

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXX
CASE NUMBER: PD1200617
BOARD DATE: 20130108

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20020410

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/Armor Crewman), medically separated for chronic low back pain (LBP), due to herniated nucleus pulposus (HNP). He was treated, but did not improve adequately to fully perform his military duties, or meet physical fitness standards. He was issued a permanent P3 profile and underwent a Medical Evaluation Board (MEB). The MEB found his LBP medically unacceptable IAW AR 40-501, and referred him to a Physical Evaluation Board (PEB). No other conditions were listed on the DA Form 3947. The PEB found the LBP condition unfitting and rated it 10%. The CI accepted the PEB finding, and was medically separated with a 10% disability rating.

CI CONTENTION: "My conditions have all gotten much worse, my back so bad I required another surgery. My knees make it impossible to sit for hours and all this raises blood pressure."

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 back pain condition (chronic lower back pain with left lower extremity radicular pain) meets the criteria prescribed in DoDI 6040.44, and is accordingly addressed below. No other condition is 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 20020201			VA (7 mos. Post-Separation) – All Effective 20020411			
Condition	Code	Rating	Condition	Code	Rating	Exam
Low Back Pain (LBP)	5293	10%	Degenerative Disc Disease (DDD)	5293-5292	20%	20021119
↓No Additional MEB/PEB Entries↓			0% x 1 / Not Service-Connected x 2			20021119
Combined: 10%			Combined: 20%			

ANALYSIS SUMMARY: The Board acknowledges the CI's assertion that his conditions have all gotten much worse. It is noted for the record that the Board is subject to the same laws for Service disability entitlements as those under which the Disability Evaluation System (DES) operates. The DES has neither the role nor the authority to compensate members for future severity or potential complications of conditions. That role and authority is granted to the Department of Veterans Affairs (DVA). The Board evaluates DVA evidence in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness and rating determinations at the time of separation. While the DES considers all of the CI's medical conditions, compensation can only be offered for those conditions that cut short a service member's career, and then only to the degree of severity present at the time of separation.

The DVA, however, is empowered to compensate for 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 change over time.

Low Back Pain (LBP), with Left Lower Extremity Radicular Pain. In 1999, the CI began having LBP and left radicular pain. He underwent back surgery and was better, but his symptoms gradually returned and became progressively worse. The pain was hindering his ability to perform normal daily activities. The CI declined further surgery, and an MEB was initiated. His MEB narrative summary (NARSUM) was dictated in November 2001. The physical examination (PE) was done on 16 August 2001, and is recorded on DD Form 2808. At that exam, back flexion was 45 degrees. Lumbar paraspinal muscles were tight, and some tenderness to palpation (TTP) was noted. Motor testing showed a slight decrease in strength for the left leg, due to pain. A follow-up neurological exam was done on 7 January 2002, and it was normal. As noted above, the CI was medically separated from the Army on 10 April 2002. Seven months later, in November 2002, the CI had a VA Compensation and Pension (C&P) exam. At that exam, he did not appear to be in obvious pain, and did not walk with a limp. Examination of the back revealed moderate muscle spasm. Back flexion was 50 degrees, with pain. No neurological deficit was found.

The Board carefully reviewed all evidentiary information available, and directs attention to its rating recommendation based on the above evidence. The 2001 VA Schedule for Rating Disabilities (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 standards were based on the rater's opinion regarding degree of severity, whereas current standards specify certain rating thresholds, with measured degrees of 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 separation. Based on forward flexion of 45-50 degrees and the other evidence, the Board unanimously agreed that the most appropriate VASRD code was 5292, and the CI's condition was best described as "moderate." There was insufficient evidence in the treatment record to support classifying his LBP condition as "severe." After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board unanimously recommends a disability rating of 20% for the chronic low back pain (LBP), with left radicular pain. It is appropriately coded 5292, and IAW VASRD §4.71a, meets criteria for the 20% 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. 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 LBP condition, the Board unanimously recommends a rating of 20%, coded 5292, IAW §4.71a of the VASRD in effect at the time of separation.

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 his prior medical separation:

UNFITTING CONDITION	VASRD CODE	RATING
Chronic Low Back Pain, with Left Lower Extremity Radicular Pain	5292	20%
	COMBINED	20%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120603, 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 / XXXXXXXXXX), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation
for XXXXXXXXXXXXXXXX, AR20130000826 (PD201200617)

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

XXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
 DoD PD BR
 DVA

