

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXX
CASE NUMBER: PD1200522
BOARD DATE: 20130118

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20031218

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty, SGT/E-5, (92A/Automated Logistical Specialist), medically separated for low back pain (LBP). The CI first noted LBP with running and lifting, but not associated with any specific trauma. He was not a surgical candidate and did not improve adequately with conservative treatment 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 an MOS Medical Retention Board which recommended a Medical Evaluation Board (MEB). The MEB determined that the LBP failed retention standards and referred the case to the Physical Evaluation Board (PEB) for adjudication. The MEB forwarded no other conditions. The PEB adjudicated the LBP condition as unfitting, rated 10%, with application of the Veterans Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals and was medically separated with a 10% disability rating.

CI CONTENTION: "Lower back pain with left lower extremity radiculopathy, Tinnitus, chronic right shin pain, bilateral hearing loss" were listed under the contention in his application.

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 other requested conditions (tinnitus, bilateral hearing loss and right shin pain) 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 20031030			VA (2 Mos. Post-Separation) – All Effective Date 20031219			
Condition	Code	Rating	Condition	Code	Rating	Exam
Low back pain	5237	10%	LBP w/LLE radiculopathy	5237	10%	20040207
↓No Additional MEB/PEB Entries↓			Tinnitus	6260	10%	20040203
Combined: 10%			0% X 1 / Not Service-Connected x 1			
			Combined: 20%			

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.

Low Back Condition. There were two 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 Degrees	MEB ~3 Mo. Pre-Sep	VA C&P ~2 Mo. Post-Sep
Flexion (90 Normal)	85	80
Combined (240)	215	---
Comment	Mild TTP; 5/5 motor strength; ROM limitations are due to pain	No antalgic gait; minimal paraspinal tenderness; neg SLR; 5/5 motor strength
§4.71a Rating	10%	10%

The CI was first seen for LBP in 1991 during an evaluation for a viral syndrome. At that visit, he reported a prior history of LBP without further details other than denying trauma. Over the next 10 years he was seen intermittently for LBP and treated with medications and physical therapy (PT). An L2 profile was issued on 15 March 2002, the first recorded profile for the back in the records. A trigger point injection was performed on 8 November 2002. The CI was seen in orthopedics on 22 January 2003 and noted to have normal X-rays and physical examination other than tight hamstrings. He was referred to PT with a further recommendation of an upgraded profile and MEB if PT did not improve his symptoms sufficiently to return to duty. The trial of PT was of no benefit and the CI was given an L3 profile and referred to a MEB on 7 May 2003. At the MEB examination on 16 September 2003, 3 months prior to separation, the CI reported a long history of LBP without antecedent trauma refractory to treatment. The examiner noted normal contour, sensation, strength and reflexes. There was tenderness to palpation over the lumbar midline, sacroiliac joints (L>R), and paralumbar muscles. No signs of non-organic pain were present. Provocative testing for nerve root irritation was negative. Minimal muscle spasms were present. The narrative summary was dictated the same day and referred to the above examination. It also noted that lumbar X-rays also done that day were normal and showed no significant interval change from prior X-rays obtained 15 January 2002. At the VA Compensation and Pension examination on 7 February 2004, 7 weeks after separation, the CI reported LBP along the belt line which would radiate into the left lower extremity as far as the knee. He denied bowel or bladder incontinence and there were no recorded episodes of incapacitation. On examination, he was noted to have a normal gait and to be able to get on and off the examination table without difficulty. Minimal paraspinal tenderness and increased muscular tone were noted. His LBP was aggravated at extreme extension, but not flexion. Strength and reflexes were normal; no comment was made on sensation. On X-rays, there was a mild decrease in normal lordosis, but otherwise they were normal.

The Board directs attention to its rating recommendation based on the above evidence. The PEB and VA both rated the LBP at 10% and coded it 5237, lumbosacral strain. The Board noted that there were no neurological findings to support the presence of a radiculopathy at separation. The Board considered the other coding options for the back and none offered a route to a higher rating than the 10% awarded. 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 LBP 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 LBP 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.

UNFITTING CONDITION	VASRD CODE	RATING
Low Back Pain	5237	10%
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120602, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans Affairs Treatment Record

XXXXXXXXXXXXXXXXXXXX, DAF
Director
Physical Disability Board of Review

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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for
XXXXXXXXXXXXXXXXXXXXXXXXXXXX, AR20130001994 (PD201200522)

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

XXXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
 DoD PDBR
 DVA