

RECORD OF PROCEEDINGS  
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXX  
CASE NUMBER: PD1200533  
BOARD DATE: 20121108

BRANCH OF SERVICE: ARMY  
SEPARATION DATE: 20020701

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**SUMMARY OF CASE:** Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSG/E-6 (67S30/OH-58D Helicopter Repairer) medically separated for chronic low back pain (LBP) secondary to degenerative disc disease (DDD) identified on magnetic resonance imaging (MRI), with protrusions, herniations at the L2-L3, L3-L4 level without neural impingement and degenerative arthritis right hip (X-ray evidence) without loss of range-of-motion (ROM), condition limits ambulatory abilities. The CI developed LBP during physical training runs in 1995. He continued with flare-ups of LBP and then in January 2002 he began having right hip pain due to early arthritis. Despite the use of a TENS unit, medications, physical therapy (PT), chiropractor care and orthopedics consults the CI failed 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 DDD and degenerative arthritis (R) hip on the DA Form 3947 to the Physical Evaluation Board (PEB). Recurrent (L) shoulder tendinitis, recurrent ankle sprains, benign essential tremor, and allergic rhinitis conditions, identified in the rating chart below, were also identified and forwarded by the MEB as meeting retention standards. The PEB adjudicated the chronic and degenerative arthritis right hip conditions as unfitting, rated 10% and 0%, with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% disability rating.

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**CI CONTENTION:** "Justice, right now I have a 70% services connected disability rating and getting worse, just Justice".

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**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 recurrent (L) shoulder tendinitis, recurrent ankle sprains, benign essential tremor, and allergic rhinitis are adjudged as requested for consideration and meet the criteria prescribed in DoDI 6040.44 for Board purview; and, are addressed below, in addition to a review of the ratings for the unfitting chronic LBP and degenerative arthritis right hip conditions. The remaining conditions rated by the VA at separation and listed on the DD Form 294 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.

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**RATING COMPARISON:**

Service IPEB – Dated 20020514			VA (~1 Mo. Post-Separation) – All Effective Date 20020722			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic LBP Secondary to DDD...	5295	10%	Disc Desiccation and Herniated Nucleus Pulposus	5293-5292	10%*	STR
Degenerative Arthritis Right Hip...	5003	0%	Mild Arthritis of The Right Hip	5252-5003	10%	20021016
Recurrent (L) shoulder tendinitis	Not Unfitting		Mild Degenerative Arthritis of The Left Shoulder	5201-5003	10%	STR
Recurrent ankle sprains	Not Unfitting		Right Ankle Pain	5299-5271	NSC	
Benign essential tremor	Not Unfitting		Benign Intention Tremor	8099-8004	0%*	20021213
Allergic rhinitis	Not Unfitting		Allergic rhinitis	6522	NSC	
↓ No Additional MEB/PEB Entries ↓			Acne Keloidalis Nuchae	7899-7828	0%*	20021126
			Tinnitus	6260	0%	20021010
<b>Combined: 10%</b>			Not Service-Connected x 8			
			<b>Combined: 30%*</b>			

\* Increased rating of HNP 5293-5292 to 20%, Tremor to 30%, and Acne to 10%; and added Lumbar Radiculopathy at 10%; all effective 20061109 (combined 60%). Tinnitus increased to 10% effective 20090108 (combined 70%)

**ANALYSIS SUMMARY:** The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-incurred condition continues to burden him. It is a fact, however, that the Disability Evaluation System (DES) has neither the role nor the authority to compensate members for anticipated future severity or potential complications of conditions resulting in medical separation. This role and authority is granted by Congress to the Department of Veterans’ Affairs (DVA). The Board utilizes DVA evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12-month interval for special consideration to post-separation evidence. The Board’s authority as defined in DoDI 6044.40, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

**Chronic LBP Condition:** The chronic back condition was rated IAW the 2002 VASRD standards which are no longer in effect. The 2002 Veterans’ Administration Schedule for Rating Disabilities (VASRD) coding and rating standards for the spine, which were in effect at the time of separation, were changed in September 2002 for VASRD code 5293 (intervertebral disc syndrome) criteria, and then changed to the current §4.71a rating standards in September 2003. The 2002 standards for rating based on ROM impairment were subject to the rater’s opinion regarding degree of severity, whereas the current standards specify rating thresholds in degrees of ROM impairment. The pertinent 5293 code criteria also specifically included symptoms compatible with sciatica which were present in this case. (NOTE: The current VASRD general spine formula does not include similar 5293 criteria). For the reader’s convenience, the 2001 rating codes under discussion in this case are excerpted below.

