

RECORD OF PROCEEDINGS  
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX  
CASE NUMBER: PD1200495  
BOARD DATE: 20130116

BRANCH OF SERVICE: ARMY  
SEPARATION DATE: 20031115

**SUMMARY OF CASE:** Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty, SPC/E-4, (62J/General Construction Equipment Operator), medically separated for chronic diarrhea with gastroesophageal reflux disease (GERD) following a failed laparoscopic Nissen fundoplication. The condition did not improve adequately with treatment and the CI had difficulty meeting the physical requirements of his Military Occupational Specialty. He was issued a permanent P3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded chronic severe GERD and chronic severe diarrhea to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. The MEB forwarded no other conditions for PEB adjudication. The PEB adjudicated the GERD/chronic diarrhea condition as unfitting, rated 10%, with application of the Veterans Affairs Schedule for Rating Disabilities (VASRD). The CI did not concur and submitted a written appeal, but waived a formal hearing. The United States Army Physical Disability Agency affirmed the PEB findings and the CI was medically separated with a 10% disability rating.

**CI CONTENTION:** "Residual effects of gastroesophageal surgery - neurological condition as a result of surgery."

**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. 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 (ABCMR).

**RATING COMPARISON:**

Service IPEB – Dated 20030801			VA (STR Used) – All Effective Date 20031116			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Diarrhea w/GERD	7399-7346-7319	10%	GERD post Nissen Fundoplication	7399-7346	30%*	STR
↓No Additional MEB/PEB Entries↓			0% X 1 / Not Service-Connected x 1			STR
<b>Combined: 10%</b>			<b>Combined: 30%</b>			

\*Rating decision reduced to 0% effective 20090601. Rating decision 20110927 added "Residual Effects of Gastroesophageal Surgery Claimed as Memory Loss and Any Mental Condition;" coded 9399-9327 at 10% effective 20100610; combined 10%

**ANALYSIS SUMMARY:** The Board acknowledges the CI's opinion that a medical error was responsible for his disability, with the implication that the disability rating should provide for remedy. It must be noted for the record that the Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to allegations regarding suspected improprieties or faulty medical care. The Board's role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB disability ratings and fitness

determinations as elaborated above. Redress in excess of the Board's scope of recommendations must be addressed by the ABCMR and/or the United States judiciary system. The Board further acknowledges the CI's assertion that his neurologic condition is related to his unfitting GERD condition and therefore should be subject to additional disability rating; although, the Board must note that a causality linkage of these contended conditions with the unfitting primary condition, even if conceded, is not a basis in itself for service disability rating. A concomitant condition of this nature must itself be independently unfitting to merit additional rating.

GERD with Chronic Diarrhea Condition. The Nissen surgical procedure performed on 10 December 2001 resulted in only partial, temporary relief of GERD symptoms. Recurrence of these symptoms was complicated by chronic diarrhea. A barium swallow study on 22 February 2002 (2 months after surgery) showed mild to moderate gastroesophageal reflux and a suggestion of a small non-reducible hiatal hernia. An outpatient general surgery note 7 months prior to separation reported that a medication for GERD symptoms was helpful, but the prescription ran out. Spicy foods and fruit made symptoms worse. Loose stools occurred 2-3 times per day. At the MEB exam 6 months prior to separation, the CI checked the "No" box for "Frequent indigestion or heartburn" and wrote that "pain in stomach sometimes (due) to surgery" was the explanation for checking "Yes" to "Stomach, liver intestinal trouble, or ulcer." Weight at this exam was 140 pounds. The narrative summary (NARSUM) examiner, 5 months prior to separation reported intermittent pain with swallowing and diarrhea that was controlled with medication. Examination revealed a weight of 140 pounds. Exam of the abdomen revealed no tenderness and a well-healed surgical scar. Laboratory studies revealed no anemia. A NARSUM addendum prepared 4 months prior to separation reported that the CI still experienced daily symptoms including postprandial pain, early satiety and bloating. Although medication was helpful for these symptoms, the CI was still unable to increase his weight to pre-operative levels. He was experiencing three to four liquid stool bowel movements per day. At times the medication controlled diarrhea, but in general symptoms were not well-controlled. Although the NARSUM stated that the CI had at one point increased his weight to 170 pounds through weightlifting from his induction weight of 149 pounds, review of the record found no confirmation of weights outside the range of 140 pounds to 150 pounds. A nutritional medicine assessment 4 months prior to separation reported that pain occurred if large meals were eaten. Diarrhea occurred after drinking beverages but not usually after eating. Appetite was fair to good. Weight was 144 pounds. In his undated rebuttal to the PEB, the CI argued for a higher disability rating because of acid reflux and stomach pain "all the time," and severe stomach and chest pain when eating fruit. Stools were described as loose and occurred 2-3 times per day. At the VA Compensation and Pension exam 4 months after separation the CI reported that the medication for GERD was the only medication he was taking. There was no abdominal tenderness on examination.

