

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXX
CASE NUMBER: PD1200761
BOARD DATE: 20121218

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20020116

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a National Guard Soldier, SGT/E-5 (45E, assigned to a Hull Systems Mechanic slot, 63E), medically separated for chronic low back pain (LBP) accompanied by neck pain with degenerative disc disease (DDD) at L4/L5 and L5/S1. The CI fell while carrying a tool box while on duty and developed persistent back pain. The neck injury occurred in 1981 while he was in bed, he reached up and grasped the head of the bed to pull him up and had a sudden onset of neck pain. Despite physical therapy (PT), non steroidal anti-inflammatory drugs (NSAIDS), chiropractor, physical medicine, orthopedic and neurosurgical evaluations, the CI failed 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 with radiation and DDD as medically unacceptable IAW AR 40-501. The MEB forwarded no other conditions for Informal Physical Evaluation Board (IPEB) adjudication. The IPEB adjudicated the chronic LBP accompanied by neck pain with DDD at L4/L5 and L5/S1 as unfitting, rated 0%, with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD). The CI appealed to the Formal PEB (FPEB). The FPEB appeal resulted in a changed final adjudication from that of the IPEB, from 0% to 10%. The CI filed a rebuttal to the FPEB decision with the US Army Physical Disability Agency (USAPDA). The USAPDA upheld the FPEB decision. The CI was separated with a 10% disability rating.

CI CONTENTION: The CI states: "I believe it was unjust for the military to tell me I was unfit for duty (as a soldier) do [*sic*] to my medical condition. However they weren't willing to give me a medical discharge-since I was injured on active duty. Which the Board has all of the records proving this at the time of the review, when I was in front of the Board at Walter Reed Medical [*sic*]. I was told I would get a cash buy out and nothing else. (Please remember all injuries occurred while on active duty). They made me take my Army National Guard retirement. I truly believe had they really reviewed my folder, they would have made a different decision. I say this because they didn't know that I had already served my country 20+ years at that time, and not they told me—sorry your [*sic*] unfit! Medically—But didn't reward me the benefits for myself & family—retirement pay until I become 60 yrs. of age."

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. 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 FPEB – Dated 20010817			VA (5 Mos. Post-Separation) – All Effective Date 20010302			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Low Back Pain Accompanied by Neck Pain with DDD at L4/L5 and L5/S1	5299-5295	10%	Degenerative Intervertebral Disc Disease, L-Spine, L3-4 and L5-S1	5293	20%	20020603
			Degenerative Intervertebral Disc Disease, C-Spine	5290	20%	20020603
↓ No Additional MEB/PEB Entries ↓			0% X 0 / Not Service-Connected x 0			20020603
Combined: 10%			Combined: 40%			

ANALYSIS SUMMARY: The Board acknowledges the CI's assertions that he was not given a medical discharge. It is noted for the record that the Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to the CI's statements in the application regarding suspected improprieties in the processing of his case. 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. It must also judge the fairness of PEB fitness adjudications based on the fitness consequences of conditions as they existed at the time of separation.

The PEB combined the chronic LBP accompanied by neck pain with DDD at L4/L5 and L5/S1 condition as a single unfitting condition, coded analogously to 5295 and rated 10%. This coding approach is countenanced by AR 635-40 (B.24 f.), but IAW DoDI 6040.44 the Board must apply only VASRD guidance to its recommendation. The Board must therefore apply separate codes and ratings in its recommendations if compensable ratings for each joint are achieved IAW VASRD §4.71a. If the Board judges that two or more separate ratings are warranted in such cases, however, it must satisfy the requirement that each "unbundled" condition was unfitting in and of itself.

Chronic Low Back Pain Condition: The Board first considered whether the LBP condition, having been de-coupled from the combined PEB adjudication, remained independently unfitting as established above. The CI was issued a permanent profile related to the low back pain condition in November 1997 and his commander's letter from February 2001 stated he was unable to perform any heavy lifting and physically demanding tasks required for his MOS. All members agreed that the LBP, as isolated condition, would have rendered the CI incapable of continued service within his MOS; and, accordingly merits a separate rating.

There was one range-of-motion (ROM) evaluation 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	MEB ~8 Mo. Pre-Sep	VA C&P ~5 Mo. Post-Sep
Flexion (90° Normal)	No ROM's	45°*
Ext (0-30)		5°*
R Lat Flex (0-30)		10°
L Lat Flex 0-30)		10°
R Rotation (0-30)		10°
L Rotation (0-30)		10°
Combined (240°)	N/A	90°
Comment	No tenderness to palpation; no straight leg raise; reflexes intact; motor/sensory normal	* With pain; left leg limp; normal lumbar curve; positive tenderness to palpation of lower lumbar paraspinal muscles bilaterally; straight leg raise to 45° caused back pain; motor/sensory normal; patellar reflexes present and symmetrical +1; Achilles reflexes absent bilaterally
§4.71a Rating		
5292	N/A without ROM Description	20%
5293	20%	20%
5295	N/A without ROM Description	10%

