

RECORD OF PROCEEDINGS  
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX  
CASE NUMBER: PD1200125  
BOARD DATE: 20130125

BRANCH OF SERVICE: ARMY  
SEPARATION DATE: 20080507

**SUMMARY OF CASE:** Data extracted from the available evidence of record reflects that this covered individual (CI) was a Reserve SGT/E-5 (31B10/Military police), medically separated for chronic low back pain (LBP). The chronic LBP condition did not improve adequately with treatment 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). Bilateral ankle pain condition, identified in the rating chart below, was also identified and forwarded by the MEB. The Informal Physical Evaluation Board (IPEB) adjudicated the chronic LBP condition as unfitting, rated 10%, with application of the Veterans Affairs Schedule for Rating Disabilities (VASRD), and the Department of Defense Instruction (DoDI) 1332.39/US Army Physical Disability Agency (USAPDA) pain policy. The CI appealed to the Formal PEB (FPEB) which affirmed the IPEB findings. The subsequent USAPDA review in April 2008 readjudicated assigning a 20% rating; the CI was then medically separated with a 20% disability rating.

**CI CONTENTION:** "Because I see other troops with less of a disability have a higher rating than I do. As I get older all my conditions are getting to be more of a problem for me and my family."

**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 condition bilateral ankle pain, as requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview; and, is addressed below, in addition to a review of the ratings for the unfitting conditions. The remaining conditions rated by the VA at separation and listed on the DD Form 294 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 Recon PEB – Dated 20080402*			VA (9 Mos. Before PEB) – All Effective Date 20040916*			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Low Back Pain	5243	20%	Herniated Lumbar Disc w/Limited ROM	5237	10%	20060814
Bilateral Ankle Pain	Not Unfitting		No VA Entry			
			Tinnitus	6260	10%	20060814
↓No Additional MEB/PEB Entries↓			0% X 2 / Not Service-Connected x 2			
<b>Combined: 20%</b>			<b>Combined: 20%</b>			

\*CI released from active duty 15 Sep 2004. Entered DES while in Reserve status in 2006. Initial IPEB March 2007, FPEB April 2007, USAPDA reconsideration April 2008.

**ANALYSIS SUMMARY:** The Board acknowledges the sentiment expressed in the CI's application regarding the significant impairment with which his service-incurred condition continues to burden him. The Board wishes to clarify that it is subject to the same laws for disability entitlements as those under which the Disability Evaluation System (DES) operates. The DES has neither the role nor the authority to compensate members for anticipated future severity or potential complications of conditions resulting in medical separation. That role and authority is granted by Congress to the Department of Veterans Affairs, operating under a different set of laws (Title 38, United States Code).

**Back Condition.** There were three goniometric range-of-motion (ROM) evaluations 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 (Degrees)	MEB ~9 Mo. Before PEB (20060531)	VA C&P ~6 Mo. Before PEB (20060814)	PT ~2 Mo. Before PEB (20070118)
Flexion (90 Normal)	40 (42, 43, 43)	75	55 (55, 55, 55)
Extension (30)	15 (16, 16, 16)	30	15 (16, 16, 16)
R Lat Flex (30)	15 (14, 14, 14)	30	20 (18, 18, 18)
L Lat Flex (30)	20 (22, 23, 23)	30	20 (18, 18, 18)
R Rotation (30)	25 (26, 26, 26)	30	30 (32, 32, 32)
L Rotation (30)	30 (35, 35, 35)	30	30 (30, 30, 30)
Combined (240)	145	225	170
Comment	Decreased ROM due to guarding + Tenderness Strength normal Neuro intact	+Spasm No tenderness Gait and posture normal Spinal contour normal Strength & reflexes intact SLR negative	Active range of motion Pain at end range + Tenderness No spasm Normal gait Normal contour
§4.71a Rating	20%	10%	20%

The commander's letter recounts a back injury in July 2003 while deployed as a result of the vehicle the CI was riding in suddenly braked. There are no medical treatment records from that time; however the commander noted the CI returned to duty after a period of treatment. Other documents record the incident occurred in November or December 2003. The first service treatment record (STR) entry for back pain was 17 December 2003 while the CI was still in Iraq when he sought care for LBP with radiation down the left leg for 3 days after throwing a duffle bag. A follow-up evaluation on 24 December 2003 recorded continued pain. On examination there was painful motion. Straight leg raising (SLR) was negative, and reflexes and sensation were intact. The CI was treated with medication and advised to follow-up as needed. No further STR entries are in evidence. According to the commander's letter (November 2006), the CI recovered from the second episode of LBP and completed his deployment performing escort missions lasting 2 to 10 days at a time wearing body armor and carrying combat load. On the post-deployment health assessment 14 July 2004, the CI indicated problems with back pain while deployed. On the report of medical assessment completed 1 August 2004, the CI reported chronic intermittent LBP. The CI was released from active duty 15 September 2004 (per the DD 214). The next medical encounter for LBP was 16 November 2004 when he experienced worsened low back pain upon awakening the day before. The clinic note indicated the CI was working at a retail store and going to school. A magnetic resonance imaging scan of lumbosacral spine January 2005 showed small L5-S1 right paracentral herniated disc contacting the right S1 nerve root, and a shallow central protrusion of the disc at L4-L5. The CI was treated with extensive physical therapy however he was not able to return to unrestricted duties in his MOS and beginning in April 2005, the CI was on duty limiting profile due to back pain. MEB was subsequently initiated. The MEB narrative summary (NARSUM), performed on 18 January 2007, noted the chronic LBP aggravated by activities. The NARSUM cited the examination from 31 May 2006 summarized in the chart; there was tenderness and decreased ROM due to

