

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1200194
BOARD DATE: 20121121

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20051216

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Soldier, SGT/E-5(25Q/Multichannel Transmission Systems Operator), medically separated for chronic low back pain (LBP). In July 2000, while in the field, the CI fell, the next day after a road march, he developed back pain and went to the CTMC. Despite non steroidal anti inflammatory drugs (NSAIDS), narcotics, orthopedic, pain management, neurology, and chiropractor consults, two epidural steroid injections, three facet injections, spinal stabilization class, physical therapy, nerve conduction study (NCS) and a TENS unit, the CI failed to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. The CI was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded LBP as medically unacceptable IAW AR 40-501 on DA Form 3947 to the Physical evaluation Board (PEB). The MEB forwarded no other conditions for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated the chronic LBP with degenerative joint disease (DJD) L5/S1 as well L4/L5 as unfitting, rated 10%, with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD) and with likely 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: The CI states: "I believe my rating did not truly reflect my disability level at that time. Shortly after my separation I was found to be 50% disabled. I filed a letter of disagreement and was found to be 70% disabled. Also, within a year of separation I was diagnosed with PTSD that was found to be service connected. While I was in the service I refused to get help for the PTSD due to the negative stigma I was given due to my back disability alone. I would like the board to reevaluate my disability rating with all of the evidence at hand. Less than a year after my separation, VA found more problems with not just my lower back but my upper back, knees, legs, and arms as well. I believe that my PTSD should be considered in this case. I was told my my [sic] Med-Hold company that I shouldn't add anything to my case because it could slow down the process. I was also told to accept any rating the PEB gives me. If I didn't it could result in a lower rating or a longer time to out-process. My chain of command said the PEB rating didn't matter because the VA would take care of us after we got out. I hope that the PDBR can right this wrong."

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 left and right leg conditions (peripheral neuropathy) as requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview (as part of the unfitting condition); and, are addressed below, in addition to a review of the ratings for the unfitting LBP condition. The remaining conditions rated by the VA at separation and listed on the DD Form 294 application 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 PEB – Dated 20050928			VA (6 Mos. Post-Separation) – All Effective Date 20051217*			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic LBP... (DJD, BLE denervation; see text)	5242	10%	Degenerative Disc Disease (DDD), Lumbar Spine	5243	10%	20060614
			Peripheral Neuropathy, Left (L) Leg	8521	10%	20060614
			Peripheral Neuropathy, Right (R) Leg	8521	10%	20060614
↓No Additional MEB/PEB Entries↓			Patellofemoral Pain Syndrome, R Knee	5299-5014	10%	20060614
			Patellofemoral Pain Syndrome, L Knee	5299-5014	10%	20060614
			DDD, Cervical Spine	5243	10%	20060614
			Peripheral Neuropathy, L Arm	8515	10%	20060614
			Peripheral Neuropathy, R Arm	8515	0%	20060614
			0% X 1 / Not Service-Connected x 0			20060614
Combined: 10%			Combined: 50%			

ANALYSIS SUMMARY: The Board notes the current VA ratings listed by the CI for all of his service-connected conditions, but must emphasize that its recommendations are premised on severity at the time of separation. The VA ratings which it considers in that regard are those rendered most proximate to separation. 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. That role and authority is granted by Congress to the Department of Veterans' Affairs.

Chronic LBP and Lower Extremity Neuropathy Condition. The PEB disability description was:

“Chronic low back pain with Degenerative Joint Disease L5/S1 as well L4/L5 and foraminal narrowing L4/L5 right greater than left side Epidural steroids did not give Soldier relief and he was referred to neurosurgery The neurosurgical recommendation was for discography The Soldier declined Nerve conduction testing showed muscle transmissions to be normal save denervation in both legs of the L5/S1 nerve roots The declination for surgical intervention was considered to be reasonable and acceptable. Soldier can forward flex to 70 degrees with pain. The neurological examination was non-focal.”

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.

