

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME:
CASE NUMBER: PD1200270
BOARD DATE: 20121121

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20070116

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an Active Guard Reserve (AGR) SGT/E-5 (42A/Human Resources Specialist), medically separated for chronic low back pain. The covered individual first developed low back pain while deployed in Iraq in 2004. The low back condition could not be adequately rehabilitated to meet the physical requirements of her Military Occupational Specialty (MOS) or satisfy physical fitness standards. She was issued a permanent L3/E2 profile duty and referred for a Medical Evaluation Board (MEB). Endometriosis, migraine headaches, right wrist pain, right knee pain and overweight conditions, identified in the rating chart below, were also identified and forwarded by the MEB. The Physical Evaluation Board (PEB) adjudicated the chronic low back condition as unfitting, rated 10% with application of regulations. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: "I was given a 10% medical discharge for Chronic Back Pain however when I was discharged I had several other conditions which were not considered. I was airlifted out of Iraq due to severe pelvic pain to Landstuhl, Germany where I found out I had severe Endometriosis (*sic*) and then was flown to GA where I underwent surgery. After many years of pain and surgery while in service I had to receive a hysterectomy at the age of 29, two years after discharge, because of the condition. I am currently rated for both the endometriosis as well as the hysterectomy. I also began to have severe Migraines while in Iraq which are documented and later received (*sic*) a 50% rating from the VA soon after discharge. I had my gall bladder removed in 2006 which gave me significant trouble while on duty as well as after discharge."

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 endometriosis and migraine headache conditions as requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview; and, are addressed below. Obesity is not a physical disability IAW DoDI 1332.38 and will be discussed no further. The remaining conditions rated by the VA at separation and listed on the DA 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 IPEB – Dated 20061109			VA (6 Mos. Post-Separation) – All Effective Date 20070117			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Low Back Pain	5237	10%	Lumbar Strain	5237	20%	20070709
Endometriosis	Not Unfitting		Endometriosis	7629	10%	20070709
Migraine Headaches	Not Unfitting		Migraine Headaches	8100	10%	20070709
Chronic Right Wrist Pain	Not Unfitting		Tendonitis Right Wrist	5215	0%	20070709
Chronic Right Knee Pain	Not Unfitting		Right Knee Condition	5261	0%	20070709
Overweight	Not Unfitting		No Corresponding VA Entry			
↓ No Additional MEB/PEB Entries ↓			0% X 5 / Not Service-Connected x 3			20070709
Combined: 10%			Combined: 40%			

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. 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. 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 nor for conditions determined to be service-connected by the Department of Veterans Affairs (DVA) but not determined to be unfitting by the PEB. However, the DVA, operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions and to periodically re-evaluate said conditions for the purpose of adjusting the Veteran's disability rating should the degree of impairment vary over time. The Board's role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to VASRD standards, based on severity at the time of separation.

Low Back Condition. The CI first developed low back pain while deployed in Iraq in 2004 after falling when carrying a rucksack. A magnetic resonance imaging (MRI) study, performed on 12 July 2005, documented small discs at the T12-L1 (midback) and L5-S1 (low back) levels without nerve compression and a mild wedge fracture of the edge of T12. The CI was treated with physical therapy and medication with unsustained improvement. A follow-up MRI study, performed on 2 January 2007, 2 weeks before separation, was unchanged from the MRI performed in July 2005, but noted the small healed compression fracture to be chronic (healed). The CI was evaluated by neurosurgeons, 22 February 2006 and 12 July 2006, who recommended conservative treatment without surgical intervention. There were four range-of-motion (ROM) evaluations, three goniometric, 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 (In degrees)	MEB ~4 Mo. Pre-Sep (20060920)	Private Clinic ~2 Mo. Pre-Sep (20061208)	VA Neuro ~5 Mo.- Post Sep(20070613)	VA C&P ~6 Mo. Post-Sep (20070709)
Flexion (90 Normal)	45	FAROM	50	80
Extension (30)	25	FAROM	20	30
Combined (240)	190	-	-	190
Comment	Normal gait motor, sensory and reflexes; No spasm/ pain SLR neg	Full active ROM Spinal tenderness; motor/sensory/ reflexes wnl	Motor, sensory, reflexes ,gait wnl No spasm, fatigue; Pain with ROM; slt spinal tenderness	No change with repetition;no pain spasm,weakness; motor/sensory wnl; gait and posture wnl

