

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXX
CASE NUMBER: PD1200699
BOARD DATE: 20130103

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20030703

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (91G/Patient Administration Specialist), medically separated for cervical degenerative disc disease (DDD). His cervical DDD condition could not be adequately rehabilitated to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent U3 profile (131111) and referred for a Medical Evaluation Board (MEB). Disc herniation condition, identified in the rating chart below, was also identified and forwarded by the MEB. The Physical Evaluation Board (PEB) adjudicated the cervical DDD condition as unfitting, subsuming the disc herniation condition while also noting the existing prior to service (EPTS) component, but finding the EPTS impact to be undeterminable, and rated the cervical DDD 10% application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: “I was going to retire from the military until I was released. I can’t do everything I could prior to going into the military.”

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 the unfitting condition, cervical DDD, will be reviewed. This condition will include the other conditions titled disc herniation and C6 decompression fracture, C5-7 disc protrusion & C5-6 anterolisthesis w/DDD. The remaining condition rated by the VA at separation (plantar calcaneal spur, right foot) is 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 20030506			VA (16 Mos. Post-Separation) – All Effective Date 20040818			
Condition	Code	Rating	Condition	Code	Rating	Exam
Cervical Degenerative Disc Disease	5293 5299 5295	10%	C6 Compression fracture, C5-7 disc protrusion & C5-6 anterolisthesis w/ DDD	5243	10%	20040918
Disc Herniation	Subsumed under DX 1		Plantar Calcaneal Spur, R Foot	5284-5015	0%	20040918
↓No Additional MEB/PEB Entries↓			Not Service-Connected x 3			20040918
Combined: 10%			Combined: 10%			

*VARD 20041221 rated bone fragment, left elbow, left knee pain and right knee pain as Not Service Connected.

ANALYSIS SUMMARY:

Cervical Degenerative Disc Disease Condition. There were three range-of-motion (ROM) evaluations in evidence, one of which was goniometric, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation; as summarized in the chart below.

Cervical ROM (Degrees)	Ortho ~30 Mo. Pre-Sep (20010110)	MEB ~4 Mo. Pre-Sep (20030423)	VA C&P ~7 Mo. Post-Sep (20040918)
Flexion (45 Normal)	FAROM	FAROM	40
Extension (45)	FAROM	FAROM	35 w/ mild discomfort
R Lat Flex (45)	FAROM	FAROM	35
L Lat Flex (45)	FAROM	FAROM	35
R Rotation (80)	FAROM	FAROM	70
L Rotation (80)	FAROM	FAROM	70
COMBINED (340)			285
Comment	FAROM = full active range of motion. Neck supple; without TTP (tender to palpation)	Minimally tender to palpation along the spinous processes of lower C- spine. Heel and toe walk without difficulty.	No neck tenderness. Mild stiffness and mild pain on range of motion testing.
§4.71a Rating	10%	10%	10%

The CI sustained a compression fracture to his cervical spine (C-spine) in high school. He had no complaints or abnormal findings related to his condition at the Military Entrance Processing Station (MEPS) physical in July 1995 and he entered active duty on 22 August 1996. He developed chronic neck pain following a neck injury incurred in 2000 when he fell out of a military truck. He was diagnosed with cervical disc disease and decided to not undergo offered surgical intervention. The MEB narrative summary (NARSUM) exam performed on 23 April 2003 notes that the CI reported neck pain and subjective tingling. There was minimal tenderness in the neck, but otherwise no physical abnormalities. He had full active and passive ROM. Neurologic examination was normal including strength and reflexes, and normal gait. At the VA Compensation and Pension (C&P) exam after separation on 18 September 2004, the CI reported neck pain and pins and needle sensation in both hands with heavy work. He had 40 degrees of forward flexion and about 35 degrees of extension with mild discomfort in his lower cervical spine. His upper extremity exam was normal (strength, sensation). X-rays demonstrated stigmata from the pre-service C6 compression fracture, as well as DDD. The C&P examiner noted that "To address the DeLuca provisions, there was mild stiffness and mild pain on range of motion with testing today."

The Board directs attention to its rating recommendation based on the above evidence. In accordance with DoDI 6040.44, the Board is required to recommend a rating IAW the VASRD in effect at the time of separation. The Board notes that the 2003 Veteran Administration Schedule for Rating Disabilities (VASRD) standards for the spine, which were in effect at the time of separation, were changed to the current §4.71a rating standards in 2004. The Board must correlate the above clinical data with the 2003 rating schedule (applicable diagnostic codes include: 5290 limitation of motion of cervical spine; 5293 intervertebral disc syndrome; and 5295 Lumbosacral strain; and by analogy 5295 lumbosacral strain). The PEB rated the condition 10% citing neck pain without radiculopathy, analogous to 5295 lumbosacral strain with characteristic pain on motion. The VA rated 10% citing limitation of motion coded 5243 using VASRD rules in effect in 2004, but were not in effect at time of separation. Under the VASRD rules in effect at time of separation, with minimal tenderness, normal ROM of cervical spine, no radiculopathy, and no incapacitating episodes, the Board concluded that the CI would be rated as 10% under 5290 or 5293. If comparing the CI's physical findings to 5295 by analogy,

the Board noted that he would rate 10% due to characteristic pain on motion. The cervical spine disc herniation is part of the overall DDD condition and is subsumed under the rating. Separate ratings based on the same impairment or disability is prohibited under §4.14 (avoidance of pyramiding). There was no associated radiculopathy for separate peripheral nerve rating. 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 for the cervical DDD 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 cervical DDD 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
Cervical Degenerative Disc Disease	5293-5299-5295	10%
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120611, 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
XXXXXXXXXXXXXXXXXX, AR20130000836 (PD201200699)

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

XXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
 DoD PDBR
 DVA