Thoracolumbar ROM	PT ~7 Mo. Pre-Sep	MEB ~4 Mo. Pre-Sep	VA C&P ~6 Mo. Post-Sep
Flexion (90° Normal)	70°	“Active ROM WNL, ...was pain with forward flexion at 70° and ... extension at 18°”	90° 40°*
Ext (0-30)	10°		30° 10°*
R Lat Flex (0-30)	30°		30° 5°*
L Lat Flex 0-30)	30°		30° 5°*
R Rotation (0-30)	30° (60/65/70°)		30°
L Rotation (0-30)	30° (70/70/75°)		30°
Combined (240°)	200°		240°
Comment: Used Notes 2 and 4 from VASRD §4.71a. Spine Formula		Painful motion; +straight leg raise (SLR) pain bilaterally at 35°; “BSG was noted to have been	* “... with X° of pain at the end”; gait normal; Pain with movement; tenderness; mildly + SLR with pain at L4S1; R knee reflex 1+/2+;” no

		decreased by 50%"	appreciable motor deficit"; decreased sensation L front leg, R/L medial leg distally
§4.71a Rating	10%	10%	10% (see text)

The magnetic resonance imaging (MRI) performed in August 2000 demonstrated slight facet asymmetry at L5-S1. The CI went through extensive PT treatments, however because of his lack of progress, he was referred for a spinal stabilization class, and then he underwent extensive chiropractor therapy. A lumbar spine X-ray showed DJD L5-S1 and an MRI confirmed this finding along with foraminal narrowing at L4-L5 with the right being greater than the left. The CI underwent two epidural steroid injections without relief and his treatment was changed to three facet injections, which failed to provide relief. The CI was then referred for a discography which he (reasonably) declined. A nerve conduction study performed indicated a denervation of the tested muscles of both legs supplied by the L5-S1 nerve roots. A medical clinic note documented no radiculopathy. The MEB examination, 4 months prior to separation noted that daily pain was aggravated by prolonged sitting, standing or other movements. The MEB physical exam findings are summarized in the chart above. The VA Compensation & Pension (C&P) examination 6 months after separation indicated stiffness, weakness, sharp, aching, sticking, cramping sharp daily pain made worse by physical activity or stress and relieved by narcotics, NSAIDS and muscle relaxants. The CI indicated that there was incapacitation one time a year for two days along with functional impairment. The C&P physical exam findings, including the lower extremity sensory abnormalities, are summarized in the chart above. Thoracic and lumbar radiographs were normal.

The Board directs attention to its rating recommendation based on the above evidence. The PEB rated the chronic LBP as 5242 (Degenerative Arthritis of the Spine) at 10% with an implied not unfitting determination for the radiculopathies. The VA coded the condition as 5243 (Intervertebral Disc Syndrome) at 10%. The VA rated each lower extremity at 10% coded 8521 for peripheral neuropathy. The General Rating Formula for Diseases and Injuries of the Spine considers the CI's pain symptoms "With or without symptoms such as pain (whether or not it radiates), stiffness or aching in the area of the spine affected by residuals of injury or disease." Board precedent is that a functional impairment tied to fitness is required to support a recommendation for addition of a peripheral nerve rating at separation. The pain component of a radiculopathy is subsumed under the general spine rating as specified in §4.71a. The sensory component in this case - decreased sensation left front leg, right and left medial leg distally- has no functional implications. There was no motor impairment. Since no evidence of functional impairment exists in this case, the Board cannot support a recommendation for additional rating based on peripheral nerve impairment.

All exams proximate to separation met the 10% rating criteria for "Forward flexion of the thoracolumbar spine greater than 60 degrees but not greater than 85 degrees" or for painful motion IAW VASRD §4.59. As noted above, the Board adjudged that the peripheral neuropathy was not separately unfitting or ratable. 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 LBP condition with not unfitting left and right lower extremity peripheral nerve conditions.

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 the chronic LBP condition was likely operant in this case and the condition was adjudicated independently of that policy by the Board. 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 lower legs (left and right lower extremity neuropathy) conditions, the Board unanimously recommends no change from the PEB (implied) determinations as not unfitting. 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 LBP	5242	10%
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120225, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

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 President
 Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency
(TAPD-ZB /), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for
XXXXXXXXXXXXXXXXXXXXXXX, AR20120021972 (PD201200194)

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

XXXXXXXXXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
() DoD PDBR
() DVA