

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXX
CASE NUMBER: PD1200230
BOARD DATE: 20121128

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20030526

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (54B/Chemical Specialist), medically separated for chronic back pain. The CI developed chronic low back pain (LBP) after a motor vehicle accident in 1999. Despite comprehensive conservative therapy as well as more invasive trigger point and caudal blocking injections, the chronic back pain condition could not be adequately rehabilitated and the CI remained unable to meet the physical requirements of her Military Occupational Specialty (MOS) or satisfy physical fitness standards. She 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 the chronic back pain condition as unfitting, rated 10%, with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD) and Department of Defense Instruction (DoDI) 1332.39. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: “The Army rated me 10% for my chronic lower back pain but did not include my other service-connected diagnoses.”

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 chronic LBP condition is the only condition identified by the PEB. The other requested conditions of scar residual of ganglion cyst, residuals of rape, and gynecological condition 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 20030204			VA (2 Mos. Post-Separation) – All Effective Date 20030527			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Back Pain	5299-5295	10%	Disc Disease of the Lumbar Spine	5293-5292	10%	20030714
↓ No Additional MEB/PEB Entries ↓			Scar Residual of Ganglion Cyst, Right Wrist	7804	10%	20030714
			Residuals of Rape	9411	50%	20040213
			0% X 1/ Not Service-Connected x 2			
Combined: 10%			Combined: 60%			

ANALYSIS SUMMARY: The Board acknowledges the CI's contention that suggests ratings should have been conferred for other conditions documented at the time of separation. 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. While the DES considers all of the member's medical conditions, compensation can only be offered for those medical conditions that cut short a member's career, and then only to the degree of severity present at the time of final disposition. However the Department of Veteran Affairs (DVA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions and to periodically reevaluate said conditions for the purpose of adjusting the Veteran's disability rating should her 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 6040.44, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation and is limited to conditions adjudicated by the PEB as either unfitting or not unfitting. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Chronic Back Pain Condition. There were three 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. The record does not specify whether these measurements were made with a goniometer and this was not required by the 2002 VASRD.

Thoracolumbar ROM	Neurosurgery ~ 5 Months Pre-Separation	MEB ~5 Months Pre-Separation	VA C&P ~1.5 Months Post-Separation
Flexion (90° Normal)	70°	70°	90°
Extension (0-30)	10°	Not Measured	25°
R Lateral Flex (0-30)	30°	30° (40)	25-30°
L Lateral Flex 0-30)	30°	30° (40)	25-30°
R Rotation (0-30)	Not Measured	Not Measured	Not Measured
L Rotation (0-30)	Not Measured	Not Measured	Not Measured
Combined (240°)	140° to 200°	130° to 220°	165° to 225°
Comment	No spasm, list, or tenderness; normal pinprick and strength 5/5 bilateral lower extremities; reflexes 1/4 symmetric. MRI slight desiccation and bulging of L4-5 disc. EMG left lower extremity normal.	Gait undisturbed; tenderness to palpation in bilateral lumbar paraspinal regions; straight leg raises are negative; reflexes 1+ at bilateral knees and ankles; motor strength 5/5 and intact pinprick sensation in bilateral lower extremities.	Slightly tender at L5-S1 level; no spasm, no abnormal curvature, and no radicular pain; strength is symmetrical in the lower extremities and reflexes and sensation were normal.
§4.71a Rating			
5292	10%	10%	10%
5293		10%	10%
5295	10%	10%	10%

The MEB narrative summary (NARSUM) completed approximately 5 months prior to separation and it reports persistent lower back pain after a motor vehicle accident in 1999. Despite extensive conservative treatment with medication, physical therapy, and profiles as well as more invasive treatment with trigger point and caudal blocking injections she continued to have pain that prevented her from performing the duties required of her MOS. Neurosurgery noted that surgery was not indicated. A magnetic resonance imaging (MRI) performed in May 2002 noted minimally bulging discs at L4-5 and L5-S1 with minimal disc desiccation at L3-4 and L4-5. Although the NARSUM notes a history of intermittent right lower extremity paresthesia

to the level of the knee and a normal right lower extremity electromyogram (EMG), an EMG of the left lower extremity was performed in July 2002 and was normal. No EMG of the right lower extremity was found in the record. Physical exertion, lifting more than 30 pounds, and wearing military gear would cause her pain to increase to 7 or 8/10 and she was limited to administrative duties in her company. At the MEB exam, the CI reported numbness and tingling shooting down both legs whenever her back “starts spasming.” The MEB physical exam was done by the same examiner that prepared the NARSUM and the physical examination findings are recorded in the ROM chart above. A VA Compensation and Pension (C&P) exam was completed almost 2 months after separation and it documented a similar clinical history. At the time of this examination, the CI reported pain of 6/10. She complained of stiffness and the use of Oxycodone for pain. An X-ray noted questionable narrowing at the level of the L5-S1 disc that could have represented either a normal exam or mild disc disease.

The 2002 Veterans Administration Schedule for Rating Disabilities (VASRD) coding and rating standards for the spine, which were in effect at the time of separation, were modified on 23 September 2002 to add incapacitating episodes (5293 Intervertebral disc syndrome), and then changed to the current §4.71a rating standards on 26 September 2003. The 2002 standards for rating based on ROM impairment were subject to the rater’s opinion regarding degree of severity, whereas the current standards specify rating thresholds in degrees of ROM impairment. When older cases have goniometric measurements in evidence, the Board reconciles (to the extent possible) its opinion regarding degree of severity for the older spine codes and ratings with the objective thresholds specified in the current VASRD §4.71a general rating formula for the spine. This promotes uniformity of its recommendations for different cases from the same period and more conformity across dates of separation, without sacrificing compliance with the DoDI 6040.44 requirement for rating IAW the VASRD in effect at the time of separation. 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

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
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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

The Board directs attention to its rating recommendation based on the above evidence. The PEB rated the chronic back pain at 10% for characteristic pain on motion using the 5299-5295 code. The VA also rated the condition at 10% although they used a different code, 5293-5292, to incorporate the CI's radicular symptoms. They did not assign a separate rating for peripheral neuropathy. While any of the three VASRD codes listed in the chart above could be used, all result in a 10% rating and none offers any advantage to the CI. Additionally, if today's VASRD was used to rate this condition, a 10% rating would result based on painful motion.

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 has no functional implications and no motor impairment was documented. Since no evidence of functional impairment exists in this case, the Board cannot support a recommendation for additional rating based on peripheral nerve impairment. 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 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. In the matter of the chronic 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 Back Pain	5299-5295	10%
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120301, 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
XXXXXXXXXXXXXXXXXXXXXXXXXX, AR20120022041 (PD201200230)

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

XXXXXXXXXXXXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
() DoD PDBR
() DVA