

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXX
CASE NUMBER: PD1201048
BOARD DATE: 20121219

BRANCH OF SERVICE: Army
SEPARATION DATE: 20020920

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a Reserve SGT/E-5 (71L20/Administrative Specialist), medically separated for chronic left shoulder and back pain – slight/constant. She felt a sudden pain in her left shoulder and upper back while running the confidence course during training in 1990 and was subsequently diagnosed with chronic tendonitis of the left rotator cuff in 1995. She reinjured the same shoulder again in 1996 and despite steroid injections and muscle relaxants the pain 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 U3/L3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded no other conditions for PEB adjudication. The PEB adjudicated the chronic left shoulder and back pain condition as unfitting, rated 10% with cited application of the US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: “It is a constant struggle daily for me to get started when getting up with mornings and dressing myself. I start each day with cream and rub down along with the medicine I take daily. I have constant pain through out the day in everything I try to do. I have bad coordination and I stumble sometimes just trying to walk. I have problems reaching my feet or trying to put on socks and shoes. I cant bend down without getting dizzy and I feel like I about to fall over. I have bad coordination. I have had to get a hysterectomy. I had to have surgery on my left shoulder and it is a daily struggle just to live.”

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 shoulder and back conditions as requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview; and, are addressed below. The other requested condition, hysterectomy, 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 20020607			VA (1 Mos. Post-Separation) – All Effective Date 20020919			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Lt Shoulder & Back Pain	5099-5003	10%	Chronic Tendonitis, Rotator Cuff Tear, Lt Shoulder	5024-5201	20%*	20021107
			Thoracic Spine Strain	5291	10%	20021107
			Lumbar Strain	5295	20%*	20021107
↓No Additional MEB/PEB Entries↓			Not Service-Connected x			20021107
Combined: 10%			Combined: 40%*			

*Previous VA rating of 30% effective 19991003 (10% each above condition), continued on initial post-separation VARD (dated 20021220) with above exam dates. VA ratings increased as charted above (changed from 5024 @10% to 5024-5201 @20%; and 5295 @10% to 20%) based on resolution of appeal and exams of 20030821.

ANALYSIS SUMMARY: The MEB forwarded two medically unacceptable conditions to the PEB. The PEB combined chronic “left shoulder pain, due to rotator cuff syndrome” and “chronic back pain, due to muscle spasms from a previous back strain” as a single unfitting and solely rated condition, coded analogously to 5099-5003, USAPDA. Although this approach complies with AR 635.40 (B.24 f.); the Board must apply separate codes and ratings in its recommendations, if compensable ratings for each condition 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 reasonably unfitting. Not uncommonly this approach by the PEB reflects its judgment that the constellation of conditions was unfitting; and, that there was no need for separate fitness adjudications, not a judgment that each condition was independently unfitting. Thus the Board must exercise the prerogative of separate fitness recommendations in this circumstance, with the caveat that its recommendations may not produce a lower combined rating than that of the PEB. The Board notes that the 2002 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. DoDI 6040.44 requires the Board consider its rating recommendations using the VASRD rating guidance in effect at the time of separation, in this case the 2002 standards prior to the VASRD changes effective 23 September 2002 and 26 September 2003. Of special note and significance for this case, the older VASRD considered the spine rated for three segments listing the cervical, dorsal (thoracic) and lumbar spine segments versus the current VASRD’s two spine segments of cervical and thoracolumbar.

Left Shoulder Condition. The Board first considered if the left shoulder condition, having been de-coupled from the combined PEB adjudication, remained independently unfitting as established above. The CI’s permanent U3 profile documented multiple significant limitations that can be attributed only to the left shoulder. These include the inability to lift greater than 10 lbs, perform push-ups, and perform any upper body weight training. These restrictions cannot be attributed to any back pain conditions. The profile does include other restrictions that could be attributed to both the left shoulder and back conditions including no PT test, neck and shoulder stretch, and two arm side stretch. All members agreed that chronic left shoulder pain, as an isolated condition, would have rendered the CI incapable of continued service within her MOS, and accordingly merits a separate rating. The narrative summary (NARSUM) notes that the CI’s left shoulder and scapula pain started in July 1990, while performing a confidence course exercise. She was diagnosed with left shoulder, back and chest sprain and treated with analgesics and muscle relaxants. The CI continued to have left shoulder pain, was evaluated by orthopedics, and given a diagnosis of impingement of the left shoulder. She reinjured the left shoulder while on active duty in 1996.

