

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXX
CASE NUMBER: PD1200396
BOARD DATE: 20121211

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20061206

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty CPT/O-3 (13A00/Field Artillery Officer), medically separated for chronic neck pain and chronic low back pain (LBP). The CI initially injured his back while deployed in 2004 and then was assaulted in January 2006, injuring his neck and reinjuring his back. He was treated with medications, duty limitations and physical therapy (PT) without adequate improvement to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent U3, L3 profile and referred for a Medical Evaluation Board (MEB). The MEB determined the neck and back conditions to be medically unacceptable and forwarded both to the Physical Evaluation Board (PEB) for adjudication. No other conditions were forwarded to the PEB. The PEB adjudicated the chronic neck pain and chronic LBP conditions as unfitting, rated 10% each, with probable application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals and was medically separated with a 20% disability rating.

CI CONTENTION: The CI attached 85 pages consisting of his statement and attachments from the VA, his personnel file and the service which was reviewed by the Board and considered in its recommendations. He contends for an increase in the neck and back conditions and requests the addition of post-concussive headaches.

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 remaining conditions rated by the VA at separation and listed on the DA Form 294 application are not within the Board's purview. In this case, only the neck and back conditions are within the purview of the Board. 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 20061010			VA (1 Mos. Pre-Separation) – All Effective Date 20061205			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Neck Pain	5243	10%	Cervical HNP with Radiculopathy to the Bilateral Shoulders	5243	10%*	20061109
Chronic Low Back Pain	5243	10%	Lumbar Spine HNP with DDD	5243	10%*	20061109
↓No Additional MEB/PEB Entries↓			Post Concussive Syndrome HA	9304-8045	10%	20061109
			0% X 2 / Not Service-Connected x 2/Deferred x 1			
Combined: 20%			Combined: 30%			

*Increased to 30 and 20%, respectively, based on the 20070511 C&P examination, effective 20070326

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 VASRD standards, based on severity at the time of separation. 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. The Board's recommendation must incorporate a probative value judgment between the disparate evidence from the file and the VA Compensation and Pension (C&P) examination. The probative value judgment has to acknowledge a normal tendency to maximize symptoms in the context of DVA rating evaluations with their attendant secondary gain pressure, but the Board concedes the validity of all evidence unless contradicting evidence can be cited.

The CI first injured his back in-theater in August 2004 during a blast from a homicide bomber. There are no records from his treatment in evidence. On 31 December 2005, he was assaulted by multiple individuals and suffered a concussion as well as neck and back injuries and secondary pain. He was placed on quarters for 24 hours after the assault; this is the only record of quarters for either the back or neck pain in the record. He was treated with medications, duty restrictions and PT for both conditions without improvement adequate to meet duty requirements. On 11 January 2006, magnetic resonance imaging (MRI) of the lumbar spine was suspicious for a 4-5 mm focal protrusion at L5-S1 without neural compromise with minimal degenerative changes in the thoracic spine. An MRI of the cervical spine on 4 March 2006 showed a protrusion and annular tear at C5-6 with slight indentation of the thecal sac.

Neck Condition. There were three 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.

Cervical ROM Degrees	MEB ~4 Mo. Pre-Sep	VA C&P ~1 Mo. Pre-Sep	VA C&P ~6 Mo. Post-Sep
Flex (45 Normal)	45 (60, 60, 60)	35	15
COMBINED (340)	265	250	25
Comment	Motion limited by pain	Nml position; tender to palpation	DeLuca negative
§4.71a Rating	10%	10%	30%

