

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXXXXXX
CASE NUMBER: PD1200431
BOARD DATE: 20121114

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20061120

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (92F/Petroleum Supply Specialist) medically separated for thoracic back pain and posttraumatic stress disorder (PTSD) with depression designated as existed prior to service (EPTS) and not service aggravated. The CI's back pain began in 2003 with exacerbations occurring approximately once a year until November 2005 when he was referred to a pain management clinic for management of his now chronic back pain. He underwent extensive evaluation to include magnetic resonance imaging (MRI) and electromyography (EMG) then treated with modalities to include chiropractic, physical therapy (PT) and steroidal injections. During the course of the evaluation and treatment of his back pain, the CI was identified as potentially suffering from PTSD after being evaluated and treated for adjustment disorder. He was referred to combat stress class and prescribed antidepressant medications. The CI did have Criteria A PTSD stressors, and by November 2005 he was given a profile for the PTSD to restrict him from deploying. The CI did not improve adequately with treatment to meet the physical requirements of his Military Occupational Specialty or satisfy physical fitness standards. He was issued a permanent U3/S3 profile on 13 July 2006 and referred for a Medical Evaluation Board (MEB). The MEB identified PTSD, thoracic degenerative disc disease (DDD) and depression along with three additional conditions (myofascial pain syndrome, thoracic disc bulges and pain disorder) that were all designated as not meeting retention standards and forwarded them for Informal Physical Evaluation Board (IPEB) adjudication. The PEB adjudicated the thoracic back pain (which included myofascial pain syndrome and thoracic disc bulges) and the PTSD as unfitting and rated each condition at 10% with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD) for a 20% combined rating. The depression condition was determined to have been EPTS and not service aggravated, therefore, not qualified for compensation. The pain disorder condition was determined to be reflected in the above diagnoses and not separately ratable to avoid pyramiding. The CI appealed to the Formal PEB (FPEB) who agreed with the IPEB's adjudication and he was then medically separated with a 20% disability rating.

CI CONTENTION: "Based on the 38 CFR 4.129 you should have discharged me at no less than 50%. You discharged me at 10% for PTSD and the Department of Veterans Affairs awarded me 70% for the same condition effective back to the date of discharge."

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 PTSD and thoracic back pain requested for consideration are rated conditions and therefore meet the criteria prescribed in DoDI 6040.44 for Board purview; and, are addressed below. Any conditions, depression in this case, 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 Admin FPEB – Dated 20060912			VA (16 Days Pre-Separation) – All Effective Date 20061121			
Condition	Code	Rating	Condition	Code	Rating	Exam
Thoracic Back Pain (myofascial pain multilevel thoracic DDD thoracic disc bulges)	5299-5242	10%	Thoracolumbar Strain w/Degenerative Disc Disease	5242	10%	20061006
PTSD	9411	10%	PTSD with Major Depressive Disorder	9411	70%	20061106
Depression	9434	EPTS	Right Knee Patellofemoral Pain Syndrome	5260-5024	10%	20061006
↓No Additional MEB/PEB Entries↓			Left Knee Patellofemoral Pain Syndrome	5260-5024	10%	20061006
			0% x1*			20061006
Combined: 20%			Combined: 80%			

*Tension HA, 8199-8100, initially rated at 0% changed to Migraine HA, 8100, rated 30% by VARD 20070904 effective 20070524

ANALYSIS SUMMARY: The Board notes the current VA ratings listed by the CI for all of his service-connected conditions, but must emphasize that its recommendations are premised on severity at the time of separation. The VA ratings which it considers in that regard are those rendered most proximate to separation. The Disability Evaluation System (DES) has neither the role nor the authority to compensate service 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).

Thoracic Back Pain 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.

Thoracolumbar ROM	NARSUM ~4 Mo. Pre-Sep	VA C&P ~1 Mo. Pre-Sep	VA C&P ~34 Mo Post-Sep
Flexion (90°)	60 ⁰	90°	70 ⁰
Ext (0-30)	15 ⁰	30°	20 ⁰
R Lat Flex (0-30)	20 ⁰	30°	20 ⁰
L Lat Flex 0-30)	25 ⁰	30 ⁰	20 ⁰
R Rotation (0-30)	30 ⁰	30°	20 ⁰
L Rotation (0-30)	30 ⁰	30°	20 ⁰
Combined (240°)	180 ⁰	240 ⁰	170 ⁰
Comments	(ROM measured by PT 3 mo. Pre-Sep) + painful motion & muscle spasm Cervical axial loading caused LBP Decreased triceps DTR bilat. Decreased tactile stimulation R 3 rd finger only Normal Strength, gait & stance	+ painful motion & tenderness to palpation No spasm, abnormal gait or spinal contour	+ tenderness to palpation + guarding of motion No abnormal musculature Strength & DTRs normal bilat. Legs
§4.71a Rating	20%	10% (painful motion)*	10%

