

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXX
CASE NUMBER: PD1200693
BOARD DATE: 20121213

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20021008

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (11B10/Infantryman), medically separated for low back pain (LBP). The CI fell twenty feet from an obstacle at the air assault confidence course, landed on his tailbone, and sustained multiple compression fractures in May 1999. Despite an L5-S1 fusion, Orthopedic and Pain Management evaluations, Physical Therapy (PT), and medication, the CI failed to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent P3 L3 profile and was referred for a MOS/Medical Retention Board (MMRB). The MMRB determined the limitations of his permanent profile were so restrictive that he could not satisfy the requirements of any MOS in the Army and he was referred for a Medical Evaluation Board (MEB). The MEB forwarded Severe Low Back Pain on DA Form 3947 to the Physical Evaluation Board (PEB). The MEB forwarded no other conditions for PEB adjudication. The PEB adjudicated Low Back Pain condition as unfitting rated 20%, with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was thus medically separated with a 20% combined disability rating.

CI CONTENTION: "Radiculopathy [SP] left/Right Lower extremity status post compression fracture thoracic spine with degenerative disc disease P.O. fusion Lumbar spine L5-S1/ Nerve Palsy [SP] ulnar [SP] Sleep Apnea"

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 Service ratings for unfitting conditions will be reviewed in all cases. The condition low back pain (P.O. fusion Lumbar spine L5-S1) meets the criteria prescribed in DoDI 6040.44 for Board purview. The other requested conditions (radiculopathy left/right lower extremity, status post compression fracture thoracic spine with degenerative disc disease with nerve palsy ulnar, and sleep apnea) and the remaining conditions rated by the VA 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 the Correction of Military Records (BCMR).

RATING COMPARISON:

Service IPEB – Dated 20020611			VA (~6 Mo. Post-Separation) – All Effective Date 20021009			
Condition	Code	Rating	Condition	Code	Rating	Exam
Low Back Pain	5295	20%	P.O. Fusion Lumbar Spine L5-S1	5292*	20%	20030401
↓No Additional MEB/PEB Entries↓			Status Post(S/P) Compression Fracture Thoracic Spine with Degenerative Disc Disease	5291**	10%	20030401
			Retro patellar Pain Syndrome, Left Knee	5257	10%	20030401
			Sinusitis	6599-6522	10%	20030401
			Diabetes Mellitus	7913	10%	20030401
			Not Service-Connected x 3			
Combined: 20%			Combined: 50%			

*VASRD code changed to 5292-5241 with 20091001 VA Rating Decision (VARD).

**VASRD code changed to 5291-5237 with 20091001 VA Rating Decision (VARD). Left and Right Lower Extremity Radiculopathy, associated with thoracic spine compression fracture added at 10% each effective 20110404. This increased combined rating to 60% with bilateral factor 2.7.

ANALYSIS SUMMARY: The Board's authority as defined in DoDI 6040.44, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. The Board utilizes 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 the time of separation.

Low Back Pain Condition. There were range of motion (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	DD Form 2808 ~5.5 Mos. Pre-Sep	MEB ~5 Mos. Pre-Sep	VA C&P ~6 Mos. Post-Sep
Flexion (90° Normal)	~15° with pain	Not Measured	40° (42)
Ext (0-30)	10°		20°
R Lat Flex (0-30)	20° (17)		15°
L Lat Flex 0-30)	20° (22)		20°
R Rotation (0-30)	Equal to Left		Not Measured
L Rotation (0-30)	Equal to Right		
Combined (240°)	65°-125°	-	95°-155°
Comment	Tenderness to palpation (TTP) T10-S1; + SLR right 75°/left 80°; patellar reflexes 1/4 bilateral, ankle 2/4 bilateral; muscle strength 5/5 bilateral	Well healed surgical scar; significant paraspinal spasm from mid thoracic levels to sacroiliac(SI) joints with severe tenderness overlying bilateral SI joints; Faber Test/Gaenslen's Test + bilaterally for pain in SI joints; motor 5/5 strength throughout; Light touch intact throughout except for decreased light touch in C6 distribution bilaterally; reflexes 2/4/symmetric; toes down going; coordination intact; normal rectal tone; no increase in symptoms with axial compression; straight leg raise(SLR) neg; seated SLR neg bilaterally; no increased pain with distraction; no weakness or overreaction to exam	Gait-normal; upright posture; no motor or sensory loss in legs, feet; dorsal spine-no deformity, tenderness
§4.71a Rating			
5292		40%	20%
5295		40%	20%

