

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1200505
BOARD DATE: 20130111

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20030829

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a Chief Warrant Officer-2 (153D0/Black Hawk Pilot), medically separated for chronic back pain due to lumbar degenerative disc disease (with scoliosis). Despite conservative management, the CI did not improve adequately with treatment to meet the physical requirements of his Military Occupational Specialty or satisfy physical fitness standards. He was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB) which found the two back conditions medically unacceptable. The MEB forwarded no other conditions for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated the chronic back pain condition as unfitting, rated 10% with application of the Department of Defense Instruction (DoDI) 1332.39, Para E2.A1.1.20.2, page 2-1-8, and Army regulation 635-40, Appendix B-39. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: "Back issues were never addressed or identified while enlisted in Air Force and later in Army. Scoliosis and Degenerative Disc Disease as well as duty related herniated disks were not treated. Records indicate condition."

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.

RATING COMPARISON:

Service IPEB – Dated 20030717			VA	
Condition	Code	Rating	Condition	Rating
Chronic Back Pain	5299-5295	10%	Herniated Discs L4, L5 with Arthritis and Scoliosis	*NSC
↓No Additional MEB/PEB Entries↓			Not Service-Connected x 2	
Combined: 10%			Combined: No rating assigned	

*CI verbally withdrew his VA claim; however, did not do the withdrawal in writing. Therefore, the VA rated. NSC upheld on the 20091124 review

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. The Board has neither the jurisdiction nor authority to scrutinize or render opinions in reference to the CI's statements in the application regarding suspected DES improprieties in the processing of his case.

Chronic Back Pain Condition. The CI was first documented to incidentally have scoliosis on a 13 July 1992 chest X-ray. There is a record in evidence for low back pain (LBP) on 1 October 1996 while he was in the Air Force. The next documented visit for low back pain (LBP) was on 13 April 2001 when he was seen for the insidious onset of LBP and thought to have a radiculopathy of the right lower extremity (RLE). He was referred to physical therapy (PT), but had persistent symptoms. He was seen in orthopedics on 13 June 2001 and was noted to have disc extrusion at L4-5 and protrusion at L5-S1 with a positive straight leg raise (SLR), a provocative test of nerve root irritation. On 10 July 2001, he had an epidural steroid injection with good relief of symptoms and was returned to full duty including flying status as a pilot on 17 February 2001. His pain recurred. A 12 November 2002 neurology examination for vertigo documented normal sensation, strength and reflexes for the lower extremities. He was again seen in orthopedics on 30 January 2003 and recommend for an MEB. A scoliosis survey on 30 January 2003 showed 27 degrees of dextroscoliosis. The CI continued PT while in the DES process. At the MEB examination on 12 June 2003, the CI reported continued LBP. The examiner noted that the lumbosacral spine was tender, but that SLR, sensation, strength and reflexes were normal. Range-of-motion (ROM) was full but painful, heel to toe walk was intact and signs of non-organic pain absent, scoliosis was noted. The narrative summary was dictated on 8 July 2003, 6 weeks prior to separation. It noted that the CI had a 10 year history of LBP, but that his symptoms were exacerbated in April 2001 and again in January 2003. He was unable to participate in flight operations or complete a physical fitness test. He denied radicular symptoms. Incapacitating episodes were not documented. A VA Compensation and Pension examination was not accomplished.

The Board directs attention to its rating recommendation based on the above evidence. The Board noted that the old spine rules were in effect at the time of separation. The PEB rated the back condition at 10% and coded it 5299-5295, analogous to lumbar strain. The VA determined the back condition to be not service-connected based on the service treatment records. The Board noted that the examination was essentially normal other than tenderness over the lumbar spine and history of a positive SLR, normal at separation. Scoliosis was documented as early as 1992; 11 years prior to separation and was determined to be a congenital condition. The Board considered the other coding options available for the back condition, but none afforded a higher rating awarded by the PEB. 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 back pain 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. As discussed above, PEB reliance on DoDI 1332.39 and AR 635-40 for rating the back condition was operant in this case and the condition was adjudicated independently of that instruction by the Board. 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, Due to Lumbar Degenerative Disc Disease...	5299-5295	10%
	COMBINED	10%

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

XXXXXXXXXXXXXXXXXXXX, DAF
Director
Physical Disability Board of Review

SFMR-RB

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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation
for XXXXXXXXXXXXXXXXXXXX, AR20130003082 (PD201200505)

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

XXXXXXXXXXXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)