

RECORD OF PROCEEDINGS  
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXX  
CASE NUMBER: PD1200438  
BOARD DATE: 20121218

BRANCH OF SERVICE: ARMY  
SEPARATION DATE: 20041031

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**SUMMARY OF CASE:** Data extracted from the available evidence of record reflects that this covered individual (CI) was a National Guard, SGT/E-5 (31B/Military Police) medically separated for venous insufficiency of the left leg and lumbar disc disease. He experienced an onset of left lower leg pain and low back pain (LBP) during deployment in 2002. He was subsequently diagnosed with venous insufficiency of the leg and disc disease of the lumbar spine. Neither condition could be adequately rehabilitated to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was consequently issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). Both conditions were forwarded to the Physical Evaluation Board (PEB) IAW AR 40-501. No other conditions were submitted by the MEB. The PEB adjudicated "left leg pain and venous insufficiency" and "chronic low back pain, without neurologic abnormality" as unfitting, each rated 10% with citation of criteria from the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 20% combined disability rating.

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**CI CONTENTION:** "I believe that my medical condition were [sic] more serious and my daily leaving [sic] is very affected. All my conditions are getting worst [sic]." He does not elaborate further or specify a request for Board consideration of any additional conditions.

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**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 left leg vascular and lumbar spine conditions are addressed below. 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.

The Board acknowledges the CI's statements regarding the significant impairment with which his service-connected condition continues to burden him; but, must emphasize that the Disability Evaluation System (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 Veteran Affairs (DVA), operating under a different set of laws. The Board considers DVA evidence proximate to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12-month interval for special consideration to post-separation evidence. Post-separation evidence is probative to the Board's recommendations only to the extent that it reasonably reflects the disability at the time of separation.

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## RATING COMPARISON:

Service PEB – Dated 20040830			VA (3 & 6 Mos. Post-Separation) –Effective 20041031			
Condition	Code	Rating	Condition	Code	Rating	Exam
Left Leg Venous Insufficiency	7120	10%	Venous Insufficiency, Left Leg	7120	10%	20050125
Chronic Low Back Pain	5299-5237	10%	Multilevel Lumbar DJD	5243	30%	20050505
Combined: 20%			Combined: 40%			

## ANALYSIS SUMMARY:

Left Leg Vascular Condition. The CI first noted left calf pain and swelling during a 2002 Saudi deployment. After redeployment the symptoms resolved with conservative measures, but recurred after his unit was again mobilized in 2003. At this time it was correlated with running and prolonged standing or exertion, requiring medication and profile restrictions. When his unit was demobilized in 2004, he was placed on medical hold for further evaluation of the condition. Ancillary studies revealed lower venous insufficiency without thrombosis, and myositis (muscle inflammation) of the calf area. After orthopedic, vascular surgery and rheumatology consultations, a MEB was recommended. A few outpatient notes from the MEB period document mild left lower leg edema, and one describes pigmentary changes. Most entries note a history of pain and swelling with activity, but did not document real time exam findings of such. The narrative summary (NARSUM) is excerpted below.

However, the pain continues to recur with prolonged standing or sitting and with physical activity. [CI] describes his pain as a throbbing pain in his left foot and a burning pain in his calf area, which increases with prolonged standing or sitting and improves with rest and leg elevation. ... Even though the pain improves with rest and leg elevation, it invariably increases every time he tries to perform physical activities to the point that he is not able to perform the duties of his MOS.

The NARSUM physical exam noted “slight tenderness to palpation and edema in the left calf.” At his VA Compensation and Pension (C&P) exam (3 months post-separation), the CI reported pain with prolonged walking, standing, or sitting; as well with stair climbing and other physical activities; rated on average 4-5/10; and, improving with rest. The VA examiner recorded the following physical findings, “Small varicose veins in extremities with hyperpigmented macules below knees, bilaterally. There is mild edema, bilaterally below the knee, more marked in left leg. ... No venous cord detected at physical examination. No redness and no warmth of legs.”

The Board directs attention to its rating recommendation based on the above evidence. Both the PEB and VA applied the same code, 7120 (varicose veins), which is the optimal clinical fit; and, both arrived at the same 10% rating. The 10% description under 7120 is “Intermittent edema of extremity or aching and fatigue in leg after prolonged standing or walking, with symptoms relieved by elevation of extremity or compression hosiery.” The next higher (20%) rating requires “Persistent edema, incompletely relieved by elevation of extremity, with or without beginning stasis pigmentation or eczema.” The 10% description is a good fit with the NARSUM, C&P, and outpatient clinical histories; and, reasonably portrays the overall disability picture. There is, however, some evidence (particularly exam findings) consistent with the 20% description. It may be surmised that mild edema was a more or less constant feature, although the superimposed myositis would account for that as a baseline finding regardless of the severity of venous insufficiency at any point in time. Members agreed that elements of both ratings were in evidence; but, that the disability and ratable elements were better reflected by the 10% description. 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 of the left leg venous insufficiency.