Following the assault on New Year's Eve, the CI was seen several times in the immediate post-trauma period and noted to have pain and reduced ROM. He was treated with PT and home traction as well as medications. A 14 March 2006 PT appointment documented a moderate decrease in right cervical rotation which was persistent on a repeat visit ten days later. At an 18 April 2006 PT appointment, he continued to complain of 7/10 pain, but was noted to have full flexion and left rotation with minimally reduced extension and moderately decreased right rotation. Strength was noted to be normal in both upper extremities (BUE). The ROM values

obtained for the MEB examination are above; CI again noted 7/10 pain. At the MEB examination on 7 July 2006, 5 months prior to separation, the CI reported continued neck pain. The MEB examiner noted cervical paraspinal tenderness, right trapezius spasm and limited, painful motion. The narrative summary (NARSUM) was dictated on 14 August 2006, 4 months prior to separation. It noted persistent pain including the right shoulder and scapular area. He was noted to have spasm and tenderness of the cervical paraspinal muscles. Sensation, strength and reflexes were normal. The ROM is above. At the first C&P exam on 9 November 2006, less than a month prior to separation, the CI reported constant 7/10 pain which improved to 2/10 with medications. It was noted that he could not lift more than 50 pounds or engage in jarring activities although he could jog ½ mile. Posture and gait were normal. The ROM was reduced secondary to pain, but not further reduced with repetition although his pain was increased. Sensation, strength and reflexes were normal. The neck was tender to palpation, but without spasm. A second C&P was performed on 11 May 2007, 6 months after separation, at the request of the CI for an increased disability rating. The CI reported continued pain and that he had needed to leave work several times due to pain; he had been employed as a civil engineer since separation. There had been no incapacitation though. The ROM is above and is inconsistent with the other examinations. Sensation, strength and reflexes were normal. DeLuca were negative other than increased pain. An MRI that day showed partial loss of normal lordosis. There was degenerative disc disease (DDD) with protrusion at C5-6 without cord compression. The Board directs attention to its rating recommendation based on the above evidence. It noted that the ROM was consistently reduced for right rotation prior to separation, but that forward flexion was not reduced, other than on the two C&P examinations, and that the second examination showed a dramatic reduction in motion without intervening trauma to explain the further deterioration. The initial C&P examination is the most proximate examination to separation and was performed within weeks of separation. It was therefore assigned the highest probative value for rating purposes. 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 neck condition.

Back Condition. There were three goniometric 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 ~5 Mo. Pre-Sep	VA C&P ~1 Mo. Pre-Sep	VA C&P ~6 Mo. Post-Sep
Flexion (90 Normal)	55 (50, 55, 55)	85	60
Combined (240)	205	235	200
Comment	+ Tenderness; spasm	+ Tenderness; painful motion	Neg DeLuca
§4.71a Rating	20%	10%	20%

The CI was placed on quarters for 24 hours on 3 January 2006 following the assault 3 days earlier. As noted, this is the only documented placement on quarters. A 14 February 2006 PT note documented normal ROM for the back. However, he was noted to have limited flexion and extension at a second PT appointment 2 weeks later. At the MEB examination, the CI reported recurrent LBP. The examiner noted limited ROM without documenting the actual ROM values. The NARSUM documented persistent pain with bilateral lower extremity numbness and tingling. He was noted to have spasm and tenderness of the paralumbar muscles. Sensation, strength and reflexes were normal. Straight leg raise, a provocative test for radicular irritability, was negative. The ROM values were obtained a month earlier in PT and are above. At a follow-up PT visit a week after the above ROM values, he was normal to have normal motion of the back. At the C&P examination prior to separation, the CI reported achy pain rated 4/10 several times a week which usually subsided over a few hours. Walking was unlimited and lifting limited to 30 pounds (see different limitations for the neck). On examination, he was noted to have normal gait and posture. Sensation, strength and reflexes

were normal. The ROM was above and pain noted at 7/10 for the measurements. At the second C&P examination, the CI noted that he could not sit for long periods of time, stiffness and the need to lie down for an hour after returning home from work. He denied incapacitation. Sensation, strength and reflexes were normal on examination. The Board directs attention to its rating recommendation based on the above evidence. As already noted, the Board determined the C&P proximate to separation to have the highest probative value. 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. 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 neck and back conditions 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
Chronic Neck Pain, Secondary to Herniated Nucleus Pulposus	5243	10%
Chronic Low Back Pain, Secondary to Herniated Nucleus Pulposus	5243	10%
	COMBINED	20%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120501, 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 / XXXXXXXXX), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for
XXXXXXXXXXXXXXXX, AR20120022692 (PD201200396)

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

XXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
 DoD PDBR
 DVA