The Board directs attention to its rating recommendation based on the above evidence. Although the CI was experiencing upper and lower gastrointestinal symptoms (reflux and diarrhea), the PEB and the VA appropriately applied a single rating for an abdominal condition IAW VASRD §4.113 and §4.114. The Board must follow suit, but IAW VASRD §4.7 (Higher of two evaluations), must confirm that its choice of applicable code achieves the optimal rating allowed by §4.114 criteria. Under 7319 (irritable colon syndrome) used in the PEB's combination coding approach, "moderate" symptoms characterized by "frequent episodes of bowel disturbance with abdominal distress" warrants a 10% rating. Board members agreed the diarrhea symptoms were not consistent with next higher 30% rating criteria ("Severe; diarrhea, or alternating diarrhea and constipation, with more or less constant abdominal distress"), particularly considering he was no longer taking medication for diarrhea by the time of the VA exam. The Board considered if a higher rating under the 7346 code (hiatal hernia) was justified. The VA rated the condition 30% under this code for "persistently recurrent epigastric distress with dysphagia, pyrosis, and regurgitation, accompanied by substernal or arm or shoulder pain,

productive of considerable impairment of health.” The 60% rating is described by “symptoms of pain, vomiting, material weight loss and hematemesis or melena with moderate anemia; or other symptom combinations productive of severe impairment of health.” While weight loss was mentioned by the NARSUM examiner, the final weight in evidence prior to separation was 144 pounds, not significantly different from his reported induction weight of 149 pounds and not inconsistent with weights found from the record review. Board members agreed the 60% criteria were therefore not met. The Board debated if the clinical picture fit the 30% criteria. Although pyrosis (heartburn) and indigestion are cardinal symptoms of GERD, the CI annotated on his MEB physical that he did not experience these. Intermittent pain with swallowing (dysphagia) was reported by the NARSUM examiner, but the only abdominal pain the CI mentioned on the MEB physical was “sometimes” due to surgery. All Board members agreed that the evidence presented above could not be reconciled with the 30% rating description. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (Resolution of reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the chronic diarrhea with the GERD condition.

Residual Effects of Gastroesophageal Surgery. The Board also considered the residual effects of gastroesophageal surgery claimed as memory loss and any mental condition for which the VA assigned a 10% rating based on an evaluation in 2011, and which the CI contends warrants additional disability rating. Neurologic and psychiatric VA examiners in June 2011 (almost 8 years after separation) opined that hypoxia and ischemia due to blood loss, a complication of the gastric surgery, may have caused later neurologic issues, specifically slurred speech, abnormal gait, forgetfulness and memory loss. As previously mentioned however, this condition must itself be independently unfitting to merit additional rating. The Board’s threshold for countering fitness determinations is higher than the VASRD §4.3 (Resolution of reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 “fair and equitable” standard. This condition was not profiled, was not implicated in the commander’s statement, and was not judged to fail retention standards. The condition was reviewed and considered by the Board. There was no indication from the record that it significantly interfered with satisfactory duty performance at the time of separation. 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 chronic diarrhea with GERD condition and IAW VASRD §4.114a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the residual effects of gastroesophageal surgery claimed as memory loss and any mental condition, the Board unanimously agrees that it cannot recommend a finding of unfit for additional rating at separation. 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:

<b>UNFITTING CONDITION</b>	<b>VASRD CODE</b>	<b>RATING</b>
Chronic Diarrhea With Gastroesophageal Reflux Disease	7399-7346-7319	10%
	<b>COMBINED</b>	<b>10%</b>

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120604, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXXX, DAF  
Director  
Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency  
(TAPD-ZB / XXXXXXXXXXXX), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for  
XXXXXXXXXXXXXXXXXX, AR20130001978 (PD201200495)

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

XXXXXXXXXX  
Deputy Assistant Secretary  
(Army Review Boards)

CF:  
 DoD PDBR  
 DVA