The CI had a low back injury in 1996. The CI was seen by neurosurgery for LBP and was then referred to Rehabilitation Medicine for back and neck pain syndrome. The lumbar spine magnetic resonance imaging (MRI) demonstrated L4-5 mild diffuse disc bulging with a small disc herniation and at L5-S1 slight disc space narrowing with a mild diffuse disc bulge and mild degenerative disc changes in the facet joints. The MEB narrative summary (NARSUM) examination 8 months prior to separation noted persistent daily LBP and difficulty with vigorous activities, pain with radiation to the left and occasionally to the right. The NARSUM physical exam findings are summarized in the chart above. No ROM measurements were recorded at the time of the NARSUM examination but a physical therapy evaluation performed in November 1996 noted a 30% reduction in lumbar flexion. Outpatient notes from orthopedics document occasional right leg pain. The VA Compensation & Pension (C&P) examination 5 months after separation indicated continuous LBP, left leg pain and with coughing and sneezing and twice-yearly flare-ups without a specific precipitating event. There were functional limitations of an inability to kneel, squat, or stoop, stand or sit for any length of time and automobile travel. The C&P physical exam findings are summarized in the chart above.

The CI sought care from a civilian chiropractor who documented constant and moderately severe pain and stiffness in the lower back radiating to buttocks and both legs. Lumbar spine X-rays done at this visit revealed abnormalities of the lower thoracic and lumbar spine suggestive of Myositis. In October 2002, the chiropractor, based on MRI's and X-rays, noted early stages of osteoarthritis in the thoracic spine (T10-12) and osteophyte formation at L2 along with disc bulges and herniations at L3-S1.

The chronic LBP accompanied by neck pain with DDD at L4/L5 and L5/S1 was rated IAW the 2002 VASRD standards which are no longer in effect. The 2002 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 in 23 September 2002 for code 5293 (intervertebral disc syndrome) criteria, and then changed to the current §4.71a rating standards in 26 September 2003. The 2002 standards for rating based on 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 pertinent 5293 criteria also specifically included symptoms compatible with sciatica which were present in this case. (NOTE: The current VASRD general spine formula does not include similar 5293 criteria). For the reader's convenience, the 2002 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

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

The Board directs attention to its rating recommendation based on the above evidence. As discussed above the PEB combined two conditions and assigned an overall 10% rating. The VA coded the Degenerative Intervertebral Disc Disease, L-Spine, L3-4 and L5-S1 as 5293 Intervertebral Disc Syndrome rated 20% (Moderate recurring attacks). The MEB NARSUM examiner indicated persistent daily LBP and with vigorous activities and limited flexion to 45 degrees. The C&P examiner noted continuous LBP pain with twice yearly exacerbations, functional limitations due to mechanical impairment and limited flexion and extension on physical exam. The civilian Chiropractor also documented chronic and moderately severe LBP with intermittent radiating pain down both legs. Although the C&P examination was completed after separation, it was more complete and was closest to the date of separation. Therefore, it was adjudged to have the higher probative value. While ROM measurements were not required for rating at the time of separation, the MEB NARSUM is silent on even qualitative statements regarding lumbar spinal motion. The clinical record does contain information regarding the presence of limitation of motion. However, no actual measurements are present in the record. Other than the ROM measurements, the C&P examination findings are consistent with the NARSUM findings and the Board assumes there was no worsening of the condition from the time of separation to the time of the C&P examination. Both the MEB NARSUM examination and the C&P examination that document chronic and significant daily pain with interment pain radiation down the right and left legs support a 20% rating under the 2002 VASRD code 5293. Additionally, the 45 degrees of flexion is considered moderate and this finding supports a 20% rating under the 2002 VASRD code 5292. Current VASRD rating criteria for a 20% rating are also met by the C&P examination. After due deliberation in consideration of the preponderance of the evidence, the Board concluded that the LBP condition was separately unfitting and considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), recommends a disability rating of 20%, coded 5293 IAW VASRD §4.71a.

Neck Pain Condition: As previously elaborated, the Board must first consider whether the neck pain condition remains separately unfitting, having been de-coupled from a combined PEB adjudication. In analyzing the intrinsic impairment for appropriately coding and rating the neck pain condition, the Board is left with a questionable basis for arguing that it was indeed independently unfitting. Although the MEB NARSUM examiner states the neck pain “caused some discomfort and limits him from all activities,” no specific limitations can be attributed to this condition. The CI injured his neck in 1981 and was able to serve for more than 20 years without any permanent duty restrictions related to the neck pain condition. The permanent profile issued in November 1997 for lower back pain does not include restrictions specific for neck pain and, in fact, the CI is able to perform neck related stretches and wear his helmet. After due deliberation, the Board agreed that the preponderance of evidence does not support a conclusion that neck pain, as an isolated condition, would have rendered the CI incapable of continued service in his MOS, and accordingly cannot recommend a separate rating for it.

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, the PEB bundled two separate conditions and the Board determined that only one, the chronic low back pain condition, was separately unfitting. The neck pain condition was not separately unfitting and no additional disability rating can be recommended. In the matter of the chronic low back pain accompanied by neck pain with DDD at L4-5 and L5-S1 condition, the Board unanimously recommends a disability rating of 20%, coded 5293 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:

UNFITTING CONDITION	VASRD CODE	RATING
Chronic Low Back Pain accompanied by Neck Pain with Degenerative Disc Disease at L4-5 and L5-S1	5293	20%
	COMBINED	20%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120614, 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 XXXXXXXXXXXXXXXX, AR20130000153 (PD201200761)

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

XXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
() DoD PDBR
() DVA