

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXXXXXX
CASE NUMBER: PD1200405
BOARD DATE: 20121205

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20060906

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a Reserve SPC/E-4 (88M/Motor Vehicle Operator), medically separated for chronic low back pain. The CI developed chronic low back pain (LBP) after a motor vehicle crash in July 2004 while deployed to Iraq leading to back surgery in January 2006. Following surgery, the CI did not improve adequately to meet the physical requirements of her Military Occupational Specialty (MOS) or satisfy physical fitness standards. She was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded no other conditions for Informal Physical Evaluation Board (IPEB) adjudication. The IPEB adjudicated the chronic LBP condition as unfitting, rated 10% using VASRD code 5241. The CI appealed to the Formal PEB (FPEB) which affirmed the IPEB findings; and was then medically separated with a 10% disability rating.

CI CONTENTION: "The rating was based on a spinal fusion of the L5-S 1. but other injuries that rendered me unfit were not included in my PEB. I suffered a Moving Vehicle Accident MVA during my deployment on July 2004 in Iraq and sustained multiple injuries. Therefore, I believe that my injuries from the said accident should have been added to the PEB. but were not. I was discharged through MTF ----- in Fort Bliss. Other injuries from my accident sustained in Iraq, were diagnosed treated by not added to my PEB. I believe that all my injuries from my accident rendered me unfit. I am currently rated at 60% through the VA. I have an appeal pending in the Los Angeles Regional office for trochanteric ositis of my hips, bi-laterally that was caused by my injuries sustain from my July 2004 accident".

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 rated condition for chronic LBP is the only condition that meets the Board's purview for review. 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 FPEB – Dated 20060711			VARD – All Effective Date 20060907			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Low Back Pain	5241	10%	Fusion, Lumbar Spine	5241	10%	STR
↓No Additional MEB/PEB Entries↓			Bilateral Plantar Fasciitis	5099-5020	10%	STR
			Residual Rib Strain	5299-5297	10%	STR
			0% X 2 / Not Service-Connected x 2			
Combined: 10%			Combined: 30%			

ANALYSIS SUMMARY:

Chronic Low Back Pain Condition. There were four 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)	PT ~5 Mo. Pre-Sep (20060412)	MEB NARSUM ~4 Mo. Pre-Sep (20060422)	PT ~4 Mo. Pre-Sep (20060509)	VA C&P ~7 Mo. Post-Sep (20070424)
Flexion (90 Normal)	45 (45, 45, 47)	50	85	90
Extension (30)	0 (2, 2, 2)	15	20	30
R Lat Flex (30)	10 (8, 7, 9)		20	30
L Lat Flex (30)	5 (4, 5, 4)		20	30
R Rotation (30)	30 (45, 47, 46)	30 (90)		30
L Rotation (30)	30 (35, 37, 40)	30 (90)		30
Combined (240)	120			240
Comment	Painful motion	"lumbar" ROM normal (not thoracolumbar) Tenderness No spasm Normal gait		Tenderness Painful motion As cited by VARD
§4.71a Rating	20%	20% (PEB 10%)	10%	10%

On 31 July 2004, CI was injured in a motor vehicle accident and treated for severe contusions of the left ankle/shin, back, chest and right hip. Back pain was treated with physical therapy (PT), chiropractic care and epidural lumbar injections. Magnetic resonance imaging (MRI) on 10 March 2005 showed Grade I retrolisthesis of L5 with respect to S1, and degenerative disc at this level with a left paracentral disc bulge, possibly making contact with the exiting left side S1 nerve root. After exhausting non-surgical treatment she opted to undergo spinal surgery performed 25 January 2006 including L5-S1 fusion. A PT evaluation on 27 February 2006, a month after surgery, recorded ROM with flexion of 80 degrees, extension 15 and lateral bending 20. On 4 April 2006 at orthopedic follow-up she was making excellent progress post-operatively, but it was determined that she could tolerate body armor and was referred into the MEB. The orthopedic examination on 4 April 2006 cited in the MEB narrative summary (NARSUM), noted a lumbar ROM considered normal for body habitus, with no gait abnormalities, no motor reflex or sensory deficits in either leg, no paraspinal muscle spasms. The CI did have tenderness to palpation over the left paraspinal region. The orthopedic surgeon specified the ROM as a lumbar ROM for which 50 degrees of flexion is near normal (normal 60 for isolated lumbar flexion). It was not clear to the Board whether this was a VASRD compliant thoracolumbar ROM or not, however, a PT examination on 12 April 2006, a week later, recorded thoracolumbar ROMs consistent with the NARSUM examination as noted in the chart above. A PT examination 2 weeks later on 9 May 2006, recorded improved ROM as noted in the chart above that was consistent with the February 2006 PT examination and the post-separation VA Compensation and Pension (C&P) examination cited by the VARD. The C&P examination as reported by the VA Rating Decision of 24 April 2007 (a copy of the C&P examination itself was not available) was noted for normal thoracolumbar ROM without spasm and X-ray showing post-operative changes with good spinal alignment. The VA assigned a 10% rating based on painful motion and report of pain with use.

The Board directs attention to its rating recommendation based on the above evidence. Although the MEB NARSUM and PT ROMS performed 10 days apart in April 2006 were consistent with 20% rating under the VASRD general rating formula for rating diseases and injuries of the spine, the 9 May 2006 PT examination, was more proximate to separation and recorded a ROM consistent with a 10% rating. This ROM was also noted to be consistent with the February 2006 PT examination, and the post-separation VA examination cited by the VA

rating decision. The Board opined these later examination would reasonably be more reflective of the outcome following recovery from surgery. There were no incapacitating episodes in the record, or cited in the commander's statement. The Board thus determined that the preponderance of evidence points towards a 10% rating using VASRD code 5241 due to forward flexion of the thoracolumbar spine greater than 60 degrees but not greater than 85 degrees; with tenderness and no abnormal gait. After due deliberation, considering all of the evidence, 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. In the matter of the chronic LBP 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
Chronic Low Back Pain	5241	10%
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120430, 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
XXXXXXXXXXXXXXXXXX, AR2013000021 (PD201200405)

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

XXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
() DoD PDBR
() DVA