* §4.59 Painful motion

At the MEB exam performed 8 months prior to separation, the CI reported “a lot of back pain since Nov. 03 due to a (*sic*) injury at deployment and got worse and worse.” The MEB physical exam noted paraspinal tenderness to palpation with painful flexion and extension and decreased ROM. Negative straight leg raise (SLR). Gait, strength and deep tendon reflexes were normal. Thoracic spine MRI in July 2005 was significant for upper thoracic DDD, subtle posterior disc bulge T2-3 & T7-8 without disc herniation. Cervical spine MRI in December 2005 was normal.

The narrative summary (NARSUM) prepared 4 months prior to separation noted onset of chronic neck and upper back pain in November 2003 while loading a 45 pound box into a truck while deployed. Initial treatment with non-steroidal anti-inflammatory drugs (NSAIDs) and then with chiropractic modalities did not resolve his pain. The pain was described as constant sharp pain, 8-10/10 intensity, located in the trapezius bilaterally and extending down between his shoulder blades with intermittent radiation into his low back. The pain was exacerbated by activity, prolonged standing, coughing and sneezing. He complained of right hand weakness along with tingling and numbness of both hands. MRI of the thoracic spine in November 2005 revealed multilevel thoracic degenerative disc desiccation and flattening of the disc and posterior bulges at T2-3 and T7-8. Thoracic plain film X-rays of the thoracic spine were normal, as was an MRI scan of his cervical spine. Bilateral upper extremity EMG was normal. Physical exam revealed tenderness to palpation in the cervical and thoracic spinal regions bilaterally. Painful motion of the cervical and thoracic spinal segments was present. ROM measurements, performed by PT 2 weeks after the NARSUM was prepared, are summarized in the chart above. He had undergone many procedures to manage his pain to include trigger point injections of six spots November 2005 with no relief of symptoms, a thoracic epidural steroid injection in March 2006 without reduction in his pain, and a diagnostic facet injection in June 2006, which did not reduce his pain. He was being treated with short acting and breakthrough narcotic medications during the day and methadone at night.

At the VA Compensation and Pension (C&P) exam prepared a month prior to separation, the CI reported developing back pain on or about October 2004 for unknown reasons. He complained of 9/10 sharp, stabbing pain, 1-2 times per day with each episode lasting approximately 2 hours with normal activity. Medications utilized were NSAIDs and methadone which helped relieve his pain. He had a normal gait but could not lift greater than 20 pounds and could not run or do any physical training. Physical exam revealed normal gait and posture. Thoracolumbar spine was tender to palpation. There was no fatigue, weakness or increased pain with repetitive motion. See ROM measurements summarized in the chart above. Deep tendon reflexes and strength were normal.

The Board directs attention to its rating recommendation based on the above evidence. The Army PEB applied the analogous VASRD code 5299-5242 rated at 10% while the VA applied code 5242, degenerative arthritis of the spine, and also rated at 10% based on painful motion and functional loss. While the VA's rating was appropriately based on the C&P exam findings, the NARSUM findings warrant a 20% rating based on a thoracolumbar spine flexion of 60 degrees as documented in the PT ROM measurements. Both of these codes utilize the General Rating Formula for Diseases and Injuries of the Spine. The general spine formula specifies it is "with or without symptoms such as pain (whether or not it radiates), stiffness, or aching in the area of the spine affected by residuals of injury or disease." The C&P exam, performed a month prior to separation, is considered the most probative exam for rating the CI's back disability at the time of separation. This exam documents normal, non-compensable, ROM measurements, but the documented presence of painful motion and tenderness to palpation, without spasm resulting in abnormal gait or spinal contour, elevates this exam to a 10% evaluation IAW VASRD §4.59 Painful motion. Therefore, 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 at the time of initial separation.

As discussed below, a retroactive Temporary Disability Retired List (TDRL) must be applied to this case. Therefore, the Board must determine a disability rating for the CI's condition at 6 months after the original separation date. There is no medical documentation available for review that is within a 6 month period after separation on which to base a permanent rating for the thoracic back pain condition. The next data point available that provides data useful for ascertaining the CI's level of disability at 6 months after initial separation is another C&P exam performed 34 months after separation. The pertinent ROM measurements and other physical

findings are summarized in the chart above. Those exam findings result in the same rating evaluation as the C&P exam performed a month prior to separation and therefore strongly suggests that the thoracic back pain condition had stabilized at the 10% rating level. 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 thoracic back pain condition at the time of exit from the constructed TDRL period in May 2007.