The CI's low back injury is well documented in the service treatment record (STR) starting in May 1995 through to May 2002. The CI had progressive worsening of the LBP and an MRI/CT Scan demonstrated L5 bilateral spondylolysis. In February 2001 the CI underwent an L5-S1 fusion. The MEB narrative summary (NARSUM) examination five months prior to separation noted severe constant LBP exacerbated by all activities such as sitting, walking, prolonged standing or any bending or stooping. The examiner further noted that the CI's functional status was an inability to perform any military duties consistent with an infantry soldier. At the time of this examination, the CI complained of mild leg tingling with prolonged standing or activity. The MEB NARSUM exam findings are summarized in the chart above. The MEB examination recorded on DD form 2808 was completed approximately two weeks prior to this NARSUM examination and it included ROM measurements. The examination findings are noted in the chart above. This exam documented bilateral positive straight leg raises but did not specify if this meant back pain or radicular pain occurred. In addition, this examination makes no comment on the presence of absence of lower extremity radicular symptoms. The NARSUM exam documented bilateral negative straight leg raise testing. The NARSUM examiner diagnosed "severe low back pain" and the severe qualifier was included on the MEB submission to the PEB. While there are few outpatient treatment records from the twelve months prior to separation, radiating leg pain and tingling is documented. None of these treatment records include ROM information and earlier treatment records document findings ranging from full ROM to ROM limitations similar to those recorded on the DD 2808. The CI was granted a P3L3 profile with limitations of no ruck marching, marching more than three miles, lifting more than 30 pounds, or perform sit-ups and various other exercises and running and bicycling were limited to his own pace and distance. He also was restricted from wearing a backpack or a helmet as well as carrying and firing a weapon. The Commander's Statement noted that the CI was limited in his ability to run, do sit-ups and road marches that had a limitation of three miles with thirty pounds on his back. The Commander opined that the CI's medical condition prevented him from doing duties expected of any Soldier. The MMRB confirmed that the CI's profile limitations were so restrictive that he was not qualified for retraining and reclassifying into any MOS. The VA Compensation & Pension (C&P) examination six months after separation noted early morning and nightly back pain with occasional radiation down both legs and an

inability to sit more than thirty to forty five minutes. The VA C&P exam findings are summarized in the chart above.

The 2002 Veterans Administration Schedule for Rating Disabilities (VASRD) coding and rating standards for the spine, were in effect at the time of separation and then changed to the current §4.71a rating standards on 26 September 2003. The 2002 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. When older cases have goniometric measurements in evidence, the Board reconciles (to the extent possible) its opinion regarding degree of severity for the older spine codes and ratings with the objective thresholds specified in the current VASRD §4.71a general rating formula for the spine. This promotes uniformity of its recommendations for different cases from the same period and more conformity across dates of separation, without sacrificing compliance with the DoDI 6040.44 requirement for rating IAW the VASRD in effect at the time of separation. For the reader's convenience, the 2002 rating codes under discussion in this case are excerpted below.

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%

5292 Spine, limitation of motion of, lumbar:

Severe.....	40%
Moderate.....	20%
Slight.....	10%

The Board directs attention to its rating recommendation based on the above evidence. The PEB coded the LBP condition 5295 Lumbosacral strain (With muscle spasm on extreme forward bending, loss of lateral spine motion, unilateral, in standing position) rated 20%. The VA coded the back condition 5292 Spine, limitation of motion of, lumbar (Moderate) rated 20%. The NARSUM exam showed significant paraspinal spasm from mid thoracic levels to sacroiliac (SI) joints with severe tenderness overlying bilateral SI joints and an inability to bend or stoop. The MEB examination documented significantly limited ROM of the thoracolumbar spine. These examinations support a disability rating of 40% under either 5292 or 5295. While the CI does not have a listing of the whole spine to opposite side, the criteria for a 40% are met based on "some of the above with abnormal mobility on forced motion." The CI has marked limitation of forward bending in standing position, loss of lateral motion with osteoarthritis changes on x-ray, narrowing of the L5-S1 joint space noted on x-ray. Additionally, while a Goldthwaite test was not specifically mentioned, the CI did have sacroiliac joint pain noted on examination. The VA C&P exam noted more moderately limited ROM measurements consistent with the 20% disability rating assigned by the VA. The VA examination made no comment about sacroiliac joint pain but VA x-rays documented osteoarthritic changes and joint space narrowing. There is no evidence of embellishment on either examination. If today's VASRD were utilized, these same ratings would result from each examination. Both examinations appear to be equally valid and both are equally detailed and approximately equidistant from the date of separation. The Board placed a higher probative value on the service examinations as they occurred prior

to separation. It appears the CI's condition improved over time. However, there is no information in the record about the CI's condition between the time of the MEB NARSUM and the VA C&P examination. The MEB NARSUM, which shows a severe condition, is the latest data available that is prior to separation. It is not possible to determine the precise moment in time when the improvement rendered the CI's condition moderate or whether this occurred prior to separation and any attempt to do so would be mere speculation. With application of reasonable doubt, the Board assumes the condition remained severe at the time of separation. Although there does appear to be a lower extremity radiculopathy, there are no abnormal neurologic findings and it does not appear to have caused any functional impairment at the time of separation from service. The VA later added ratings for bilateral radiculopathy but this was not effective until more than eight years after separation from service. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 40% for the low 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 Low Back Pain condition, the Board by a vote of 2:1 recommends a disability rating of 40%, coded 5295 IAW VASRD §4.71a. The single voter for dissent who recommended adopting the VA rating at 20% submitted the addended minority opinion. 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; and, that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of his prior medical separation:

UNFITTING CONDITION	VASRD CODE	RATING
Low Back Pain	5295	40%
	COMBINED	40%

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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for
XXXXXXXXXXXX, AR20130000742 (PD201200693)

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 reject the Board's recommendation and accept the Board's minority opinion as accurate that the applicant's final Physical Evaluation Board disability rating remains unchanged. There is insufficient justification to support the Board's recommendation in accordance with Army and Department of Defense regulations.

2. 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

XXXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
() DoD PDBR
() DVA