

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1200489
BOARD DATE: 20130109

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20030801

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (52C/Utilities Equipment Repairer), medically separated for lumbosacral strain with left sciatic dysfunction. The CI first noted low back pain (LBP) in 1997 after lifting heavy gas cylinders. He was found to have a herniated nucleus pulposus (HNP) associated with left sciatic dysfunction. The CI did not improve adequately with conservative treatment to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent L3 E2 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded lumbar spine, herniated disc pulposus, to the Physical Evaluation Board (PEB) for adjudication. Adjustment disorder, vision defect, intermittent retropatellar pain syndrome (RPPS) of the left knee, mild asymptomatic pes planus, mild (bilateral) high frequency hearing loss (HFHL) and occasional heartburn, identified in the rating chart below, were forwarded by the MEB as conditions meeting retention standards. The PEB adjudicated the lumbosacral strain and left sciatic dysfunction conditions as unfitting, rated 10% each, 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 20% disability rating.

CI CONTENTION: “Conditions at time of discharge have since then developed into further medical conditions.” The CI made no specific contention in his application.

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. 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 IPEB – Dated 20030627			VA (<1 Mo. Pre-Separation) – All Effective Date 20030802			
Condition	Code	Rating	Condition	Code	Rating	Exam
Lumbosacral strain	5293 5299-5295	10%	HNP lumbar	5293-5292	20%	20030718
L sciatic dysfunction	5293-8620	10%	Left sciatic dysfunction	5293-8620	10%	20030718
Adj disorder	Not Unfitting		Adjustment disorder	9440	0%	STR
RPPS L knee	Not Unfitting		L knee, RPPS	5099-5014	10%	20030718
Heartburn	Not Unfitting		Heartburn	7399-7319	NSC	20030718
Mild Bil HFHL	Not Unfitting		NO VA ENTRY			
Vision defect	Not Unfitting		NO VA ENTRY			
Mild asy pes planus	Not Unfitting		NO VA ENTRY			20030718
↓No Additional MEB/PEB Entries↓			R shoulder subacromial bursitis	5019	10%	20030718
			L shoulder subacromial bursitis	5019	10%	20030718
			0% X 4 / Not Service-Connected x 1			20030718
Combined: 20%			Combined: 50%			

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 the 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.

Lumbosacral strain and left sciatic dysfunction condition. The first record in evidence for LBP was in late October 1999 when the CI presented with a 3 week history of pain after repetitive lifting. He was referred to physical therapy (PT) where normal range-of-motion (ROM) and gait were noted although his symptoms increased with ROM. He was treated with PT and medications, but had recurrent symptoms over the next year. On 12 September 2000, he was found to have a left lateral disc protrusion at L5S1 with left foraminal stenosis on magnetic resonance imaging (MRI) examination. He was seen in orthopedics and given duty limitations and referred back to PT. He continued conservative management, but had persistent pain and was referred to Physical Medicine and Rehabilitation (PMR) on 2 April 2001. The neurological examination and ROM were normal. He was referred to an MOS Medical Retention Board (MMRB) and retention with duty limitations recommended. On 25 February 2003, an orthopedist noted a normal gait and neurological examination with a positive test for nerve root irritation and tenderness in the lumbar region. X-rays were normal. He was issued a permanent L3 profile and referred to MEB. On 11 April 2003, he was placed on quarters for 72 hours; this is the only record of quarters found in evidence. He was seen again in orthopedics on 17 April 2003 and gave a history of LBP radiating to both calves. An MRI was repeated on 30 April 2003 and showed left L5S1 disc protrusion with mild lateral recess narrowing adjacent to the left S1 nerve root and disc bulging at L3-4 and L4-5. At the MEB examination on 22 April 2003, the CI reported numbness and tingling in both legs and that the LBP radiated to both legs. On examination, he had tenderness at the lumbo-sacral junction without spasm and slightly reduced flexion, extension as well as left lateral bend and rotation. Testing for nerve root irritation was negative. One non-organic sign of pain was present. Mild weakness of left ankle dorsiflexion was noted as was diminished sensation in a S1 distribution. At an orthopedic evaluation on 28 May 2003, obtained for the MEB, the CI reported progressive LBP since 1999 which had been treated with epidurals, PT and other conservative management without relief of his pain. On examination, he was found to have spasm and tenderness in the lower lumbar spine area with slight instability and a slight decrease in ROM. Testing for nerve root irritation was slightly positive on the right. Strength and sensation were grossly normal. Reflexes were symmetric. The narrative summary (NARSUM) dictated on 5 June 2003, 2 months prior to separation. It noted the above and that the CI could not run, bend, twist, lift heavy objects or stand over 30 minutes without aggravation of his pain. He was also limited to sitting no more than an hour and walking no more than 40 minutes. It cited the both the above examinations for objective findings. It noted that the ROM was slightly reduced in flexion, extension and left rotation and side bend. At the VA Compensation and Pension (C&P) examination on 18 July 2003, 2 weeks prior to separation, the CI reported a lot of pain if he sat in one place over 15 minutes or drove over 30 minutes and a past history of foot drop on the left. Gait and posture were noted to be normal without foot drop although with reversal of normal lumbar lordosis. Episodic spasms were noted. The ROM was reduced to 70 degrees in flexion and another ten degrees after repetition due to spasms and pain. A radiculitis at L5S1 was noted. Provocative

testing for nerve root irritation was positive on the left at 70 degrees. Some weakness at 4/5 was noted for dorsiflexion of the left great toe. X-rays were normal.

The Board directs attention to its rating recommendation based on the above evidence. The PEB and VA both rated the left sciatic dysfunction at 10%, coding it 5293-8620, for intervertebral disc syndrome and sciatic neuritis. The Board noted that both the MEB and C&P examiners noted slight weakness of left ankle dorsiflexion, but that the orthopedist did not. The C&P examiner specifically noted the gait to be normal without foot drop. This supports no more than a mild disability. 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 left sciatic dysfunction condition. The Board then considered the rating for the L5S1 HNP. The PEB coded the condition as 5293 and 5299-5295, analogous to lumbosacral strain, and rated it 10%. The VA coded it 5293 and 5292, limitation of motion, but rated it at 20% for moderate limitation of motion. The Board noted that the ROM seen on the C&P examination was decreased from that seen on the two MEB examinations, both of which showed only a slight decrease. The Board considered that the C&P examination was more proximate to separation, but that the orthopedic examination was by a more experienced examiner and only one month earlier and supported by the other MEB examination. It was therefore assigned a higher 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 HNP 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 HNP and left sciatica conditions and IAW VASRD §4.71a and 4.124, 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
Herniated Disc Pulposus L5/S1 with some Left Sciatica	5293-5299-5295	10%
Left Sciatic Dysfunction	5293 8620	10%
	COMBINED	20%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120604, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans’ Affairs Treatment Record

XXXXXXXXXXXXXXXX, 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
XXXXXXXXXXXXXXXXXXXX, AR20130000823 (PD201200489)

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

XXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
 DoD PDBR
 DVA