

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXX
CASE NUMBER: PD1200791
BOARD DATE: 20130104

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20011029

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (51T10/Tech Engineer Specialist), medically separated for chronic low back pain (LBP) secondary to right sacroiliac joint pain syndrome. The CI had a 16 month history of right a-traumatic LBP that failed medical therapy and physical therapy to rehabilitate the individual. The CI did not improve adequately with treatment to meet the physical requirements of his Military Occupational Specialty or satisfy physical fitness standards. He was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded the condition chronic LBP secondary to right sacroiliac joint pain syndrome to the Physical Evaluation Board (PEB). The MEB forwarded no other conditions for PEB adjudication. The PEB adjudicated the chronic LBP secondary to right sacroiliac joint pain syndrome condition as unfitting under AR 40-501, Chapter 3.41.3, rated 0%, with application of the Veterans Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 0% disability rating.

CI CONTENTION: "I have been living in constant pain for the past 13 years. Since the beginning of my condition I have gone through extensive rehabilitation ranging from Physical Therapy to Pain Management using pain medication and weight loss. As a result of this injury I will have to take pain killers for the rest of my life, while my condition will continue to deteriorate. I have noticed over the last 3 – 5 years that I am getting a (numbing) sensation in my legs. As I get older it is getting harder for me to engage in everyday life, like playing with my kids or having a romantic relationship."

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 unfitting condition chronic LBP secondary to right sacroiliac joint pain syndrome meets the criteria prescribed in DoD Instruction 6040.44 for board purview and is accordingly addressed below. 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 20010621			VA (12 Mos. Post-Separation) – All Effective Date 20011030			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic LBP secondary to Rt SI Joint Pain Syndrome	5299-5295	0%	Rt SI Joint Pain Syndrome	5294	10%	20021021
↓No Additional MEB/PEB Entries↓			0% X 0 / Not Service-Connected x 0			
Combined: 0%			Combined: 10%			

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-aggravated condition continues to burden him. It is a fact, however, that the Disability Evaluation System (DES) has neither the role nor the authority to compensate members for anticipated future severity or potential complications of conditions resulting in medical separation. This role and authority is granted by Congress to the Department of Veterans Affairs (DVA). The DVA, operating under a different set of laws (Title 38, United States Code), is empowered to compensate service-connected conditions and to periodically re-evaluate said conditions for the purpose of adjusting the Veteran’s disability rating should his degree of impairment vary over time. The Board utilizes DVA 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. The Board’s authority as defined in DoDI 6044.40, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation. The 2002 VASRD coding and rating standards for the spine, which were in effect at the time of separation, were changed to an interim §4.71a rating standard effective 23 September 2002. The 2002 standards for rating are based on the rater’s interpretation and opinion of range-of-motion (ROM) impairment regarding degree of severity, whereas the current standards specify rating thresholds in degrees of ROM impairment measured with an instrument. 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
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

Chronic Low Back Pain Secondary to Right Sacroiliac Joint Pain Syndrome Condition. The narrative summary (NARSUM) notes the CI developed LBP around December 1999. The pain was described as “a constant, dull ache in character and localized with the right sacroiliac region posteriorly and radiating to the right proximal thigh depending on activities.” The CI denied weakness or sensation loss and the severity was described in the range between 5-