Lumbar Spine Condition. The CI experienced an onset of LBP during the same Saudi deployment noted above. The clinical course, in fact, mirrored that of the leg condition; with worsening during the 2003 mobilization; and, the back condition was added to the 2004 MEB for the leg condition. Earlier clinical entries document left foot numbness, but no motor symptoms or evolving radicular symptoms are in evidence. No definitive imaging studies or surgical consultations are found for the lumbar spine condition. Outpatient entries during the MEB period were concentrated on the extremity vascular condition, but a concurrent complaint of back pain during those visits is found in various notes. Gross range-of-motion (ROM) observations are sparse. An entry 14 months prior to separation noted “pain at the end range” for flexion. No comments regarding impaired ROM or gait are found in any outpatient note during the MEB period. Normal neurologic examinations are recorded. The NARSUM is excerpted below.

However, just like with the leg pain, his pain would recur with physical activity. ... He reports that with physical therapy he did get significant improvement of his pain, but again his pain recurs every time he tries to perform physical activities. [CI] reports no trauma to his lower back area and describes no other associated symptoms such as bowel and bladder dysfunction, paresthesia of the lower extremities, or weakness of the lower extremities. His pain increases with bending and prolonged standing or sitting and improves with rest, medications, and physical therapy.

The NARSUM physical exam noted a normal gait and no spinal tenderness, with normal neurological findings. The 3 month post-separation VA (general) C&P examiner did not differentiate the pain and disability of the back condition from that of the extremity condition. No radicular symptoms were reported. Normal gait and spinal contour was noted, although lumbar spasm and tenderness were recorded; neurological findings were again normal. At the 6 month post-separation VA (spine) C&P, the reported history reflected more severity and some interference with daily activities. The only occupational limitation noted was heavy lifting. At this point, radicular symptoms were reported (bilateral, left > right, distal paresthesias) which had not surfaced in MEB records; and, were denied in the NARSUM. The 6 month examination noted normal gait and contour; palpable spasm and tenderness; and, no weakness or neurological deficits. The MEB and post-separation VA ROM evaluations are summarized in the chart below.

Thoracolumbar ROM	MEB ~4 Mo. Pre-Sep	VA C&P ~3 Mo. Post-Sep	VA C&P ~6 Mo. Post-Sep
Flexion (90° Normal)	80°	60° (threshold for 20%)	40°
Combined (240°)	220°	210°	150°
§4.71a Rating	10%	20%	20%

The Board directs attention to its rating recommendation based on the above evidence. The PEB’s 10% rating was IAW the VASRD §4.71a general spine formula for the ROMs in evidence. The VA rating decision (VARD) relied on the ROM evidence from the 6 month spine exam. The VARD justified its 30% rating as follows, “We have elevated the 20 to 30 percent since the examiner indicates that you are additionally limited by pain; not additionally limited by weakness, fatigue, or lack of endurance.” The VA examiner’s recorded comments in that regard are confusing; since the numerical deductions listed would indicate that after repetition, all forward and lateral spine motion was prohibited by pain. Members agreed, especially considering the contradictory evidence, that no DeLuca based elevation of rating could be supported for the Board’s recommendation. The Board is left in this case with a judgment regarding probative value assignment to the Army or VA ROM evidence, with obvious implications for the rating outcome. The VA evidence suggests a steadily worsening course after separation with the emergence of bilateral radicular symptoms. The only evidence for the latter was the left distal sensory symptoms in the 2004 entries. The VA evidence provides no interim history of trauma or other aggravation in explanation of the worsened severity. There is little corroborative evidence, although that which is available is consistent with the NARSUM examiner’s ROM measurements. The Board must also acknowledge that VA rating evaluations

based on ROM rely on subjective pain thresholds which are patently associated with financial incentive, thus inherently subject to some loss of objectivity. This notwithstanding, considering the nature of the pathology and the VA clinical history, it can be easily accepted that the spine condition clinically evolved after separation. Given the stable course preceding separation, however, this development cannot be reasonably incorporated into the disability rating. After due deliberation and mindful of reasonable doubt, members agreed that preponderant probative value should be assigned to the MEB evaluation. Considering the totality of the evidence, therefore, the Board concluded that there was insufficient cause to recommend a change in the PEB rating of the lumbar spine condition. The PEB designated code remains applicable.

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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 left leg vascular condition and IAW VASRD §4.104, the Board unanimously recommends no change in the PEB adjudication. In the matter of the lumbar spine 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.

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**RECOMMENDATION:** The Board, therefore, recommends that there be no recharacterization of the CI's disability and separation determination.

<b>UNFITTING CONDITION</b>	<b>VASRD CODE</b>	<b>RATING</b>
Venous Insufficiency, Left Leg	7120	10%
Chronic Low Back Pain	5299-5237	10%
	<b>COMBINED</b>	<b>20%</b>

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The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120521, 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 / XXXXXXXXXX), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for  
XXXXXXXXXXXXXX, AR20130000143 (PD201200438)

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

XXXXXXXXXXXXXX  
Deputy Assistant Secretary  
(Army Review Boards)

CF:  
 DoD PDBR  
 DVA