

RECORD OF PROCEEDINGS  
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX  
CASE NUMBER: PD1200297  
BOARD DATE: 20121102

BRANCH OF SERVICE: ARMY  
SEPARATION DATE: 20060126

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**SUMMARY OF CASE:** Data extracted from the available evidence of record reflects that this covered individual (CI) was a 1LT/O-2 (00E, Student Officer) medically separated for chronic low back pain (LBP). She was treated, but did not respond adequately to fully perform her military duties or meet physical fitness standards. She was issued a permanent profile and a Medical Evaluation Board (MEB) was initiated. The MEB found the chronic LBP medically unacceptable, and referred her to a Physical Evaluation Board (PEB). No other conditions were listed on the DA Form 3947. The PEB found the chronic LBP condition unfitting, and rated it 10% IAW the Veterans' Administration Schedule for Rating Disabilities (VASRD). The CI accepted the PEB findings, and was medically separated with a 10% disability rating.

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**CI CONTENTION:** "I was given a rating of 10% and then separated from the Army. I find it odd that I was deemed physically unfit for duty but received such a low rating. I believe that if I was physically unfit for duty, my disability rating should be higher than 10 or 20%. After being discharged I went to the VA to be evaluated and received an initial disability rating of 10%. Since then I have been reevaluated and I now have a disability rating of 30%."

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**SCOPE OF REVIEW:** The Board's scope of review as defined in the Department of Defense Instruction (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 unfitting chronic back pain condition meets the criteria prescribed in DoDI 6040.44 for Board purview, and is accordingly addressed below. No other condition is within the Board's purview. Any condition outside the Board's defined scope of review may be eligible for future consideration by the Army Board for Correction of Military Records.

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**RATING COMPARISON:**

Army PEB – dated 20051006			VA (4.5 mos. Post-Separation) – All Effective 20060127			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Back Pain	5299-5237	10%	Disk Disease, Lumbar	5237	10%*	20060612
↓No Additional MEB/PEB Entries↓			0% X 1			20060612
<b>Combined: 10%</b>			<b>Combined: 10%*</b>			

\*The VA rating for Disk Disease was later increased, by a subsequent VA Rating Decision (VARD) dated 20091221

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**ANALYSIS SUMMARY:**

**Back Pain Condition.** In September 2004, 2 months after starting active duty, the CI began having pain in her entire spine (neck, mid-back, and lower back). There was no history of any specific injury or trauma to the spine. From September 2004 to December 2004, the pain became progressively worse. When she began flight training, she noticed that sitting in a helicopter significantly increased her pain. Magnetic resonance imaging (MRI) performed in May 2005 showed the cervical and thoracic spine to be essentially normal. The lumbar spine

showed disc bulges (L3-L4 & L4-L5), some facet hypertrophy, and mild canal stenosis. She was seen by a neurosurgeon who recommended against surgery or epidural injections. Since the pain did not resolve with treatment, an MEB was initiated. Her MEB clinical evaluation was at Fort Rucker AL, on 16 September 2005. At that time, the neck pain had cleared and was only minimally uncomfortable. The thoracic (mid-back) pain had also improved. However, she continued to have significant low back pain (LBP). On exam, her gait and spinal curvature were normal. There was no muscle spasm noted. She did have some tenderness to palpation (TTP). Straight leg raise (SLR) and neurological exam were normal. Range-of-motion (ROM) was measured and is summarized in the chart below.

On 12 June 2006, 19 weeks after separation, the CI had a VA Compensation and Pension (C&P) exam. At that time, she complained of pain, but was in no acute distress. Height was 65 inches, weight 128 pounds, BMI 21. She had normal posture and gait. Examination of the back showed no evidence of spasm, weakness, or tenderness. Thoracolumbar ROM was full, with mild discomfort during flexion and extension. Neurological exam was normal. In the CI's treatment record, two relevant ROM evaluations were noted, and are summarized below.

Thoracolumbar ROM	MEB – 19 weeks Pre-Sep (20050916)	VA C&P – 19 weeks Post-Sep (20060612)
Flexion (90° is normal)	110°	90°
Combined (240° is normal)	230°	240°
Comment	Painful ROM	Mild discomfort with ROM
§4.71a Rating	10%	10%*

\*10% based on VASRD §4.59 (Painful motion)

The Board carefully reviewed all evidentiary information available. After consideration of the two back examinations noted above, it was determined that both exams carried probative value. Both examinations were conducted in a thorough manner, and were performed 19 weeks away from her date of separation. Based on the September 2005 MEB exam, and IAW the VA Schedule for Rating Disabilities (VASRD) §4.71a, a disability rating of 10% is warranted due to combined thoracolumbar ROM greater than 120 degrees but not greater than 235 degrees. Her combined thoracolumbar ROM was 230 degrees, because normal ROM for flexion (90 degrees) is the maximum that can be used for calculation of combined ROM. Based on the June 2006 VA exam, and IAW VASRD §4.59, a disability rating of 10% is warranted due to painful motion of the thoracolumbar spine. The evidence in the treatment record does not show sufficient justification for a rating greater than 10%. 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.

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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. The Board did not surmise from the record or PEB ruling in this case that any prerogatives outside the VASRD were exercised. 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.

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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 Back Pain	5299-5237	10%
	<b>COMBINED</b>	<b>10%</b>

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The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120309, 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  
XXXXXXXXXXXXXXXXXXXX, AR20120021209 (PD201200297)

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