- 5292 Spine, limitation of motion of, lumbar:
  - Severe..... 40
  - Moderate..... 20
  - Slight..... 10
- 5293 Intervertebral disc syndrome:
  - Pronounced; with persistent symptoms compatible with sciatic neuropathy with characteristic pain and demonstrable muscle spasm, absent ankle jerk, or other neurological findings appropriate to site of diseased disc, little intermittent relief..... 60
  - Severe; recurring attacks, with intermittent relief..... 40
  - Moderate; recurring attacks..... 20
  - Mild..... 10

Postoperative, cured.....	0
5294 Sacro-iliac injury and weakness:	
5295 Lumbosacral strain:	
Severe; with listing of whole spine to opposite side, positive Goldthwaite's sign, marked limitation of forward bending in standing position, loss of lateral motion with osteoarthritic changes, or narrowing or irregularity of joint space, or some of the above with abnormal mobility on forced motion.....	40
With muscle spasm on extreme forward bending, loss of lateral spine motion, unilateral, in standing position.....	20
With characteristic pain on motion.....	10
With slight subjective symptoms only.....	0

There were three 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	MEB ~4 Mos. Pre-Sep	MEB ~2 Mos. Pre-Sep	VA C&P ~3 Mos. Post-Sep
Flexion (90° Normal)	90°	80°	75°
Ext (0-30)	20°	25°	35°
R Lat Flex (0-30)		25°	40°
L Lat Flex 0-30)		25°	40°
R Rotation (0-30)		30°	35°
L Rotation (0-30)		30°	35°
Combined (240°)		215°	260°
Comment:		"LBP"; Tenderness to palpation L2-S1 mid spine; - SLR; motor 5/5; sensory L1-S1 nml	"Pain with bending"; + Tenderness right side at lumbosacral junction; straight leg raise increase in LBP; "slight decrease sensation R side in distro of L-5"
§4.71a Rating	10%	10%-20% (MEB 10%)	10% (VA 10%)

The L/S spine MRI performed in January 2002 demonstrated herniated discs L2-3 and L3-4. The commander's statement indicated that the CI's LBP limited his mobility and his ROM to perform his MOS. The first MEB examination 4 months prior to separation noted that the CI had both orthopedic and chiropractic evaluations without significant improvement in chronic LBP symptoms. Exam findings are in the chart above. The second MEB examination 2 months prior to separation indicated that the CI was unable to walk more than 30 minutes due to aggravation of pain in his back. The CI would get pain with running and had an inability to perform repeated bending and running. The exam findings are in the chart above, and indicated sensory deficit in the right lower extremity. Electrophysiological testing (EMG/NCV) was accomplished within 3 weeks after the narrative summary (NARSUM) and demonstrated right L5 and S1 radiculopathy. The service treatment record (STR) documented numerous visits for the low back condition including one emergency room visit with "extremely limited ROM and decreased strength" within the year prior to separation. Three additional ER treatment visits were prior to the 12-month pre-separation timeframe.

The initial VA Compensation & Pension (C&P) examination performed 3 months after separation noted more than 20 sick call visits in the STR for severe LBP flare-ups along with three acute bouts of LBP that caused functional impairment. The examiner also indicated that the CI's daily pain prevented him from performing running, mechanics or heavy lifting. The C&P exam findings are in the chart above. VA records over 4 years remote from separation indicated worsening of the back condition with a documented lumbar radiculopathy at that time.

