

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1200406
BOARD DATE: 20121220

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20030611

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty CPT/0-3 (35D/Military Intelligence), medically separated for chronic low back pain (LBP) with L5/S1 herniated disc. The CI first presented with LBP in 1998. He was initially managed with conservative measure; however redeveloped LBP in the final few years of active duty, and 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). The MEB determined that the herniated disc in the L4-L5 region (the Board noted that it was actually in the L5S1 region) and chronic LBP were medically unacceptable and forwarded the two conditions for Physical Evaluation Board (PEB) adjudication. Chronic bilateral patellar tendonitis, right knee patellar tendon tear, chronic orofacial pain, masticatory myalgia/co-contraction, cervical myalgia/co-contraction, episodic anterior digastric spasm (by history), right TMJ (temporal mandibular joint) articular disc disorder, reducing, and chronic tinnitus conditions, identified in the rating chart below, were forwarded by the MEB as medically acceptable. The PEB adjudicated the chronic LBP with (an) L5S1 herniated disc conditions 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 U.S. Army concluded that I was injured with ten serviceable connected conditions. The Veterans Affairs Administration rated the serviceable connected conditions at 60%. The Army's rating did not follow in accordance with the Veterans Affairs Board (VASB). The Army's rating was 10% regarding the same service connected conditions. Please re-look all the conditions and make a fair assessment." The CI continued his contention on the back page.

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 chronic bilateral patellar tendonitis, right knee patellar tendon tear, chronic orofacial pain, masticatory myalgia-contraction, episodic anterior digastric spasm, right TMJ articular disc disorder, reducing, and chronic tinnitus 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 conditions. 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 20030225				VA (1 Wk Post-Separation) – All Effective Date 20030612			
Condition	Code	Rating		Condition	Code	Rating	Exam
Chronic LBP w/L5/S1 Herniated Disc	5293-5299-5295	10%		Lumbar Spine...	5299-5292	20%	20030507
Chronic Bil Patellar Tendonitis	Not Unfitting			DJD Left Knee	5003	10%	20030507
R Patellar Tendon Tear	Not Unfitting			DJD Right Knee	5003	10%	20030507
Chronic Orofacial Pain	Not Unfitting			TMJ Syndrome	9999-9905	20%	20030507
Masticatory Myalgia...	Not Unfitting						
Episodic Ant Digastric...	Not Unfitting						
Right TMJ ...	Not Unfitting						
Chronic Tinnitus	Not Unfitting			Bilateral Tinnitus	6260	10%	20030507
↓No Additional MEB/PEB Entries↓				Chronic HAS Associated w/TMJ	9905-8100	0%	20030507
Combined: 10%				0% X 3 / Not Service-Connected x 8			
				Combined: 60%			

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 notes that the presence of a diagnosis at separation does not render the condition unfitting and, thereby, ratable. 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 did review the additional clinical information from 2011 and 2012, but these did not affect the adjudication.

Back Condition. The CI was first seen for LBP in 1998, 5 years prior to separation. Initially, he was successfully managed conservatively, but had continued pain and radiation which lead to magnetic resonance imaging (MRI) on 30 November 2000. It showed a small central disc protrusion at L5S1. He continued to be managed with duty limitations, medications and physical therapy. The CI was seen in family practice on 23 September 2002 reporting chronic LBP and requesting a permanent profile. He was seen a month later in orthopedics and noted to have a possible recurrent herniated nucleus pulposus (HNP) at L5S1. The CI was next seen 19 December 2002 for possible extension of active duty service. He had a P2 profile and was able to do "all stated approved activities." The MRI was repeated on 8 January 2003, 5 months prior to separation, and showed the L5S1 HNP with possible nerve root compression. The CI was apparently seen in physical medicine a few days later and given a permanent L3 profile for his back condition on 13 January 2003. He was noted to be non-deployable and that he could not meet the requirements of his MOS. In the last year of active duty, the CI was placed on quarters once, for 72 hours, on 31 July 2002 for back and knee pain. The narrative summary