Posttraumatic Stress Disorder Condition. At the MEB exam performed 8 months prior to separation, the CI reported “since deployment I been with a lot of stress and anxiety and I can’t be in an area where is too many people close to each other.” “I only sleep an average of 3 to 4 hours a day but with the medication I’m sleeping for about 6 to 7 hours.” “I have been depressed because all the experiences of the war and the marital problems that have been caused by my illnesses.” “I have been seeing a phsychiatrist (*sic*), psychologist, care managers, social workers and under medication to control myself and to calm me down for almost a year.” “In the year 2005 I tried to harm myself and to kill myself about 4 times which the last one my psychologist has knowledge of.” The MEB physical exam simply noted normal psychiatric exam.

The psychiatric addendum to the NARSUM prepared 6 months prior to separation notes deployment to Iraq from July 2003 to April 2004. He presented to the mental health clinic in July 2005 due to symptoms of decreased concentration and memory; disturbed sleep with nightmares; restlessness or actual assaultive movement during sleep; increased rage outbursts, numbness and hyper-arousal. He was started on anti-depressant medications and attended group therapy. In August 2005 he was referred for assessment of suicidality. He reported thoughts of hurting his platoon sergeant because he was treating him “like nothing.” Despite continued treatment, he still complained of hyper-arousal, panic attacks to the point he avoided situations, disturbed sleep and intrusive thoughts. It was further noted that the member acknowledged feelings of depression going back to his teens noting significant physical, emotional and verbal abuse from his parents. He attempted suicide at age 17. No treatment was sought. There was no physical or mental status exam performed. No Global Assessment of Functioning (GAF) was noted. Final diagnosis was PTSD impairment for military duty: marked and impairment for social/industrial adaptability: considerable.

At the C&P PTSD exam prepared 2 weeks prior to separation, the CI reported deployment to Iraq from July 2003 until April 2004 where he worked as a fueler. Eight months after his return from Iraq, his wife asked that he seek help because she noticed behaviors which were out of character for him, specifically , anger problems, yelling, problems getting along with co-workers, distrustful and suspicious of everyone. He had nightmares every night and was, according to his wife, “fighting in his sleep, punching her, sweating and shaking.” At the time of this exam, the CI had not received outpatient treatment for approximately 2 months. He was prescribed Zoloft and Seroquel, both anti-depressant medications. He was sleeping 6-7 hours per night, nightmares occurred about two times per week and he was socializing with his wife and children but still having difficulty forming friendships. The examiner opined that the CI’s psychosocial functioning was poor. Mental status examination (MSE) revealed blunted, almost flat, sad affect. He appeared depressed and became tearful. Thought processes appeared logical and goal directed. There was some difficulty with explanations of proverbs due to English being his second language. There was no evidence of delusions, obsessive behavior or abnormal speech and he denied suicidal ideation. Impulse control was impaired as he reported releasing anger by going into a closet and punching the door. His GAF was 41.

The Board directs attention to its rating recommendation based on the above evidence. The PEB utilized VASRD code 9411, PTSD, and rated it 10% citing mild social/industrial impairment. The VA also utilized VASRD code 9411 but rated it 70% citing occupational and social impairment with deficiencies in most areas. Considering the documentation noted above

concerning the diagnosis of PTSD along with the adjudication of the PEB, the Board agreed that VASRD principle §4.129 should be applied in this case. The PEB rating, as described above, was derived from DoDI 1332.39 and preceded the promulgation of the National Defense Authorization Act (NDAA) 2008 mandate for DoD adherence to Veterans Administration Schedule for Rating Disabilities (VASRD) §4.129. IAW DoDI 6040.44 and DoD guidance (which applies current VASRD 4.129 to all applicable Board cases), the Board is obligated to recommend a minimum 50% PTSD rating for a retroactive 6-month period on the TDRL. The best sources of rating information for the TDRL entry period are the psychiatric addendum prepared 6 months prior to separation and the C&P examination performed 2 weeks prior to separation. Those exams document occupational impairment, trouble with coworkers, significant social impairment, marital difficulties and no social interactions outside of his family. He had a flattened, depressed affect, suicidal ideation, impaired impulse control, inability to establish and maintain effective relationships and nearly continuous depression. He had symptoms of panic attacks, poor sleep, daily nightmares, increased startle response and poor concentration. His GAF was 41, consistent with serious symptoms or serious impairment in social or occupation functioning. This level of impairment and attendant signs and symptoms are most consistent with a 70% evaluation. The next higher 100% evaluation requires total occupational and social impairment which is not present in this case as his commander's statement revealed that he was working in an administrative capacity and was a reliable soldier. The 70% rating for PTSD requires occupational and social impairment in most areas which is present in this case based on both exams performed prior to separation. Entering the retroactive six month TDRL period, a 70% is warranted as the §4.130 criteria for a rating higher than the required minimum 50% rating is present in this case and therefore the Board recommends a 70% rating at the TDRL entry period in November 2006.

