

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXXXXXX
CASE NUMBER: PD1200700
BOARD DATE: 20121213

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20030130

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (95B/Military Police), medically separated for chronic low back pain (LBP). The condition began as a consequence of injury in 1999 and was not associated with a surgical indication. The CI did not improve adequately with treatment to meet the physical requirements of her Military Occupational Specialty (MOS) or satisfy physical fitness standards. She was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded chronic LBP with multiple level lumbar degenerative disc disease (DDD) to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Hypertension and right shoulder strain conditions, identified in the rating chart below, were also identified and forwarded by the MEB. The PEB adjudicated the chronic LBP condition as unfitting, rated 10% with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The remaining conditions were determined to be not unfitting. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: “MVA at high rate of speed (I was stopped and struck btwn 60-65 mph) Informed the Emergency room that I struck my head (but could not recall on what). My Cervical Spine was not ever checked until after separation and the VA discovered C4, C5 & C6 were impacted, Lupus & migraines too.”

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 cervical spine, lupus and migraine conditions 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 20021202			VA (2 Mos. Post-Separation) – All Effective Date 20030131					
Condition	Code	Rating	Condition	Code	Rating	Exam		
Chronic Low Back Pain	5295	10%	Limitation of Motion, Lumbar Spine, Disc Disease	5293-5292	10%*	20030325		
			Radiculopathy, Right Lower Extremity	5293-8520	10%	20030325		
Hypertension	Not Unfitting		No VA Entry					
Right Shoulder Strain	Not Unfitting		Not Service Connected					
↓No Additional MEB/PEB Entries↓			Fibromyalgia	5025	20%	20031030		
			Cervical Spondylosis	5010-5237	10%	20040130		
			Systemic Lupus Erythematosus with Sjogrens Syndrome	6350	10%	20040115		
			0% X 2 / Not Service-Connected x 3			20030325		
			Combined: 10%			Combined: 50%		

*VA decision 20051021 increased to 20% effective 20050819; combined 70% including, non-PEB conditions

ANALYSIS SUMMARY:

Chronic Low Back Pain Condition. The 2003 Veteran Administration Schedule for Rating Disabilities (VASRD) coding and rating standards for the spine, which were in effect at the time of separation, were changed to the current §4.71a rating standards in 2004, and were identical to the 2003 VASRD standards used by the VA in its initial rating decision. The pre-2004 ratings were based on a judgment as to whether the disability was mild, moderate or severe. The 2004-to-current standards are grounded in range-of-motion (ROM) measurements. IAW DoDI 6040.44, this Board must consider the appropriate rating for the CI's back condition at separation based on the VASRD standards in effect at the time of separation (i.e. pre-2004 standards). A motor vehicle accident on 12 September 1999 resulted in low back pain and occasional right lower extremity radicular pain. Evaluation of persistent pain with magnetic resonance imaging (MRI) on 5 December 1999 showed disc bulge at L4-5 and L5-S1 and neuroforaminal narrowing at L5-S1. She was treated with physical therapy and injections without significant pain relief. Follow-up MRI on 27 June 2002 showed disc bulging from L4 to S1 with some disc desiccation, but without central or neuroforaminal stenosis. Evaluation by a neurosurgeon determined that the condition did not warrant surgery. At the narrative summary (NARSUM) exam 3 months prior to separation, the CI reported daily pain and required narcotic pain medication for severe pain. She could not wear load-bearing equipment or perform prolonged marching, running, jumping or lifting greater than 15 pounds. Physical examination revealed tenderness of the lower back, but no spasm. Straight leg raise (SLR) testing was negative for pain radiating down the lower extremity. At a civilian consultation at the time of separation, the CI denied muscle weakness or loss of sensation. Examination revealed normal muscle strength. At the VA Compensation and Pension (C&P) exam 2 months after separation, the CI reported daily pain severity of 4-8 on a 10 point scale associated with radiation to the posterior aspect of the thigh, leg and plantar aspect of foot (right versus left lower extremity was not specified). Numbness in the distal leg and foot occurred sometimes. She denied use of assistive devices for walking. She could no longer ride horses or roller blade, but could swim. Examination revealed a normal gait and spinal curvature. Flexion was 55 degrees and extension 5 degrees. Rotation was somewhat restricted. Tenderness was minimal and spasm was absent, however some guarding was present. Sensation was intact and motor exam revealed normal tone and no atrophy. SLR was limited to 40 degrees due to unspecified pain. A follow-up C&P exam 9 months after separation noted forward flexion of the lumbar spine to 90 degrees and extension to 20 degrees. Muscle strength was normal in all muscles tested.

The Board directs attention to its rating recommendation based on the above evidence. Although not specifically noted in the NARSUM physical examination, "characteristic pain on motion" supporting the PEB's 10% rating under the 5295 code is reasonably conceded given the CI's history and symptoms of lifestyle limiting pain at the time of separation. The VA assigned a 10% rating under the 5292 code for "slight" or mild limitation of lumbar motion. The Board agreed that elements of the 40% rating were not present on any of the cited examinations, and further noted that there was no evidence of "incapacitating episodes" that would justify a minimal rating under the 5293 code. Board members debated if any of the documented examinations met the requirements for the 20% level under the 5292 code, but agreed that the condition more nearly approximated the criteria for the 10% rating. The VA also assigned a 10% rating for right lower extremity radiculopathy, specifically radiating pain. The presence of functional impairment with a direct impact on fitness is the crucial factor in the Board's decision to recommend any condition for rating as additionally unfitting. The lower extremity pain components in this case have no functional implications. There was no motor impairment that could be linked to any functional deficit or limitation of specific physical requirements. The Board therefore concludes that additional disability rating for radiculopathy was not justified on this basis. 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 chronic LBP 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 LBP 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 Low Back Pain	5295	10%
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120610, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXX, DAF
President
Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency
(TAPD-ZB / XXXXXX), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation
for XXXXXXXXXXXXXXXXXXXX, AR2013000045 (PD201200700)

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