(NARSUM) dictated on 20 January 2003, 5 months prior to separation. The examiner noted that the CI was well nourished and in no apparent distress. Sensation, strength and reflexes were normal and there was no atrophy present. Flexion was decreased 40 degrees in flexion, but range of motion (ROM) normal otherwise. Provocative testing for radicular irritation was positive on the right. Multiple tender points were noted about the right gluteal region. At the MEB examination 2 weeks later on 3 February 2003, the CI reported continued LBP. The MEB examiner noted tenderness to palpation over the lumbar spine. Gait and posture were normal. Musculature was symmetrical and without spasm. The ROM was reduced secondary to pain as above. The neurological examination was normal. At the VA Compensation and Pension (C&P) examination on 7 May 2003, 1 month prior separation, the CI reported a several year history of pain, but denied fatigability, reduced endurance, incoordination or flare-ups. Gait and posture were normal. The ROM was reduced from pain and without DeLuca findings. The musculature was symmetrical and without atrophy. The neurological examination was normal.

Contended PEB Conditions. The contended conditions adjudicated as not unfitting by the PEB were chronic bilateral patellar tendonitis, right knee patellar tendon tear, chronic orofacial pain, masticatory myalgia/co-contraction, cervical myalgia/co-contraction, episodic anterior digastric spasm, right TMJ articular disc disorder, reducing, and chronic tinnitus conditions. 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 (Resolution of reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 "fair and equitable" standard. Of these conditions, only the knees were profiled and the last profile, a L2 profile, expired 6 September 2002, 9 months prior to separation. The commander's statement implicated all of the contended conditions; however, it did so without an apportionment of relative contribution of each condition to duty impairment, reducing the value of the statement. None of the conditions were judged to fail retention standards. There was a single evaluation for tinnitus in the service treatment record (STR). It was accomplished while in the DES process and there was no evidence of duty impairment. Other than X-rays during the DES process, the CI was last seen for the knees 10 months prior to separation and was not on a profile for his knees at separation. The conditions related to the TMJ condition were thought to be secondary to the chronic LBP. All of these conditions were reviewed by the action officer and considered by the Board. There was no indication from the record that any of these conditions significantly interfered with satisfactory duty performance other than temporarily. 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.

The Board directs attention to its rating recommendation based on the above evidence. The PEB coded the back condition as 5293, intervertebral disc syndrome, and 5299-5295, analogous to lumbosacral strain, rated it at 10%. The VA coded the back condition analogous to 5292, analogous to lumbar limitation of motion, but rated it at 20% for a moderate limitation in motion. The Board noted that the codes 5292, 5293 and 5295 are no longer used, and this case was adjudicated under the old spine rules which have since been superseded. The Board is required to use the VASRD in effect at the time of separation. The Board then considered the findings. The examinations by both the MEB and VA clinicians showed a normal neurological examination, inconsistent with a significant radiculopathy. The ROM testing was reduced on both examinations. The Board determined that the disability in evidence would warrant a moderate disability under the 5292 coding option and a 20% rating. No other coding option would provide a more favorable rating to the CI. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (Resolution of reasonable doubt), the Board recommends a disability rating of 20% coded 5292 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 chronic LBP condition, the Board unanimously recommends a disability rating of 20%, coded 5292 IAW VASRD §4.71a. In the matter of the contended chronic bilateral patellar tendonitis, right knee patellar tendon tear, chronic orofacial pain, masticatory myalgia/co-contraction, cervical myalgia/co-contraction, episodic anterior digastric spasm, right TMJ articular disc disorder, reducing, and chronic tinnitus 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 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
Chronic LBP with L5S1 Herniated Disc	5292	20%
	COMBINED	20%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120428, 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 XXXXXXXXXXXXXXXXXXXX, AR20130001038 (PD201200406)

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

XXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
 DoD PDBR
 DVA