The Board must now determine the most appropriate fit with VASRD 4.130 criteria at six months for its permanent rating recommendation. There are no formal mental status/mental health clinical notes available until a C&P examination performed 24 months after separation. The Board must therefore weigh the evidence contained in the psychiatric NARSUM and the C&P exam performed two weeks before initial separation and TDRL entry, balanced by the VA evidence fairly remote from separation, in order to extrapolate an estimation of the ratable impairment at six months after separation. DoDI 6040.44 specifies a 12-month interval for special consideration to VA findings, but allows the Board to consider all relevant information. The Board recognizes that a delayed VA examination reflects the stress of transition to civilian life, which is intrinsic to the permanent rating recommendation. The Board therefore will consider information from the 24-month post-separation VA evaluation with additional historical employment and GAF information present in a C&P examination performed 34 months after separation in regards to its permanent PTSD rating recommendation. This data documents continued sleep disturbance with nightmares, hyper-vigilance, irritability, explosive behavior and forgetfulness on a daily basis. There was no suicidal ideation. He continued to have marriage problems and had two friends who he visited infrequently. His mood was depressed, his affect was constricted, he had mild psychomotor retardation and his speech was "impoverished." His GAF was 60 on the 28 November 2008 examination and 48 on the 10 September 2009 examination. He was still being treated with anti-depressant and anti-anxiety medications along with individual psychotherapy. He was unemployed, having attempted a civilian job as a customer service representative (telephone work) but could not manage the stress of the job. He had not worked since 2007 and cited his irritability and poor stress tolerance as the primary reason for his unemployment. Summary statement documents "impaired significantly in occupational and social realms." This level of impairment and attendant signs and symptoms are most consistent with a 70% evaluation. The next higher 100% evaluation requires total occupational and social impairment which is present in this case however, there is no documented gross impairment in thought processes or communication; persistent delusions or hallucinations; grossly inappropriate behavior; persistent danger of hurting self or others; intermittent inability to perform activities of daily living (including

maintenance of minimal personal hygiene); disorientation to time or place; memory loss for names of close relatives, own occupation, or own name documented in the record. In addition, the VA continued its 70% rating throughout the period of time from 2 weeks prior to initial separation in November 2006 until the most recent VARD in the record, 6 October 2009 strongly suggesting stability in the CI's PTSD condition over time. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a permanent disability rating of 70% for the PTSD 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. As discussed above, PEB reliance on DoDI 1332.39 for rating PTSD was operant in this case and the condition was adjudicated independently of that instruction by the Board. The Board also applied VASRD §4.129 in its rating determination and constructed a retroactive 6-month period on the TDRL. In the matter of the thoracic back pain condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication with a 10% initial TDRL rating and a 10% permanent disability rating at 6 months, coded 5299-5242 IAW §4.71a. In the matter of the PTSD condition, the Board unanimously recommends an initial TDRL rating of 70% and a 70% permanent rating at 6 months, coded 9411 IAW VASRD §4.130. 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: TDRL at 70% for 6 months following CI's prior medical separation (PTSD at minimum of 50% IAW §4.129 and DoD direction) and then a permanent combined 70% disability retirement as below:

UNFITTING CONDITION	VASRD CODE	RATING	
		TDRL	PERMANENT
Thoracic Back Pain	5299-5242	10%	10%
Post Traumatic Stress Disorder	9411	70%	70%
	COMBINED	70%	70%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120515, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXX, 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, AR20130000626 (PD201200431)

1. Under the authority of Title 10, United States Code, section 1554(a), I approve the enclosed recommendation of the Department of Defense Physical Disability Board of Review (DoD PDBR) pertaining to the individual named in the subject line above to constructively place the individual on the Temporary Disability Retired List (TDRL) at 70% disability for six months effective the date of the individual's original medical separation for disability with severance pay and then following this six month period recharacterize the individual's separation as a permanent disability retirement with the combined disability rating of 70%.
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:
 - a. Providing a correction to the individual's separation document showing that the individual was separated by reason of temporary disability effective the date of the original medical separation for disability with severance pay.
 - b. Providing orders showing that the individual was retired with permanent disability effective the day following the six month TDRL period.
 - c. Adjusting pay and allowances accordingly. Pay and allowance adjustment will account for recoupment of severance pay, provide 70% retired pay for the constructive temporary disability retired six month period effective the date of the individual's original medical separation and then payment of permanent disability retired pay at 70% effective the day following the constructive six month TDRL period.
 - d. Affording the individual the opportunity to elect Survivor Benefit Plan (SBP) and medical TRICARE retiree options.
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