The goniometric range-of-motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation, with documentation of additional ratable criteria, are summarized in the chart below.

Shoulder ROM	MEB ~14 Mo. Pre-Sep		MEB ~2 Mo. Pre-Sep		C&P ~2 Mo. Post-Sep	C&P 11 Mo. Post-Sep
	Left	Right	Left	Right	Left	Left
Flexion (0-180°)	160°	170°	150°	150°	180°	140°
Abduction (0-180°)	160°	170°	110°	120°	140°	140°
Comments: X-rays and MRI DJD(VA)	+Pain with motion; +tenderness over the left shoulder		+Tenderness; + pain limited motion		Crepitus on motion; + tenderness;- apprehension	ROM uncomfortable in the extreme; stable shoulder
§4.71a Rating	10%	N/A	10%	N/A	10% (VA 10%)	10% (VA 20%)

At the MEB exams almost 14 months prior to separation, the CI reported constant pain and numbness in the left shoulder. The MEB physical exams noted pain with hyperextension and backward extension of the left shoulder and tenderness over the left shoulder. The shoulder exam is summarized above. At the VA Compensation and Pension (C&P) exam 2 months after separation, the CI reported pain over the entire left shoulder. The pain was worse with activity and relieved by rest. The VA exam noted tenderness mainly over the anterior shoulder in the acromioclavicular area. VA radiographic evaluation demonstrated degenerative joint disease (DJD) of the left shoulder. The exam is summarized above. The VA exam performed 11 months after separation indicated pain-limited ROM with a stable shoulder. The exam is summarized above. VA records indicated left shoulder surgery in March 2004 with a temporary 100% rating that subsequently decreased to 10%-20% on later exams/ratings. The Board directs attention to its rating recommendation based on the above evidence. As discussed above the PEB combined multiple conditions and assigned an overall 10% rating IAW the USAPDA pain policy. The VA rated the left shoulder pain, rotator cuff tear as tenosynovitis using 5024 and initially assigned a 10% rating for painful limited motion that exceeded shoulder level. On appeal, with the VA exam, the VA retroactively increased their rating to 20% coded 5024-5201. The MEB and VA examinations are consistent for painful ROM limitations above the shoulder level and the Board could not find evidentiary justification for the 20% or higher rating which requires limitation of ROM at shoulder or below shoulder level. After due deliberation, the Board agreed that the preponderance of the evidence with regard to the functional impairment of the left shoulder impingement syndrome condition favors its recommendation as a separately unfitting condition for disability rating. Considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 10% for the left shoulder impingement syndrome condition.

Back Condition. The Board first considered if the chronic mid and lower back pain, having been de-coupled from the combined PEB adjudication, remained independently unfitting as established above. The CI's permanent U3/L3 permanent profile documented multiple significant limitations that can be attributed only to the chronic back pain. These include no running, jumping, marching, sit-ups, and bicycle and swim at own pace and distance. These restrictions cannot be attributed to the left shoulder condition. The profile does include other restrictions that could be attributed to both the left shoulder and back conditions including no PT test. All members agreed that the back condition would have rendered the CI incapable of continued service within her MOS, and accordingly merits a separate rating for chronic back pain. The Board next deliberated if the mid back pain (dorsal/thoracic spine) was separable from the lower back pain (lumbar spine pain) and if separate ratings should be applied to each spine segment. This will be discussed below the exam findings in the rating deliberations. The CI has a history of lower thoracic and upper lumbar back pain after sustaining a fall while on active duty in 1996. She was treated with non-steroidal anti-inflammatory medications and muscle relaxants without relief. The goniometric ROM evaluations in evidence which the Board weighed in arriving at its rating recommendation, with documentation of additional ratable criteria, are summarized in the chart below.

Thoracolumbar ROM	MEB ~14 Mo. Pre-Sep	MEB ~2 Mo. Pre-Sep	VA C&P ~2 Mo. Post-Sep
Flexion (90° Normal)	"Lacks 20 cm"	95°	75°
Ext (0-30)	"WNL"	25°	15°
R Lat Flex (0-30)	"WNL"	25°	20°
L Lat Flex (0-30)	"WNL"	25°	20°
R Rotation (0-30)	"WNL"	30°	20°
L Rotation (0-30)	"WNL"	35°	20°
Combined (240°)	-	-	170°
Comment: X-rays/MRI DJD Lumbar Spine (VA); Normal ROMs are from current VASRD	+painful motion: + tenderness upper back	+ muscle spasm left thoracic, lumbar and trapezius; + tender	+ tenderness thoracic/lumbar; + spasm; + left SLT at 90°; weakness/atrophy in Lt Lower extremity
§4.71a Rating	10%	20%	20% (VA 20%+ 10%)

