

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1200429
BOARD DATE: 20121127

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20070815

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (88N/Transportation Management Coordinator), medically separated for non-radicular chronic low back pain (LBP) with L4/5 herniated disc and L5 Grade I spondylolisthesis. The CI experienced the onset of lower back pain in October of 2005. There was no history of trauma or other back injuries. The chronic LBP could not be adequately rehabilitated with anti-inflammatory medications, steroid injections and physical therapy. The CI did not improve adequately with treatment 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). Allergic rhinitis condition, identified in the rating chart below, was also identified and forwarded by the MEB. The Physical Evaluation Board (PEB) adjudicated the non-radicular chronic LBP with L4/5 herniated disc and L5 Grade I spondylolisthesis conditions as unfitting, rated 10% with application of the Veteran’s Affairs Schedule for Rating Disabilities (VASRD). The remaining condition was determined to be not unfitting. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: “The severity of the pain and inability to function due to my back problems were not taken into account”.

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 service rated condition non-radicular chronic LBP with L4/5 herniated disc and L5 Grade I spondylolisthesis as requested for consideration meets the criteria prescribed in DoDI 6040.44 for Board purview; and, is addressed below. 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 20070523			VA (6 Mos. Post-Separation) – All Effective Date 20070816			
Condition	Code	Rating	Condition	Code	Rating	Exam
Non-radicular Chronic Low Back Pain with L4/5 Herniated Disc and L5 Grade I Spondylolisthesis	5299-5237	10%	Spondylolisthesis of the Lumbar Spine	5239	0%	20080213
Allergic Rhinitis	Not Unfitting		NO VA ENTRY			
↓No Additional MEB/PEB Entries↓			Tendonitis of the Left Achilles Tendon	5024-5271	10%	20080213

Combined: 10%

Combined: 10%

ANALYSIS SUMMARY:

Non-radicular Chronic Low Back Pain with L4/5 Herniated Disc and L5 Grade I Spondylolisthesis. 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	PT (Narsum) ~4 Mo. Pre-Sep*	VA C&P ~6 Mo. Post-Sep	VA C&P ~4 Years Post-Sep
Flexion (90° Normal)	90°	90°	90°
Ext (0-30)	20°	25°	30°
R Lat Flex (0-30)	30°	30°	30°
L Lat Flex (0-30)	20°	30°	30°
R Rotation (0-30)	30°	30°	30°
L Rotation (0-30)	30°	30°	30°
Combined (240°)	220°	230°	240°
Comment: *Inclinometer used by PT	+ Tenderness; mild muscle spasm; normal gait and contour	+ Tenderness; painful motion; normal gait; Lasegue's and SLR neg; Waddell testing neg	+ Tenderness; painful motion
§4.71a Rating	10%	10% (VA 0%)	10% (no RD on file)

At the MEB exam 4 months prior to separation, the CI reported the onset of LBP in October 2005. Although the CI's back pain was not attributed to either of these events, her history was significant for a car accident in 2005 and a fall on her tailbone while in Iraq. The pain was rated "3-4/10 on a day to day basis" with occasional 8/10 episodes. There were no radicular complaints. The CI was treated with anti-inflammatory medication, physical therapy and epidural steroid injections without sustained pain relief. The CI was also evaluated by neurosurgery and was not a surgical candidate. The MEB physical exam noted tenderness at the L4-L5 level with mild muscle spasm. The gait and spinal contour were normal. The neurologic exam was normal. A magnetic resonance imaging (MRI) exam performed in December 2006 showed L4-5 prominent central disk extrusion without spinal stenosis or neural foraminal narrowing. L-Spine X-ray revealed bilat spondylolysis of L5 and grade 1 spondylolisthesis of L5 on S1. Profile and limitations were no Army Physical Fitness Test (APFT), no lifting greater than 15 lbs, no standing greater than 30 minutes, and no impact activities. At the VA Compensation and Pension (C&P) exam 6 months after separation, the CI reported constant dull pain at the left iliac crest and left buttock. She did not report radiation of the pain. The exam was significant for tenderness over the lower spinous process without spasm. The gait and posture were normal. The Board directs attention to its rating recommendation based on the above evidence. The pain component, contended by the CI, is subsumed under the general spine rating as specified in §4.71a. The CI had near-normal ROM with tenderness to palpation along the lower spinous process per VA examination. This would meet the criterion of local tenderness at a 10% rating evaluation level. Although mild spasms were noted on the MEB exam, the gait and spinal contour were normal. A higher evaluation of 20% is not supported by the evidence of record under code 5237 per the PEB coding nor 5239 per the VA coding. 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. The Board concluded therefore that this condition could not be recommended for additional disability rating.

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 LBP 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
Non-radicular Chronic Low Back Pain with L4/5 Herniated Disc and L5 Grade I Spondylolistheis	5299-5237	10%
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120514, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXXXXXX
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, AR20120022044 (PD201200429)

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

XXXXXXXXXXXXXXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
() DoD PDBR
() DVA