

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXX
CASE NUMBER: PD1200538
BOARD DATE: 20121220

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20011120

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (67T, Helicopter Repair) medically separated for low back pain (LBP) and left hip pain. She was treated, but did not improve adequately to fully perform her military duties or meet physical fitness standards. The CI was issued a permanent profile and underwent a Medical Evaluation Board (MEB). The MEB found her LBP and left hip pain medically unacceptable IAW AR 40-501, and referred her to a Physical Evaluation Board (PEB). No other conditions were listed on the DA Form 3947. The PEB combined the two painful conditions into a single unfitting condition, and rated it 10%, IAW the US Army Physical Disability Agency (USAPDA) Policy/Guidance Memorandum #13, Pain Policy. The CI accepted the PEB findings, and was medically separated with 10% disability.

CI's CONTENTION: The CI states, "Other hip is hurting due to injured hip out of place. My hip and back injury were grouped as one. [sic] Should be separate and add the other hip."

SCOPE OF REVIEW: The Board's scope of 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 unfitting chronic pain condition (low back and left anterior hip pain) meets the criteria prescribed in DoDI 6040.44, and is accordingly addressed below. Right hip pain is not within the Board's purview. Any condition outside the Board's defined scope of review may be eligible for future consideration by the Army Board for Correction of Military Records.

RATING COMPARISON:

Army PEB – dated 20010727			VA (No Exam) – All Effective 20011121			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Pain, Low Back and Left Anterior Hip	5099-5003	10%	Chronic Low Back and Left Anterior Hip Pain	5295	10%	STR
↓No Additional MEB/PEB Entries↓			Not Service Connected (NSC) x 2			STR
Combined: 10%			Combined: 10%			

ANALYSIS SUMMARY:

Chronic LBP and Left Hip Pain. The CI has a history of scoliosis and leg length discrepancy (LLD). She injured her back and left hip during pregnancy. She was treated with physical therapy (PT) and non-steroidal anti-inflammatory drugs (NSAIDs), but the LBP and left hip pain persisted. She was unable to fully perform her military duties, so an MEB was initiated. Her MEB clinical evaluation was on 23 April 2001. At that exam, she had good flexion at the waist. Straight leg raise (SLR) was negative and neurological exam was normal. Both hips had full range-of-motion (ROM). There was some tenderness anterior to the greater trochanter and groin. As noted

above, the Army PEB found her unfit and she was medically separated in November 2001, with a disability rating of 10%. The VA granted service-connection for chronic low back and left anterior hip pain, and also rated it 10%. No VA Compensation and Pension (C&P) exam was done at that time. Four years later, on 1 December 2005, the CI had a C&P exam. She was working as an accounting clerk and administrative assistant for a sign company. Examination of the lumbar spine showed normal lumbar lordosis and no paraspinal muscle spasm. ROM testing revealed forward flexion of 75 degrees, extension 30 degrees, and lateral bending of 40 degrees in either direction. These ROM tests were not painful. Heel and toe walk was normal. SLR was negative and neurological exam was normal. While standing, she did have a pelvic tilt, suggesting LLD. Examination of the left hip showed good ROM with no pain, and was generally a normal exam of the left hip.

The Board carefully reviewed all evidentiary information available. The PEB combined the CI's two chronic pain problems into a single unfitting condition: "Chronic Pain, Low Back and Left Anterior Hip." The condition was coded 5099-5003 and rated at 10%. The December 2001 VA Rating Decision (VARD) also listed a single bundled condition, and also assigned a rating of 10%. The Board evaluated whether or not it was appropriate for the two chronic pain problems to be "bundled" together. The Board must determine if the PEB and the VA's approach of combining the conditions under a single rating was justified in lieu of separate ratings. The Board must apply separate codes and ratings in its recommendations if compensable ratings for each condition are achieved IAW the Veteran's Administration Schedule for Rating Disabilities (VASRD). If the Board judges that two or more separate ratings are warranted, however, it must satisfy the requirement that each 'unbundled' condition was separately unfitting. After due deliberation, the Board agreed that the evidence supports a conclusion that each of the chronic pain conditions, separately, would have rendered the CI unable to perform her required military duties (helicopter repair). Accordingly, the Board recommends a separate disability rating for each of the two chronic pain conditions. It is not appropriate for the LBP and the left anterior hip pain to be "bundled" together, and treated as a single condition.

After consideration of the clinical examinations noted above, the Board determined that the April 2001 MEB exam had greater probative value since it was conducted 7 months prior to separation. The C&P exam was done 48 months after separation. The Board can use VA 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. Post-separation evidence is probative only to the extent that it reasonably reflects the disability and fitness implications at separation. The Board determined that 48 months was too long. Therefore, due to its very low probative value, the clinical data from the December 2005 C&P exam was not used by the Board in arriving at its rating recommendations.

The 2001 VASRD coding and rating standards for the spine, which were in effect at the time of the CI's separation, were modified in September 2002, and then were changed again in September 2003. The older 2001 standards were based on the rater's opinion regarding degree of severity, whereas current standards specify certain rating thresholds, with measured degrees of ROM impairment. IAW DoDI 6040.44, the Board must use the VASRD coding and rating standards which were in effect at the time of the CI's separation. After reviewing all the evidence, the Board unanimously agreed that the CI's low back condition was best described as "slight." There was insufficient evidence in the treatment record to support classifying her LBP condition as "moderate" or "severe." Following due deliberation, the Board unanimously recommends a rating of 10% for the chronic low back pain (LBP) condition. It is appropriately coded 5292, and IAW VASRD §4.71a, meets criteria for the 10% rating level.

The Board then directed its attention to the painful left hip condition. Based on data from the April 2001 MEB exam, hip ROM was full, but there was tenderness present. With full ROM, the left hip joint was essentially non-compensable based on the VASRD §4.71a diagnostic codes for

loss of hip and thigh motion (5251, 5252, and 5253). However, due to the CI's history of chronic pain and the tenderness on exam, the Board determined that it would be reasonable to surmise that hip motion was painful. IAW VASRD §4.40, §4.45, and §4.59, a 10% rating is warranted when there is evidence of functional limitation due to painful motion of a major joint. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 10% for chronic left hip pain. It is appropriately coded 5299-5252 and meets criteria for the 10% rating level.

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 the USAPDA pain policy was operant in this case and the condition was adjudicated independently of that policy by the Board. In the matter of the chronic LBP, the Board unanimously recommends a disability rating of 10%, coded 5292, IAW §4.71a of the VASRD that was in effect at the time of separation. In the matter of the chronic left anterior hip pain, the Board unanimously recommends a disability rating of 10%, coded 5299-5252, IAW VASRD §4.40, §4.45, §4.59, and §4.71a. There were no other conditions within the Board's scope of review for consideration.

RECOMMENDATION: The Board, therefore, recommends that the CI's prior determination be modified as follows, effective as of the date of her prior medical separation:

UNFITTING CONDITION	VASRD CODE	RATING
Chronic Low Back Pain	5292	10%
Chronic Left Anterior Hip Pain	5299-5252	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

XXXXXXXXXXXXXXXXXXXX, DAF
 President
 Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency
 (TAPD-ZB / XXXXXXXXXXXXXXX), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation
for XXXXXXXXXXXXXXXXXXXX, AR20130000040 (PD201200538)

1. I have reviewed the enclosed Department of Defense Physical Disability Board of Review (DoD PDDBR) 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

XXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
 DoD PDDBR
 DVA