At the MEB exam the CI reported back pain secondary to muscle spasms. The MEB physical exam noted slight tenderness in the left paravertebral thoracic and lumbar region due to muscle spasms. The examiner also noted left trapezius muscle tenderness to palpation. The exam is summarized above. The L3/U3 permanent profile limitations included no running, no jumping, no marching, no ruck, and no PT test. At the C&P exam performed 2 months after separation the CI reported pain in the back at all times in any position. She reported that her pain was mainly in the lower back. She also reported pain in the legs that progressed to numbness from the waist down when standing too long. The VA physical examine noted tenderness in the lower thoracic and upper lumbar spinous processes, left greater than right. The examiner also noted spasms on the left with a positive straight leg raise (SLR) at 90 degrees. The VA exam was also significant for documented left lower extremity weakness with approximately ½ inch left calf atrophy. There was an additional VA exam which stated "She has normal range of motion of the thoracic spine with a flexion of 60 degrees as measured for the thoracic spine. Range of motion of the lumbar spine is normal with a flexion of 90 degrees, extension of 35 degrees, side bend of 40 degrees, and rotation of 35 degrees." The Board directs attention to its rating recommendation based on the above evidence. As discussed above the PEB combined multiple conditions and assigned an overall 10% rating IAW the USAPDA pain policy. The VA rated the thoracic and lumbar back conditions separately using 5291, moderate dorsal spine limitation of range of motion with a 10% rating and initially 5295, lumbosacral strain with characteristic pain on motion at a 10% rating that was increased on appeal to 20% for muscle spasm on extreme forward bending and unilateral loss of lateral spine motion in a standing position, although the later VA exam had improved ROMs. The VA and MEB exams most proximate to separation demonstrated spasms in the thoracic and lumbar spine segments and documented decreased thoracolumbar extension, lateral flexion and rotation. The later remote VA exam was adjudged as post-separation improvement. After due deliberation, the Board agreed that the preponderance of the evidence with regard to the functional impairment of chronic back pain condition favors its recommendation as a separately unfitting condition for disability rating. The Board considered combining the back disability and rating as 5299-5295 for the muscle spasms and loss of lateral spine motion was predominate to rating the lumbar spine and thoracic spine separately as the exams did not delineate separate spine segment ROMs and the disability was for the mid and lower back. Considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a rating of 20% for the chronic back pain coded 5299-5295.

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, PEB reliance on the USAPDA pain policy for rating chronic left shoulder and back pain was operant in this case and the condition was adjudicated independently of that policy by the Board. In the

matter of the left shoulder condition, the Board unanimously agrees that it was unfitting; and, unanimously recommends a disability rating of 10%, coded 5099-5024 IAW VASRD §4.71a. In the matter of the chronic back pain condition, the Board unanimously agrees that it was unfitting; and, unanimously recommends a disability rating of 20%, coded 5299-5295 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; and, that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of her prior medical separation:

UNFITTING CONDITION	VASRD CODE	RATING
Chronic Left Shoulder, due to rotator cuff syndrome	5099-5024	10%
Chronic Back Pain	5299-5295	20%
	COMBINED	30%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120608, 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 / XXXXXXXXXXXX), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation
 for XXXXXXXXXXXXXXXXXXXX, AR20130000629 (PD201201048)

1. Under the authority of Title 10, United States Code, section 1554(a), I approve the enclosed recommendation of the Department of Defense Physical Disability Board of Review (DoD PDBR) pertaining to the individual named in the subject line above to recharacterize the individual's separation as a permanent disability retirement with the combined disability rating of 30% effective the date of the individual's original medical separation for disability with severance pay.

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:

a. Providing a correction to the individual's separation document showing that the individual was separated by reason of permanent disability retirement effective the date of the original medical separation for disability with severance pay.

b. Providing orders showing that the individual was retired with permanent disability effective the date of the original medical separation for disability with severance pay.

c. Adjusting pay and allowances accordingly. Pay and allowance adjustment will account for recoupment of severance pay, and payment of permanent retired pay at 30% effective the date of the original medical separation for disability with severance pay.

d. Affording the individual the opportunity to elect Survivor Benefit Plan (SBP) and medical TRICARE retiree options.

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

XXXXXXXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
 DoD PDBR
 DVA