

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1200567
BOARD DATE: 20121109

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20031215

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty PFC/E-3 (13B/Cannon Crewman) medically separated for chronic back pain. He was initially injured moving boxes of artillery ammunition in Korea; approximately in August 2002 He was treated with medication, chiropractic and physical therapy, but could not be adequately rehabilitated to meet the physical requirements of his Military Occupational Specialty (MOS) or physical fitness standards. The CI was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded "degenerative disk disease and chronic lumbago with radiculopathy", citing AR 40-501 (para 3-39e), to the Physical Evaluation Board (PEB). No other conditions were identified or submitted by the MEB. The PEB adjudicated "chronic back pain, without neurologic abnormality, with limitation of motion due to pain with localized tenderness" [sic] as unfitting; rated at 10%. The CI made no appeals and was medically separated with a 10% disability rating.

CI CONTENTION: "Condition has worsened to include more pain."

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in Department of Defense Instruction (DoDI) 6040.44 (Enclosure 3, paragraph 5.e.2) is limited to those conditions 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." Accordingly, the rating for the single specified unfitting condition of chronic back pain is 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.

RATING COMPARISON:

Service PEB – Dated 20031121			VA (~1 Mo. Pre-Separation) – Effective 20031216			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Back Pain	5299-5237	10%	Degenerative Disc Disease w/ Herniated Disc	5343	10%	20031125
Combined: 10%			Combined: 10%			

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.

Chronic Back Pain Condition. There were three goniometric range-of-motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation, with documentation of additional ratable criteria, are summarized in the chart below.

Thoracolumbar ROM (Degrees)	Neurosurgery ~3 Mo. Pre-Sep (20030905)	MEB ~2 Mo. Pre-Sep (20031008)	VA C&P ~ 1 Mo. Pre-Sep (20031125)
Flexion (90° Normal)	70°	65°	50° (48°)
Extension (30°)	30°	20°	10° (12°)
Combined (240°)	220°	190°	165°
Comment	Tenderness. Gait normal. No radiculopathy.	Tenderness. "Without significant spasm" Gait normal. Posture normal. No radiculopathy.	ROM to pain onset. No tenderness. No spasm. Gait normal. Posture normal. No radiculopathy.
§4.71a Rating	10%	10%	20%

Magnetic resonance imaging (MRI) performed on 25 June 2003 demonstrated the presence of degenerative disc disease (DDD) at L3-4 and L4-5, with a small central protrusion of the L3-4 disc without neuroforaminal stenosis, and a minor left L4-5 neuroforaminal protrusion. Neurosurgery evaluation performed on 5 September 2003 documented chronic low back pain without radiation of pain. On examination, the ROM was slightly reduced as recorded in the chart. There was tenderness. There were no objective findings of radiculopathy (normal strength, reflexes, sensation, and negative provocative maneuvers for nerve root irritation). Gait was normal. Non-surgical treatment was advised. The MEB narrative summary (NARSUM), performed on 30 September 2003 recorded continued back pain exacerbated by strenuous activity including lifting. The CI denied the presence of radicular pain. On examination, ROM was slightly reduced compared to the neurosurgery examination a month before. There was tenderness "without significant spasm". Gait and posture were normal. The examiner thought there was "mild levoscoliosis" present on physical examination, but scoliosis X-rays performed the same day reported there was no scoliosis present. There were no objective findings of radiculopathy (normal strength, reflexes, sensation, and negative provocative maneuvers for nerve root irritation). The VA Compensation and Pension (C&P) examination was 25 November 2003, 3 weeks before separation. The CI reported aching back pain exacerbated by activity and was unable to jog or jump. He denied incapacitation and stated he could function with medication. On examination, the ROM values recorded were for onset of pain. Motion past onset of pain was not recorded. The examiner noted that pain was the major functional impact and that function was not additionally limited by fatigue, weakness, lack of endurance or incoordination. There was no examination evidence of radiculopathy. The Board directs attention to its rating recommendation based on the above evidence. The ROM evidence from the neurosurgery and MEB NARSUM examinations support the 10% rating. Although the MEB NARSUM examiner noted "without significant spasm" and "mild levoscoliosis" suggestive of findings supportive of a 20% rating, X-rays the same day excluded the presence of levoscoliosis or abnormal spinal contour. All other examinations did not find muscle spasm or abnormal contour, and gait was normal in all examinations. The Board noted that the flexion reported by the C&P examiner merited consideration of a 20%

rating. However the ROM reported by the examiner was not the full ROM, rather, it was the ROM at which there was onset of pain. The C&P ROM values were not consistent with prior examinations and were not explained by a new injury. The Board also noted that previous tenderness was absent and that there was no muscle spasm with normal posture and gait. Although more than a year after separation, the Board noted the C&P examination July 2008 with a ROM examination (flexion 85 degrees, combined 210 degrees) that was similar to the neurosurgery examination from 5 September 2003 leading the Board to conclude that the neurosurgery and MEB NARSUM examinations more consistently reflected the disability at the time of separation. There was no evidence of incapacitating episodes due to intervertebral disc disease that would meet the criteria for a minimum rating under the alternative formula for incapacitating episodes due to intervertebral disease. There was no evidence of an unfitting peripheral nerve impairment in this case. 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 chronic back pain 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 chronic back pain 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.

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
Chronic Back Pain	5299-5237	10%
	COMBINED	10%

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 / XXXXXXXX), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for
XXXXXXXXXXXXXXXX, AR20120022719 (PD201200567)

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

XXXXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
 DoD PDBR
 DVA