The Board directs attention to its rating recommendation based on the above evidence. The PEB coded the chronic LBP condition as 5295 (Lumbosacral strain: With characteristic pain on motion) rated at 10%. The PEB disability description indicated “no radiculopathy”; however, the NARSUM documented a sensory deficit with an objective EMG/NCV radiculopathy prior to the PEB. The Board notes that at the time of the NARSUM and MEB, the EMG results demonstrating a radiculopathy, had not been performed and were therefore not part of the NARSUM. The VA coded the back condition as 5292 (Spine, limitation of motion of, lumbar: Slight) with 5293 (Intervertebral disc syndrome: Mild) rated at 10%. However, of special note, the initial VA rating narrative (February 2003) cited the updated 5293 spine criteria (incapacitation) in their rating decision, while the older 5293 spine criteria (including sciatic symptoms as noted above) were in effect the date of the CI’s separation.

The Board considered the tenants of the older VASRD 5293, Intervertebral disc syndrome, criteria which included radicular pain symptoms and the STR that indicated radicular symptoms, as well as the provisions of 5292 (Spine, limitation of motion of, lumbar). There was ample documentation of limited mobility and functional loss (IAW VASRD §4.40) due to LBP in the commander’s statement interfering with the CI’s ability to perform his MOS. Board precedent is that a functional impairment tied to fitness is required to support a recommendation for addition of a peripheral nerve rating at separation: However, the spine criteria in effect in 2001 includes specific VASRF coding (5293) that includes radicular pain as a rating element. The Board deliberated regarding the CI’s disability picture with limited ROM and radicular symptoms and considered if the CI was closer to the moderate (20%) rating picture envisioned under the older 5293 coding when also considering the underlying spine pathology, limited motion, and functional loss noted in the treatment record.

After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 20% for the chronic LBP condition coded 5292-5293 which includes limited motion, pain and sensory loss in the right lower extremity.

Degenerative Arthritis Right Hip: There were three 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.

Right Hip	MEB ~4 Mos. Pre-Sep	MEB ~2 Mos. Pre-Sep	VA C&P ~3 Mos. Post-Sep
Flexion (0-125°)	90° with pain	110°	125°
Extension (0-20°)	Full ROM	Not recorded	25°
External Rotation (0-45°)		0-45°	50° (45°)
Abduction (0-45°)		Not recorded	40°
Adduction (0-45°)		Not recorded	25°
Comment: X-ray show early degenerative arthritis	Increased pain with flexion; TTP deep into inguinal area; neurovascularly intact	“pain with running”; Tenderness over right abductor tendons	Normal gait; “occasional moderate pain”; “associated with limitation of motion”; no weakness of legs; motor wnl
§4.71a Rating	10%	10% (PEB 0%)	10% (VA 10%)

The exams all showed right hip painful motion. The right hip X-ray demonstrated early degenerative arthritic changes. The commander’s statement indicated that the right hip pain and LBP limited the CI’s mobility and his ROM to perform his MOS. The first MEB examination noted that the CI had increased pain in flexion. The second MEB examination indicated that the CI was unable to walk more than approximately 30 minutes and an inability to run due to right hip pain. The exam findings are in the chart above. X-rays demonstrated early degenerative arthritis. The initial C&P examination 3 months after separation noted intermittent moderate pain associated with painful motion. The C&P exam findings are in the chart above with no objective evidence of painful motion.

The Board directs attention to its rating recommendation based on the above evidence. The PEB coded the degenerative arthritis right hip 5003 arthritis, degenerative (hypertrophic or osteoarthritis) rated 0%. The VA coded the Right Hip condition 5252 (thigh, limitation of flexion of) to 5003 arthritis, degenerative (hypertrophic or osteoarthritis) rated 10%. Both MEB exams indicated pain with motion and the right hip X-ray demonstrated degenerative arthritis. The C&P exam indicated mild right hip arthritis with a noncompensable limitation of motion with abduction and adduction. The Board agreed that the more probative evaluation reflecting disability at separation was that of the MEB examiner. The PEB-stated "without loss of motion" was in contrast to the NARSUM limited ROM measurements. The PEB indicated "condition limits ambulatory abilities" was supported in the NARSUM and the commander's statement and indicated functional loss IAW VARD §4.40.

