

RECORD OF PROCEEDINGS  
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXX  
CASE NUMBER: PD1200638  
BOARD DATE: 20121113

BRANCH OF SERVICE: ARMY  
SEPARATION DATE: 20010917

**SUMMARY OF CASE:** Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (63S10/Heavy Wheeled Vehicle Mechanic), medically separated for chronic mechanical low back pain (LBP). The CI originally experienced the sudden onset of low back pain in August 1998 when he was working on a heavy vehicle, adjusting a track and he felt a "pop" and "his back locked up." He went on to have bilateral sciatic symptoms and in October 2000, he underwent 2-level lumbar fusion and discectomies at L4/L5 and L5/S1. Following surgery he had 70% relief of prior pain with remaining positional back pain. Chronic mechanical LBP condition could not be adequately rehabilitated. The CI did not improve adequately with treatment to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded LBP secondary to herniated nucleus pulposus status post lumbar effusion to the PEB to adjudicate. No other conditions were forwarded by the MEB. The Physical Evaluation Board (PEB) adjudicated the chronic mechanical LBP condition as unfitting, rated 10% citing application of Department of Defense Instruction (DoDI) 1332.39 and AR 635-40. The CI made no appeals, and was medically separated with a 10% disability rating.

**CI CONTENTION:** "The condition that I have is a common Birth defect but the type of work that was performed during my 4 years made that defect much much worse"

**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. The chronic mechanical LBP condition as requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview; and, is addressed below, in addition to a review of the ratings for the unfitting conditions. The remaining conditions rated by the VA at separation and listed on the DD Form 294 application are not within the Board's purview. 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 20010810			VA (~1 Mo. Post-Separation) – All Effective Date 20010918			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Mechanical Low Back Pain, Status Post L4-5, L5-S1 Discectomies and Fusion	5299-5295	10%	Degenerative Disc Disease, Lumbar Spine	5292	20%	20010822
↓ No Additional MEB/PEB Entries ↓			Tinea Pedis	7899-7806	10%	20010822
<b>Combined: 10%</b>			0% X 1			
			<b>Combined: 30%</b>			

\* No change in VARD dated 20090507.

**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 Mechanical Low Back Pain Condition.** The 2001 Veterans' Administration Schedule for Rating Disabilities (VASRD) coding and rating standards for the spine, which were in effect at the time of separation, were changed on 23 September 2002 for code 5293 (intervertebral disc syndrome) criteria, and then changed to the current §4.71a rating standards in September 2003. The 2001 standards for rating based on range-of-motion (ROM) impairment were subject to the rater's opinion regarding degree of severity, whereas the current standards specify rating thresholds in degrees of ROM impairment. The 5293 criteria also specifically included symptoms compatible with sciatica which were present in this case. For the reader's convenience, the 2001 rating codes under discussion in this case are excerpted below.

5292 Spine, limitation of motion of, lumbar:	
Severe.....	40
Moderate.....	20
Slight.....	10
5293 Intervertebral disc syndrome:	
Pronounced; with persistent symptoms compatible with sciatic neuropathy with characteristic pain and demonstrable muscle spasm, absent ankle jerk, or other neurological findings appropriate to site of diseased disc, little intermittent relief.....	60
Severe; recurring attacks, with intermittent relief.....	40
Moderate; recurring attacks.....	20
Mild.....	10
Postoperative, cured.....	0
5294 Sacro-iliac injury and weakness:	
5295 Lumbosacral strain:	
Severe; with listing of whole spine to opposite side, positive Goldthwaite's sign, marked limitation of forward bending in standing position, loss of lateral motion with osteoarthritic changes, or narrowing or irregularity of joint space, or some of the above with abnormal mobility on forced motion.....	40
With muscle spasm on extreme forward bending, loss of lateral spine motion, unilateral, in standing position.....	20
With characteristic pain on motion.....	10
With slight subjective symptoms only.....	0

There were two goniometric ROM evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation; as summarized in the chart below.

Thoracolumbar ROM (Measurements in Degrees)	NARSUM ~4 Mos. Pre-Sep	VA C&P ~ 1 Mo. Pre-Sep
Flexion (90° Normal)	40°	70°
Extension (30°)	-	20°
R Lat Flexion (30°)	-	0°
L Lat Flexion (30°)	-	0°
R Rotation (30°)	-	30°
L Rotation (30°)	-	30°
Combined (240°)	-	150°
Comment: Surgery 20001030; Current VASRD normal listed above	Normal gait; positive straight leg raise bilaterally; decreased vibration on L4-L5 distribution	ROM limited by pain; no fatigue, weakness, lack of endurance or incoordination. Normal LE muscle strength; no significant sensory deficits; LE reflexes normal (see text)
§4.71a Rating	20% (PEB 10%)	10%-20% (see text; VA 20%)

At the MEB exam, 6 months post-surgery and 4 months prior to separation, the CI reported a 70% relief in pain and the pain was largely positional. Occasional pain was treated with NSAIDs and Flexeril as needed. The CI could lift 10 pounds easily, but anything more than 20 pounds caused significant pain, as did prolonged sitting or standing. The MEB exam demonstrated normal gait, pain limitation of flexion to 40 degrees, mildly positive straight-leg raise (SLR) bilaterally, and decreased vibratory sensation at the L4/L5 and L5/S1 levels. Profile and limitations were no marching, lifting up to 10 pounds and no APFT events. At the VA Compensation and Pension (C&P) exam performed a month prior to separation, the CI had decreased ROM secondary to pain as summarized above. The examiner stated that there were moderate functional limitations because of decreased ROM in the lumbar spine which was suggestive of a permanent lifting restriction. Lumbar X-rays showed the presence of the internal fixation device securing the superior portion body of L4, L5 and the lower margin of the device fixates into the sacrum. There was evident spondylolisthesis, a pars defect, some mild joint narrowing in the level above the fixation and some evident degenerative change. Although remote from separation, the Board notes the VA exam in February 2009, over 8 years after separation, indicated pain-limited ROM within the newer VASRD 20% rating criteria and there was no lower extremity motor or sensory deficit noted. The VA continued their rating of 20% for the lower back condition. The Board directs attention to its rating recommendation based on the above evidence. The VA exam was closer to separation and further from surgery to allow for more complete healing. The MEB exam would independently rate at 20% IAW the VASRD in effect at the time absent application of DOD and Army-specific rules. The VA exam documented loss of lateral flexion without spasm and would rate between 10% and 20% for limited ROM numbers alone; however, the Board considered the examiner's comments including repetition and functional loss (VASRD §4.40, functional loss) would justify a 20% rating as awarded by the VA. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 20% for the low back condition coded 5299-5292.

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**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 and AR 635-40 for rating the low back condition was operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the low back condition, the Board unanimously recommends a disability rating of 20%, coded 5299-5292 IAW VASRD §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:

<b>UNFITTING CONDITION</b>	<b>VASRD CODE</b>	<b>RATING</b>
Chronic Mechanical Low Back Pain, status post L4-5, L5-S1 Discectomies and Fusion	5299-5292	20%
	<b>COMBINED</b>	<b>20%</b>

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120602, 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 / XXXXXXXXX), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation  
for XXXXXXXXXXXXXXXXXXXX, AR20120022723 (PD201200638)

1. 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 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

XXXXXXXXXXXXXXXXX  
Deputy Assistant Secretary  
(Army Review Boards)

CF:  
( ) DoD PDBR  
( ) DVA