

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1200560
BOARD DATE: 20130102

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20020301

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (19K/Armored Crewman) medically separated for chronic low back pain (LBP), due to degenerative disc disease (DDD). He was treated, but did not improve adequately to fully perform his military duties or meet physical fitness standards. He was issued a permanent L3 profile and underwent a Medical Evaluation Board (MEB). The MEB found his chronic LBP condition medically unacceptable, and referred him to a Physical Evaluation Board (PEB). The PEB found the LBP condition unfitting, and rated it 10% IAW DoD Instruction 1332.39. The CI accepted the PEB findings, and was medically separated with 10% disability rating.

CI CONTENTION: "Condition has worsened and have been recently diagnosed with PTSD."

SCOPE OF REVIEW: The Board's scope of review as defined in DoDI 6040.44, 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 LBP condition meets the criteria prescribed in DoDI 6040.44 and is accordingly addressed below. The posttraumatic stress disorder (PTSD) which was mentioned by the CI on the DD Form 294 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 20011106			VA (8 mos. Post-Separation) – All Effective 20020302			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Low Back Pain	5299-5295	10%	DDD, Lumbosacral Spine	5293-5292	20%	20021031
↓No Additional MEB/PEB Entries↓			(No Other VA Rating Decision Entries from 2002/2003)			
Combined: 10%			Combined: 20%			

ANALYSIS SUMMARY:

Low Back Pain (LBP). The CI injured his lower back in February 1998 while working on a tank, and he has suffered from LBP ever since. He was seen by multiple providers, and many different treatment options were tried, including; medication, physical therapy (PT), and epidural steroid injections. He was evaluated by Neurosurgery, and it was determined that he was not a surgical candidate. Despite all of his treatment, the LBP persisted and an MEB was initiated. The MEB clinical evaluation was completed on 9 October 2001. At that exam, he was in no acute distress. His gait was normal and heel-toe walk was normal. There was some tenderness to palpation (TTP), and forward flexion was limited to 60 degrees (with painful motion). Motor strength testing was normal, but sensory testing showed a decrease in sensation bilaterally. Straight leg raise (SLR) was positive on the right. His pain was rated as

constant, slight. The diagnosis was radicular LBP with lumbar DDD. As noted above, the CI was medically separated from the Army due to his unfitting LBP condition. On 31 October 2002, 8 months after separation, the CI had a VA Compensation and Pension (C&P) exam. At that time, he reported that LBP was affecting his daily activities. His gait was normal and there was no abnormal back curvature. He flexed at the waist to 45 degrees, and used his arms to get back upright. He had pain with flexion, extension, and lateral bending. Neurological exam was unremarkable.

The Board carefully reviewed all evidentiary information available. After consideration of the clinical examinations noted above, the Board determined that the October 2001 MEB exam had greater probative value since it was conducted closer to the date of separation. The C&P exam was done 8 months after separation. The Board can use VA evidence proximal to separation in arriving at its recommendations, but post-separation evidence is probative only to the extent that it reasonably reflects the disability and fitness implications at separation. The Board determined that because it was done 8 months after separation, the probative value of the C&P exam was somewhat diminished. However, clinical data from that October 2002 C&P exam was taken into consideration by the Board in arriving at its rating recommendation.

The VA Schedule for Rating Disabilities (VASRD) coding and rating standards for limitation of spine motion, 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 standards were based on the rater's opinion regarding degree of severity, whereas current standards specify certain rating thresholds, with measured degrees for range-of-motion (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 from service in March 2002. After reviewing all the evidence, the Board unanimously agreed that the most appropriate diagnostic code (DC) for the CI's low back condition was 5292. The degree of severity was best described as "moderate." There was insufficient evidence in the treatment record to support classifying the LBP condition as "severe." After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a rating of 20% for the LBP 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 was operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the chronic LBP condition, the Board unanimously recommends a disability rating of 20%, IAW VASRD §4.3 and §4.71a.

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 Low Back Pain	5292	20%
	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

XXXXXXXXXXXXXXXXXX, DAF
President
Physical Disability Board of Review

SFMR-RB

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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation
for XXXXXXXXXXXXXXXXXXXX, AR20130000649 (PD201200560)

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

XXXXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
() DoD PD BR
() DVA