The NARSUM examination and STR notes warranted application of VASRD §4.59 (painful motion) and §4.40 (functional loss) to achieve the minimal compensable rating (10%). There was no compensable ROM impairment under either the 5251 (limitation of extension) or 5252 (limitation of flexion) codes. Code 5253 (thigh, impairment) was considered; but, loss of motion beyond 10 degrees abduction was not documented and this was the only route to a rating higher than 10% under that code. Thus there is no route to a rating higher than 10% under any applicable joint code and no coexistent pathology which would merit additional rating for the hip condition under a separate code. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 10% for the degenerative arthritis right hip condition coded 5003.

Contended PEB Conditions. The contended conditions adjudicated as not unfitting by the PEB were recurrent (left) shoulder tendinitis, recurrent ankle sprains, benign essential tremor, and allergic rhinitis. The Board's first charge with respect to these conditions is an assessment of the appropriateness of the PEB's fitness adjudications. The Board's threshold for countering fitness determinations is higher than the VASRD §4.3 (reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 "fair and equitable" standard.

None of these conditions were profiled; none were implicated in the commander's statement; and, none were judged to fail retention standards. All were reviewed by the action officer and considered by the Board. There was no indication from the record that any of these conditions significantly interfered with satisfactory duty performance.

After due deliberation in consideration of the preponderance of the evidence, the Board concluded that there was insufficient cause to recommend a change in the PEB fitness determination for any of the contended conditions; and, therefore, no additional disability ratings can be recommended.

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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. In the matter of the chronic LBP Secondary to DDD condition, the Board unanimously recommends a disability rating of 20%, coded 5292-5293 IAW VASRD §4.71a. In the matter of the degenerative arthritis right hip condition, the Board unanimously recommends a disability rating of 10%, coded 5003 IAW VASRD §4.71a. In the matter of the contended recurrent (left) shoulder tendinitis, recurrent ankle sprains, benign essential tremor, and allergic rhinitis conditions, the Board unanimously recommends no change from the PEB determinations as not unfitting. There were no other conditions within the Board's scope of review for consideration.

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**RECOMMENDATION:** The Board recommends that the CI's prior determination be modified as follows; and, that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of his prior medical separation:

<b>UNFITTING CONDITION</b>	<b>VASRD CODE</b>	<b>RATING</b>
Chronic LBP Secondary to DDD	5292-5293	20%
Degenerative Arthritis Right Hip	5003	10%
	<b>COMBINED</b>	<b>30%</b>

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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

XXXXXXXXXXXXXXXXXX  
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 XXXXXXXXXXXXXXXXXXXXXXXX, AR20120021439 (PD201200533)

1. Under the authority of Title 10, United States Code, section 1554(a), I approve the enclosed recommendation of the Department of Defense Physical Disability Board of Review (DoD PDBR) pertaining to the individual named in the subject line above to recharacterize the individual's separation as a permanent disability retirement with the combined disability rating of 30% effective the date of the individual's original medical separation for disability with severance pay.

2. I direct that all the Department of the Army records of the individual concerned be corrected accordingly no later than 120 days from the date of this memorandum:

a. Providing a correction to the individual's separation document showing that the individual was separated by reason of permanent disability retirement effective the date of the original medical separation for disability with severance pay.

b. Providing orders showing that the individual was retired with permanent disability effective the date of the original medical separation for disability with severance pay.

c. Adjusting pay and allowances accordingly. Pay and allowance adjustment will account for recoupment of severance pay, and payment of permanent retired pay at 30% effective the date of the original medical separation for disability with severance pay.

d. Affording the individual the opportunity to elect Survivor Benefit Plan (SBP) and medical TRICARE retiree options.

3. I request that a copy of the corrections and any related correspondence be provided to the individual concerned, counsel (if any), any Members of Congress who have shown interest, and to the Army Review Boards Agency with a copy of this memorandum without enclosures.

BY ORDER OF THE SECRETARY OF THE ARMY:

Encl

XXXXXXXXXXXXXXXXXX  
Deputy Assistant Secretary  
(Army Review Boards)

CF:  
( ) DoD PDBR  
( ) DVA