Comment	+Tenderness No spasm No deformity	+ Tenderness Painful motion No spasm L lat foot sensory loss	Spasm Painful motion	ROM after repetition Painful motion + Tenderness +Episodic spasm L>R Normal gait
§4.71a Rating	10%	10%		20%

The CI reported injuring his back after falling off “parallel bars” during training 4 April 1997. The CI was subsequently treated for recurrent/chronic back pain beginning in 1999. Imaging studies including magnetic resonance imaging (MRI) in June 2002 demonstrated spondylolysis with spondylolisthesis of L5-S1 and a L5-S1 disc protrusion abutting the right L5 nerve root. Electrodiagnostic testing on 24 July 2002 was negative for signs of radiculopathy. CI was treated with a brace with some improvement in pain. He was offered spinal surgery which he declined. The orthopedic MEB consultation examination, dated 30 October 2002, and the MEB narrative summary (NARSUM) examination, dated 5 November 2012, both approximately 4 months before separation, are summarized in the chart above. On 14 November 2002, 4 months prior to separation, the CI’s civilian spine surgeon noted spasms of the paraspinal muscles and increased pain with flexion and extension. Normal reflexes, normal sensory and motor examinations. The CI had been treated in a Boston brace for many months with improvement of his back symptoms. He had been assigned to no lifting and no bending and had not been involved in heavy activity for many months. CI reported dull and achy back pain associated with spasm. At the VA Compensation and Pension (C&P) 2 months prior to separation, the CI reported chronic recurrent pain more or less every day, easily flared-up up to 25 times a month depending on activities. The ROMs in the chart above reflected the movement after repetition. There was an increase in pain radiating to the left buttocks and thigh, and stiffness that the examiner characterized as a sensory radiculitis. Inconsistent episodic spasms mostly of the left were noted as well. Strength, sensation and reflexes of the lower extremities were normal, and straight leg raising testing for nerve root irritation was negative.

The Board directs attention to its rating recommendation based on the above evidence. In accordance with DoDI 6040.44, the Board is required to recommend a rating IAW the VASRD in effect at the time of separation. The Board notes that the 2002 Veteran Administration Schedule for Rating Disabilities (VASRD) standards for the spine, which were in effect at the time of separation, were changed to the current §4.71a rating standards in 2004. The Board must correlate the above clinical data with the 2002 rating schedule (applicable diagnostic codes include: 5292 limitation of lumbar spine motion; 5293 intervertebral disc syndrome; and 5295 Lumbosacral strain). The PEB rated the back condition 10% using VASRD diagnostic code 5295 as lumbosacral strain with characteristic pain on motion. The VA rated the back condition

20% citing moderate limitation of motion (5292) based on the C&P ROM examination but listed the code as 5293 (intervertebral disc syndrome).

All Board members agreed the MEB NARSUM and examinations supported a 10% rating under both the VASRD code 5292 for limitation of motion, and lumbosacral strain code 5295 while the C&P examination supports a 20% rating under limitation of motion code 5292. Inconsistent and episodic muscle spasm was noted on the C&P examination but there was no muscle spasm on extreme forward bending or unilateral loss of lateral spine motion to support a 20% rating under code 5295; also there was no gait abnormality to suggest significant muscle spasm. At the time the CI separated from service, ratings under the VASRD code 5293 for intervertebral disc syndrome were based on incapacitating episodes, and evidence of the service records indicate the CI's back condition did not meet a minimum rating under this diagnostic code.

Due to the significant differences between the service and C&P examinations and the ratings adjudicated by the PEB and VA, the Board carefully considered the whole record in order to develop a consistent picture of the CI's back pain condition. The Board noted the chronic and stable nature of his condition over several years leading into the MEB. Orthopedic examinations during 2002 prior to the MEB recorded either no, or slight limitation of motion without spasm. Characteristic pain on motion was documented. The 14 November 2002 orthopedic encounter recorded improvement in pain since the previous examination and pain with motion but did not describe muscle spasm on extreme forward bending, or loss of lateral spine motion, unilateral, in standing position. The characteristic pain on motion of the lumbar spine as described by the CI, and the restrictions imposed on military duties for his rank and training, would qualify as 10%, more than slight subjective symptoms. There was no history of injury or cause for the worsening between the MEB NARSUM examination and the C&P examination. Therefore, Board members concluded the MEB NARSUM examination and service treatment records (STR) were most reflective of the overall disability picture at the time of separation. Although several years later, the C&P examination in 2011 documented examination findings and improved ROM consistent with the MEB NARSUM examination. The Board also considered if an additional disability rating was justified for peripheral nerve impairment due to radiculopathy. The CI had degenerative disc disease (DDD) with radiating pain. However, examinations indicated normal strength, reflexes and gait, and electrodiagnostic testing was negative for evidence of radiculopathy. The left lateral foot sensory changes noted in the MEB NARSUM examination were consistent with S1 disc pathology. The presence of functional impairment with a direct impact on fitness is the key determinant in the Board's decision to recommend any condition for rating as additionally unfitting. Therefore the critical decision is whether or not there was a significant sensory impairment which would impact military occupation specific activities. There is no evidence in this case that sensory loss of the left lateral foot existed to any degree that could be described as functionally impairing. The Board therefore concludes that any additional disability rating was not justified on this basis. 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 low back pain condition.

Contended PEB Conditions. The contended conditions adjudicated as not unfitting by the PEB were gastroesophageal reflux disease (GERD) condition and pes cavus condition. The Board's first charge with respect to these conditions is an assessment of the appropriateness of the PEB's fitness adjudications. The Board's threshold for countering fitness determinations is higher than the VASRD §4.3 (reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 "fair and equitable" standard. GERD condition was treated and controlled with over the counter medications and did not impose any duty restrictions. Pes cavus condition was present upon intake physical 20 December 1996, and waived. The MEB NARSUM examination stated the pes cavus was asymptomatic. None of these conditions were profiled; none were implicated in the commander's statement; and,

none were judged to fail retention standards. All were reviewed by and considered by the Board. There was no indication from the record that any of these conditions significantly interfered with satisfactory duty performance. After due deliberation in consideration of the preponderance of the evidence, the Board concluded that there was insufficient cause to recommend a change in the PEB fitness determination for the any of the contended conditions; and, therefore, no additional disability ratings can be recommended

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 pain condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended GERD and pes cavus conditions, the Board unanimously recommends no change from the PEB determinations as not unfitting. 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
Low Back Pain with spondylosis, spondylolisthesis, and herniated disk at L5-1	5295	10%
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120419, 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 / XXXXXXXXXX), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for
XXXXXXXXXXXXXX, AR20130000108 (PD201200375)

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

XXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
 DoD PDBR
 DVA