

RECORD OF PROCEEDINGS  
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX  
CASE NUMBER: PD1200381  
BOARD DATE: 20121211

BRANCH OF SERVICE: ARMY  
SEPARATION DATE: 20080118

**SUMMARY OF CASE:** Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SFC/E-7 (35L40/Counter Intelligence), medically separated for chronic low back pain (LBP). Despite surgical intervention, chronic intermittent left LBP did not improve adequately to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy unrestricted physical fitness standards. He was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded no other conditions for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated the chronic LBP as unfitting, rated 10%, with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals and was medically separated with a 10% disability rating.

**CI CONTENTION:** “Was surprised by percentage considering severity of injury and determination that I was no longer fit for duty. Continue to get back injections twice a year.”

**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 the 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 IPEB – Dated 20071210			VA (3 Mos. Post-Separation) – All Effective Date 20080119			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Low Back Pain	5241	10%	Lumbar Disc Disease, s/p Discectomy and Lumbar Fusion (L5-S1)	5243	20%	20080407
No Additional MEB/PEB Entries			Chronic Left Shoulder Strain	5201	10%	20080407
			0% X 1 / Not Service-Connected x 5			
<b>Combined: 10%</b>			<b>Combined: 30%</b>			

No other VARDs in evidence

**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. 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. 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. That role and authority is granted by Congress to the Department of Veterans Affairs (DVA), operating under a different set of laws (Title 38, United States Code). The Board evaluates DVA evidence proximal to separation in arriving at its recommendations, but its authority resides in evaluating

the fairness of DES fitness decisions and rating determinations for disability at the time of separation. 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 DVA, however, is empowered to compensate service-connected conditions and to periodically re-evaluate said conditions for the purpose of adjusting the Veteran's disability rating should the degree of impairment vary over time.

Chronic Low Back Pain. 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 ~4 Mo. Pre-Sep	VA C&P ~3 Mo. Post-Sep
Flexion (90 Normal)	45	50 mechanical stop
Combined (240)	125	185
Comment	Goniometer utilized, ROMs are averages; individual ROMs not listed); - Tenderness; spasm; abnormal gait Rotation values obtained 20071120	Tenderness; painful motion. Weak left ankle dorsiflexion
§4.71a Rating	20% (IPEB rated 10%)	VA rated 20%

The CI first noted LBP in 1995 without specific injury. He was seen for LBP several more times over the next few years and managed conservatively with medications, physical therapy (PT) and duty modification. In March of 2005, he had sudden onset of left lower extremity (LLE) weakness and numbness during a fitness test run. A CT scan showed a left-sided broad based disc bulge at L5-S1 which contacted the left S1 nerve root. Degenerative joint disease (DJD) was also noted. Conservative management, including nerve root injections, failed to control the pain. A discogram confirmed concordant pain at L5-S1. On 27 April 2006, he underwent a transforaminal lumbar interbody fusion (TLIF) at L5-S1. He did well post-operatively, but had persistent pain and was entered into the MEB process in May 2007. Two months later, resolution of the LBP was noted at a 21 June 2007 orthopedic follow-up (15 months after surgery, 7 months prior to separation), but radicular pain, albeit improved, persisted. His motor examination was noted as being unchanged from the normal examination 2 months earlier. There were no further appointments for the LBP condition prior to separation other than for the MEB evaluation. At the MEB exam performed on 21 August 2007, the CI reported persistent LBP. The MEB physical exam noted limited and painful ROM. The MEB narrative summary (NARSUM) was dictated on 19 September 2007, 4 months prior to separation. The CI reported satisfactory control of his pain, but that he could not meet military fitness standards or wear required military personal protective equipment. Sensation, strength and reflexes were normal although the CI reported subjective paresthesias in the posterior LLE. His gait was normal and ROM limited mechanically. No comment was made on spasm or posture. At the VA Compensation and Pension (C&P) examination on 7 April 2008, 3 months after separation, the CI reported that he could no longer participate in sports as he did prior to the injury and surgery and that he guarded his movements. His only medication was a muscle relaxer which he took several times a week. No incapacitation was noted. His movements were noted to be "careful" and gait minimally antalgic, favoring the LLE. On examination, the scars were well healed. Limitation in flexion was noted to be mechanical. Sensation, strength and reflexes were normal other than 4/5 dorsiflexion of the left ankle. The Board directs attention to its rating recommendation based on the above evidence. The PEB rated the back at 10% and coded it as 5241, spinal fusion. The VA rated the back 20% and coded it 5243, intervertebral disc syndrome. The Board noted that an evaluation of 20 percent is assigned for forward flexion of the thoracolumbar spine greater than 30 degrees but not greater than 60 degrees. This limitation is present on both ROM examinations. The weakness in ankle dorsiflexion observed on the C&P examination was not present on the prior to separation MEB examination

or the two orthopedic examinations accomplished after MEB initiation. The sensory examination was normal other than subjective paresthesias on the NARSUM examination. There is no evidence that either condition impaired duty separate from the back pain. After due deliberation in consideration of the preponderance of the evidence, the Board recommends a disability rating of 20% for the chronic low back pain condition, coded 5241.

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**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 low back pain condition, the Board unanimously recommends a disability rating of 20%, coded IAW VASRD §4.71a. There were no other conditions within the Board’s scope of review for consideration.

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**RECOMMENDATION:** The Board recommends that the CI’s prior determination be modified as follows, effective as of the date of his prior medical separation:

<b>UNFITTING CONDITION</b>	<b>VASRD CODE</b>	<b>RATING</b>
Chronic Low Back Pain	5241	20%
	<b>COMBINED</b>	<b>20%</b>

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The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120420, 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 XXXXXXXXXXXXXXXX, AR20130000018 (PD201200381)

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

XXXXXXXXXXXXXXXXXXXX  
Deputy Assistant Secretary  
(Army Review Boards)

CF:  
 DoD PDBR  
 DVA