10/10. Over 6 months of physical therapy failed to improve his condition. In October 2000, a right sacroiliac joint injection gave pain relief for a week, but neither further injections, Tylenol, or anti-inflammatory medications changed the character of his daily pain. In November 2000, the CI received a permanent L3 profile. L-spine films were within normal limits according to the NARSUM exam dated 28 February 2001. The commander's evaluation of April 2001 noted the CI was not physically fit for service in the US Army, non-deployable and unable to carry heavy loads, which hampered his duty performance. Additionally "member does limited PT and cannot pass a fitness test due to back and weight problems (and he) ... is currently barred for re-enlistment due to a failure of progress on the Army Weight Control Program." The CI's back pain could not be adequately treated and he was referred to the MEB. No goniometric range-of-motion (ROM) evaluations are charted herein because all ROM recorded by the physical therapy clinic about 13 months prior to separation, and in the NARSUM, were considered to be within normal limits, and the resultant PEB rating was based on pain and a positive Gaenslen's test (for primary-chronic inflammation of the lumbar vertebrae and sacroiliac joint). At the noted PT exam, the therapist documented "no reproduction of pain with facet loading or extension," no painful motion; neurological exam normal; tenderness to palpation right sacral sulcus; and positive Gaenslen's sign on the right. At the MEB exam, about 8 months prior to separation, the CI reported pain as a constant, dull ache in character and localized within the right sacroiliac region posteriorly, worse with walking, sitting and standing, and without weakness or sensation loss. The MEB physical exam noted ROM "was within normal limits," and no evidence of painful motion, weakness or spasm. The examiner noted "no reproduction of pain with facet loading or extension" and Gaenslen's test was positive on the right. There was tenderness to palpation over the right sacral sulcus. Sensory, motor, and reflex exams were normal. At the VA Compensation and Pension exam about 12 months after separation, the CI reported severe back pain approximately four to five times per week, usually lasting for 5-10 minutes. The patient stated he worked as a land surveyor and had not lost any time from work because of his back pain. The VA examiner documented twice that the spinal ROM was not painful, and was "Forward flexion 0° to 90°. Extension backwards 0° to 30°. Lateral flexion 0° to 30° bilaterally. Rotation 0° to 30° bilaterally." There was no fatigue, weakness, tenderness, muscle spasm or lack of endurance on repetitive motion. The examiner recorded that neurological exam was normal and that recent lumbar X-rays were negative.

The Board directs attention to its rating recommendation based on the above evidence. On an exam 8 months prior to separation, the PEB coded 5299-5295, lumbosacral strain, with slight subjective symptoms only, for 0%, and not rising to the level of characteristic pain on motion for 10% using the VASRD in effect at the time. The VA coded 5294 for sacroiliac injury and weakness for 10% disability for the "VA examination showing slight limitation of motion of the lumbar spine with complaints of severe pain," and not rising to the higher level of muscle spasm on extreme forward bending, loss of lateral spine motion, unilateral, standing position. Of special note in this case is that the VA spine normal ROMs were not codified in the VASRD until September 2003 (Plate V) and "normal" was considered what the examiner indicated. ROM exam templates from that timeframe often indicated normal ROMs with greater values for extension, lateral bending and rotation than current VASRD normal limits. The Board opined that fundamentally there was little substantive difference in all three exams of record. Almost all exams indicated tenderness of the sacroiliac joint or sulcus and the Board considered the tenants of VASRD §4.66 (Sacroiliac joint) and §4.40 (Functional loss). The record supported greater than "slight" symptoms. The Board adjudged that the consistently documented tenderness and pain limited functioning indicated a disability picture closer to that of the 10% rating under code 5294. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (Resolution of reasonable doubt) and §4.7 (Higher of two evaluations), the Board majority recommends a disability rating of 10% for the chronic LBP secondary to right sacroiliac joint pain syndrome 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 secondary to right sacroiliac joint pain syndrome condition, the Board, by a vote of 2:1, recommends a disability rating of 10%, coded 5294 IAW VASRD §4.71a. The single voter for dissent (who recommended no recharacterization at 0%) did not elect to submit a 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, effective as of the date of his prior medical separation:

UNFITTING CONDITION	VASRD CODE	RATING
Chronic low back pain secondary to right sacroiliac joint pain syndrome	5294	10%
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120615, 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 / XXXXXXXXXXXX), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation
 for XXXXXXXXXXXXXXXXXXXX, AR20130001160 (PD201200791)

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 10% 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

XXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
 DoD PDBR
 DVA