

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1201477
BOARD DATE: 20121212

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20020204

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (63B10/Light Wheeled Vehicle Mechanic), medically separated for chronic mechanical low back pain, without neurologic abnormality or documented chronic paravertebral muscle spasms. He had a 3 year history of low back pain, which he related to an episode of heavy lifting. The pain was refractory to physical therapy, activity restrictions and a variety of medications. The CI 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 L3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded no other conditions for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated chronic mechanical low back pain, without neurologic abnormality or documented chronic paravertebral muscle spasms as unfitting, rated 10% with application of the Department of Defense Instruction (DoDI) 1332.39 and AR 635-40, Appendix B-39. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: "Degenerative arthrosis, degenerative disc disease lumbar spine, intervertebral disc syndrome L4-L5, L5-S1/major depressive disorder/ganglion cyst (right wrist)/status post stress fracture (left leg)/status post stress fracture and shin splints (right tibia)/bilateral pes planus/ left knee pain/right knee pain."

SCOPE OF REVIEW: The Board's scope of review is defined in DoDI 6040.44, Enclosure 3, paragraph 5.e.(2). It is limited to those conditions determined by the PEB to be unfitting for continued military service and those conditions identified, but not determined, to be unfitting by the PEB when specifically requested by the CI. 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. Also IAW DoDI 6040.44, the Board's authority is limited to making recommendations on correcting disability determinations. The Board's role is thus confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to Veteran's Affairs Schedule for Rating Disabilities (VASRD) standards, based on ratable severity at the time of separation.

RATING COMPARISON:

Service IPEB – Dated 20011113			VA - (3 Mos. Pre-Separation) Effective Date 20020205			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Mechanical Low Back Pain, w/o Neurol. Abnor. or Muscle Spasms.	5299- 5295	10%	Intervertebral Disc Syndrome	5293	10%*	20011106
No Additional MEB/PEB Entries			0% 2 # / Not Service-Connected x 4			
Combined: 10%			Combined: 10%			

Based on VARD 20020313 (most proximate to Date of Separation)

*VARD 20060511 changed code to 5243 due to VASRD spine rating guideline change and increased to 20%, effective 20020205) based on VA treatment records following separation (November 2002 and February 2005 to April 2006).

ANALYSIS SUMMARY:

Chronic Mechanical Low Back Pain Condition. The CI had a 3 year history of chronic low back pain associated with leg pain related to an episode of heavy lifting. A magnetic resonance imaging (MRI) scan performed on 10 January 2001, a year before separation, demonstrated large disc protrusions at L4-5 and L5-S1 with slight compression of the right nerve root at the L5-S1 level. Electrodiagnostic testing (electromyogram) performed on 27 July 2001 was normal showing no evidence of radiculopathy. At a neurosurgery evaluation performed on 6 September 2001 the CI denied radicular pain or numbness and the neurologic examination was normal (normal strength, intact symmetric reflexes, normal sensation to pin prick). The neurosurgeon diagnosed mechanical pain secondary to disc degeneration without evidence of radiculopathy. The MEB narrative summary (NARSUM) performed on 26 October 2001 recorded a 3 year history of chronic low back pain and noted there was no lower extremity pain or numbness at that time. On examination there was no paraspinous muscle spasm or tenderness. There was pain with range-of-motion (ROM) testing. Flexion was 90 degrees, extension 10 degrees, and lateral bending was "full" bilaterally. Neurologic examination was normal. At the time of the VA Compensation and Pension (C&P) examination performed on 6 November 2001, 3 months before separation, the examiner recorded a history of chronic low back pain without radiation, interfering with activity, and aggravated by heavy lifting. On examination ROM was normal (flexion was 95 degrees, extension 35 degrees, lateral bending 40 degrees bilaterally, and rotation 35 degrees bilaterally) but there was painful motion. There was no muscle spasm or tenderness. Gait and posture were normal. Neurologic examination was normal (normal strength, intact reflexes and sensation) and straight leg raising was negative for nerve root irritation.

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 2002 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 2002 rating schedule (applicable diagnostic codes include: 5292 limitation of lumbar spine motion; 5293 intervertebral disc syndrome; and 5295 Lumbosacral strain). The PEB coded the condition 5295 for lumbosacral strain but applied regulations. The VA assigned a 10% rating based on mild symptoms due to intervertebral disc syndrome (5293) based on the evidence of the MEB NARSUM and the November 2001 C&P examination. The Board considered the rating under the VASRD diagnostic code 5292 in effect at the time. The Board agreed that the ROM documented at the time of the MEB NARSUM examination and the VA C&P examination supported the 10% under the VASRD diagnostic code 5292 as there was slight or no limitation of motion. The Board next considered whether a higher rating was warranted under the guidelines for intervertebral syndrome, code 5293. The Board noted the CI had degenerative disc disease (DDD) with protruding discs and compression of a nerve root on MRI. There was a history of radiating pain prior entry into the Disability Evaluation System (DES), however by the time of the MEB NARSUM and C&P examination there was no radiating pain or clinical signs of radiculopathy. An electromyogram (EMG) in July 2001 was negative for signs of a radiculopathy and the neurosurgery evaluation concluded there was no evidence of a radiculopathy. No care for exacerbations was documented in the service treatment records (STR). Board members agreed there was no evidence to support a rating higher than the 10% assigned by the VA under 5293 intervertebral disc syndrome. The Board also considered the rating under the code, 5295, lumbosacral strain used by the PEB. The Board members agreed the evidence did not support the 40% rating under this code. The Board considered the 20% rating however there was no evidence of muscle spasm on forward bending or unilateral loss of lateral motion on either the MEB examinations or the C&P examination to support the 20% rating. The Board also noted that posture and gait were normal. The Board concluded the 10% rating was appropriate for characteristic pain on motion noted on all examinations. There was no

associated radiculopathy for separate peripheral nerve rating. The Board noted the VA rating decision in May 2006, 4 years after separation, increased the rating to 20% effective the day after separation. However, this was based on post-separation VA treatment records (November 2002, and February 2005-April 2006) and are not probative to the Board's deliberations. 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 mechanical low back pain 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. As discussed above, PEB reliance on service regulations for rating the chronic mechanical low back pain was operant in this case and the condition was adjudicated independently of those regulations by the Board. In the matter of the chronic mechanical low back pain 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 Mechanical Low Back Pain	5299-5295	10%
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120705, 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 / XXXXXX), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for
XXXXXXXXXXXXXXXXXXXX, AR20120022708 (PD201201477)

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

XXXXXXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
 DoD PDBR
 DVA