guarding. There was no muscle weakness or neurologic findings. At the VA Compensation and Pension examination, 14 August 2006, the CI reported chronic LBP with activity and prolonged standing. The thoracolumbar ROM was mildly limited and is recorded in the chart. The ROM was not further limited after repetition. There was muscle spasm but the gait and posture were normal. SLR was negative. X-rays demonstrated mild degenerative changes. The examiner concluded: "After repetitive use, the ROM is not limited by pain, fatigue, weakness, or lack of endurance or incoordination." There was no painful radiation in the lumbar spine but paraspinal muscle spasm was present." The VA rated the back condition 10% based on this examination (coded 5237 lumbosacral strain). A physical therapy examination for the MEB on 18 January 2007, documented limited thoracolumbar ROM per the chart above. There was localized tenderness and muscle guarding/spasms. There were no abnormalities of gait and spinal contour was normal.

The Board directs attention to its rating recommendation based on the above evidence. The PEB rated the condition 10% citing passive range of motion. The FPEB upheld the findings of the PEB. The CI submitted a rebuttal submitting ROM performed by a civilian provider. The civilian provider measured the isolated lumbar ROM in accordance with the American Medical Association disability guides rather than the thoracolumbar motion used by the VASRD. Although not comparable, the examination confirms the limitation of active ROM at the time of the physical therapy examination. The CI's case was closed in May 2007, however disability separation orders and payment of severance pay were not executed and the case was reviewed by the USAPDA in April 2008. The rating for the back was readjudicated with a 20% rating based on active ROM in accordance with National Defense Authorization Act of 2008 directing use of VASRD only guidelines. Separation orders were executed, and the was CI discharged from the Reserves on 7 May 2008. The physical therapy examination 18 January 2007 was the most proximate examination to the time of the PEB and separation, and was in conformity with VASRD guidelines. It was therefore assigned the highest probative value for rating purposes. The Board used the active ROM in accordance with VASRD guidelines in considering its rating recommendation. The active ROM correlated with the 20% rating under the general rating formula for diseases and injuries of the spine. The evidence did not support a higher rating (a higher evaluation of 40% is not warranted unless there was forward flexion of the spine less than 30 degrees or there is ankylosis of the thoracolumbar spine; not documented in the physical therapy examination). The Board noted the CI had intervertebral disc disease, but there were no incapacitating episodes meeting the criteria under the alternate formula. There were no objective neurologic findings of extremity weakness to support consideration of a separate rating for radiculopathy. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (Resolution of reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the chronic low back condition.

Contended PEB Conditions. The contended condition adjudicated as not unfitting by the PEB was bilateral ankle pain. The Board's first charge with respect to this condition is an assessment of the appropriateness of the PEB's fitness adjudications. The Board's threshold for countering fitness determinations is higher than the VASRD §4.3 (Resolution of reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 "fair and equitable" standard. The NARSUM notes chronic ankle pain since basic training. Upon review of the STRs no evidence was found on the ankle condition interfering with the performance of duties. There is no medical care or complaint of ankle pain while deployed or noted on the post-deployment medical assessment. The ankle conditions were not profiled implicated in the commander's statement; and were not judged to fail retention standards. The ankle condition was reviewed by the action officer and considered by the Board. There was no indication from the record that any of these conditions significantly interfered with satisfactory duty performance. After due deliberation in consideration of the preponderance of the evidence, the Board concluded that there was insufficient cause to

recommend a change in the PEB fitness determination for the any of the bilateral ankle pain ; and, therefore, no additional disability rating can be recommended.

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**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. In the matter of the chronic LBP condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended bilateral ankle pain condition, the Board unanimously recommends no change from the PEB determination as not unfitting. There were no other conditions within the Board’s scope of review for consideration.

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**RECOMMENDATION:** The Board, therefore, recommends that there be no recharacterization of the CI’s disability and separation determination, as follows:

<b>UNFITTING CONDITION</b>	<b>VASRD CODE</b>	<b>RATING</b>
Chronic Low Back Pain	5243	20%
	<b>COMBINED</b>	<b>20%</b>

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The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120130, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans’ Affairs Treatment Record

XXXXXXXXXXXXXXXXXXXXX, DAF  
Director  
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  
XXXXXXXXXXXXXXXXXXXXX, AR20130001975 (PD201200125)

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

XXXXXXXXXX  
Deputy Assistant Secretary  
(Army Review Boards)

CF:  
 DoD PDBR  
 DVA