

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1200363
BOARD DATE: 20121026

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20050128

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSGT/E-6 (63M30/Bradley Fighting Vehicle System Maintainer), medically separated for chronic back pain status post L4-S1 fusion. He did not respond adequately to operative and rehabilitative treatment and was unable 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). The MEB forwarded L4-S1 transforaminal lumbar interbody fusion to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB's submission. The PEB adjudicated the chronic back pain condition as unfitting, rated 20% with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD). Upon the CI's written appeal, the USAPDA confirmed the findings of the PEB and he was then medically separated with a 20% disability rating.

CI CONTENTION: "Lower back injury, spinal fusion"

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its 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 ratings for unfitting conditions will be reviewed in all cases. The chronic back pain condition requested for consideration meets the criteria prescribed in DoDI 6040.44 for Board purview, and is accordingly addressed below. The remaining conditions rated by the VA at separation and listed on the DA 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 IPEB – Dated 20040909			VA (1 Mo. Pre -Separation) – All Effective Date 20050129			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Back Pain Status Post L4-S1 Fusion	5241	20%	Herniated Nucleus Pulposus Lumbosacral Spine	5237-5243	40%	20050106
↓No Additional MEB/PEB Entries↓			Myofascial Syndrome C-Spine	5299-5237	10%	20050106
			Bilateral Keratitis	6001-6018	10%	20041221
			Gastroesophageal Reflux	7339-7346	10%	20050106
			Tender Scar, L-Spine	7804	10%	20050106
			Onychomycosis	7813-7806	10%	20050106
			0% X 2 / Not Service-Connected x 3			
Combined: 20%			Combined: 60%			

ANALYSIS SUMMARY:

Lumbar Spine Condition. After several years of low back pain, the CI had lumbar disc surgery in August 2001 for progressive right leg radicular pain. The outcome was excellent, but re-injury from a motor vehicle accident in August 2002 led to significant pain and bilateral sciatica. After lumbar fusion performed in April 2004, radicular symptoms resolved, but he continued to experience significant pain. 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 in degrees	MEB ~6 Mo. Pre-Sep	PT ~3 Mo. Pre-Sep	VA C&P ~3 Wks. Pre-Sep
Flexion (90 Normal)	35 (35,30,35)	35	15
Ext (0-30)	5 (5, 5, 5)	5	15
R Lat Flex (0-30)	20 (20, 20, 20)	Not Reported	10
L Lat Flex 0-30)	15 (15, 15, 15)		20
R Rotation (0-30)	25 (25, 25, 30)		20
L Rotation (0-30)	30 (25, 30, 30)		15
Combined (240°)	130	--	95
Comment	Slow, guarded movement	Inclinometer	+ Painful motion, tenderness
§4.71a Rating	20%	20%	40%

At the narrative summary (NARSUM) examination performed 12 August 2004 (5 months prior to separation) and 4 months after surgery, the CI denied radicular symptoms. The examiner stated that the surgery resulted in “good resolution of his symptoms” although he was in “constant and moderate” pain. Examination revealed no tenderness and no evidence of sacroiliac joint pain. The MEB examiner reported that pain and bilateral sciatica were present, but were much better since surgery. He did not use a back brace. Examination showed a positive straight leg raise (SLR) test bilaterally and decreased sensation in both thighs. A physical therapy note 3 months prior to separation reported that the CI was experiencing significant pain that interfered with sleep and caused an inability to bend or sit. Pain severity was never less than seven on a 1 to 10 scale. The CI was riding a bike and lifting light weights each morning at the gym. At the VA Compensation and Pension (C&P) exam performed 3 weeks prior to separation (6 January 2005), the CI reported unremitting back pain that prevented his ability to perform yard work and was exacerbated by movement, prolonged standing or walking more than 15 minutes. Pain severity was reported to be 8 out of 10 at rest. The pain occurred daily and radiated to both buttocks, but symptoms of radiculopathy were absent. He took a narcotic pain medication 3 times per day. Examination noted mild to moderate distress and an antalgic gait due to back pain. Posture was normal, but spasm wasn't mentioned. Weakened movements against resistance, fatigability with use and lack of endurance were reported, although repetitive measurements were not provided. Muscle strength, sensation and deep tendon reflexes (DTR) were normal. There was no evidence of radiculopathy. 10 months after separation, a VA clinic provider reported that the CI was a student. The CI indicated that his pain level was 5 out of 10, and he was only taking over the counter pain medication. He was noted to have a steady gait.

The Board directs attention to its rating recommendation based on the above evidence. The PEB assigned a 20% rating under the 5241 code (spinal fusion) based on flexion of 35 degrees. The VA's 40% rating under a 5237-5243 code (lumbosacral strain, intervertebral disc syndrome) was based on lumbar flexion of 15 degrees. Under the §4.71a spine formula, forward flexion of 30 degrees or less justifies a 40% rating; and flexion greater than 30 degrees, but not more than 60 degrees, combined ROM not greater than 120 degrees, or muscle spasm or guarding severe enough to result in an abnormal gait or abnormal spinal contour justifies a 20% rating. The Board agreed that the respective ratings assigned by the PEB and the VA were consistent with the available data. In its deliberation, the Board considered that the two service ROM exams

performed 3 months apart were identical, and that the outpatient VA follow-up visit performed 10 months after separation noted the pain severity had lessened, over the counter medication was being used for pain control and there was no longer an antalgic gait. Board members agreed that the internal consistency of the exam data and the post separation evidence indicative of an improving condition most accurately depicted the overall clinical picture. The Board also considered whether a rating higher than the PEB's 20% could be achieved under the formula for rating intervertebral disc disease based on incapacitating episodes. However, criteria for the minimum 10% rating under that formula were not present. The Board further deliberated if additional disability was justified for radiculopathy in this case. Although the CI complained of intermittent radiating pain, and one examiner noted a positive SLR, all other examiners documented that no clinically significant radiculopathy existed. The presence of functional impairment with a direct impact on fitness is the crucial factor in the Board's decision to recommend any condition for rating as additionally unfitting. Any lower extremity pain components in this case have no functional implications, and the Board therefore concludes that additional disability rating was not justified on this basis. 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 lumbar spine 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. 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.

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 Status Post L4-S1 Fusion	5241	20%
	COMBINED	20%

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120310, 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, AR20120020614 (PD201200363)

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