§4.71a Rating	20%	10%	20%	10%
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At the MEB/narrative summary (NARSUM) evaluation, performed on 20 September 2006, 4 months before separation, the CI reported back pain without radiation averaging 6/10 increasing to 8/10 with any strenuous activity. She reported taking only Tylenol for pain control as she was breast feeding 4 months post partum. Findings on physical examination are recorded above. On a clinic exam performed 8 December 2006, 2 months before separation, ROM of the back was reported as "full" (see findings above). On VA Compensation and Pension (C&P) neurologic examination performed on 13 June 2007, 5 months after separation, ROM of the back was reduced to flexion of 50 degrees without spasm (see findings above). At the C&P general exam, 9 July 2007, 6 months post-separation and 3 weeks after the prior exam, the CI reported persistent, localized back pain without radiation, but noted no impact on activities of daily living or occupation. Findings on physical examination are recorded above and are noted for markedly improved ROM compared to the previous examination. The Board directs attention to its rating recommendation based on the above evidence. The PEB and VA (initially) rated the back condition 10% code 5237, lumbar-sacral strain. A higher rating, 20% under this code, requires forward flexion of the thoracolumbar spine of 30 to 60 degrees, combined ROM of not greater than 120 degrees or muscle spasm or guarding severe enough to result in abnormal gait or abnormal spine contour. The Board noted a panoply of disparate ROM evaluations on examinations proximate to separation as noted in the ROM chart above. The Board was unable to ascertain a reasonable explanation for this disparity based on intermittent medication use, physical therapy or physical activity. After review of the available evidence and discussion the Board unanimously agreed that a rating of 20% was appropriate. A higher rating of 40% requiring flexion of 30 degrees or less or favorable ankylosis of the entire lumbosacral spine was not supported by the record in evidence. There was no evidence of ratable peripheral nerve impairment in this case, since no motor weakness was present and sensory symptoms had no functional implication. There was no evidence of incapacitating episodes for a higher rating under 5243. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 20% for the low back pain condition.

Contended PEB Conditions. The contended conditions adjudicated as not unfitting by the PEB were endometriosis and migraine headache conditions. The Board's first charge with respect to these conditions 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 (reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 "fair and equitable" standard. Endometriosis Condition: The CI developed chronic abdominal pain in 1999. Laparoscopy at that time revealed only hydrosalpinx, evidence of chronic infection. She was admitted in 2004 for recurrent abdominal pain and a diagnosis of endometriosis was made at laparoscopy. Ablation of the disease was performed at this procedure and patient begun on appropriate suppressive medication with subsequent adequate control of symptoms. The CI was admitted to the hospital June 2006 for right upper abdominal pain related to gallstones not endometriosis. The treatment record contains no ER or emergent visits or hospitalizations for treatment of the endometriosis condition after diagnosis in 2004. Migraine Headache Condition: The CI had migraine headaches as a child. Headaches reappeared in 2004 after deployment. At time of separation headaches were responding to simple analgesic medication (Excedrin). On the MEB/NARSUM evaluation, the CI reported a headache 'once in a while.' The record in evidence contains no emergent clinic, ER visits or loss of work for this condition and no treatment with any migraine specific medication at time of separation. Neither of these conditions was profiled, implicated in the commander's statement; nor judged to fail retention standards. Both were reviewed by the action officer and

considered by the Board. There was no indication from the record that either 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 endometriosis and migraine headache conditions; and, therefore, no additional disability ratings can be recommended.

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. The PEB reliance on service regulations for rating the chronic back pain condition was operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the chronic low back pain condition, the Board unanimously recommends a disability rating of 20%, coded 5237 IAW VASRD §4.71a. In the matter of the contended endometriosis and migraine headache conditions, the Board unanimously recommends no change from the PEB determinations as not unfitting. 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, effective as of the date of her prior medical separation:

UNFITTING CONDITION	VASRD CODE	RATING
Chronic Low Back Pain	5237	20%
	COMBINED	20%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120505, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

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

1. I have reviewed the enclosed Department of Defense Physical Disability Board of Review (DoD PDDBR) 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 to modify the individual's disability rating to 20% without recharacterization of the individual's separation. This decision is final.
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.
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

Deputy Assistant Secretary
(Army Review Boards)