

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXX
CASE NUMBER: PD1200541
BOARD DATE: 20130213

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20040124

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an Active National Guard SPC/E-4 (88M10/Transportation Specialist), medically separated for chronic neck pain with associated headaches (without neurologic or electrodiagnostic abnormality); and for low back pain (LBP) (without neurologic or electrodiagnostic abnormality). The CI's neck pain began in June 2002 when he fell off of a truck. His LBP began in about March or April 2003 when he ran through a hole during physical training. The CI failed conservative treatment measures and could not be adequately rehabilitated to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent U2/L3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded no other conditions for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated neck and low back conditions as unfitting, rated 10% and 10%, with application of the Veterans Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated.

CI CONTENTION: "Had to have a surgery on my shoulder after medically released – Headaches so severe I have been totally unable to work due to these injuries from this time frame." The CI also states, "I don't understand why they allowed me to deteriorate to a point that I'm in constant pain due to the things I was involved in during my deployment."

SCOPE OF REVIEW: The Board's scope of review is defined in DoDI 6040.44, Enclosure 3, paragraph 5.e. (2). It is limited to those conditions determined by the PEB to be unfitting for continued military service and those conditions identified but not determined to be unfitting by the PEB when specifically requested by the CI. Ratings for unfitting conditions will be reviewed in all cases. The unfitting neck pain with associated headaches, and LBP, meet the criteria prescribed in DoDI 6040.44 for Board purview and are addressed below. The shoulder condition and 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 20031114			VA (6 Mos. Post-Separation) – All Effective Date 20040124			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Neck Pain w/ HAs (w/o neurologic ...)	5299-5237	10%	Mild C-Spine DDD after Injury	5237-5010	10%	20040607
LBP (w/o neurologic ...)	5299-5237	10%	Chronic Occipital HAs	8199-8100	0%	20040607
↓No Additional MEB/PEB Entries↓			Lumbar Spine Injury w/ Limitation of Motion	5237	20%	20040730
			Adjustment D/O w/ Depressed Mood	9400	50%*	20040730
			Mild RUE Carpal Tunnel Syndrome (CTS)	8615	10%	20040607
			Mild LUE CTS	8615	10%	20040607
			Lt Shoulder S/P Anterior Capsular Labial Reconstruction	5203	20%*	20050115
			0% X 2 (Includes Above)/ Not Service-Connected x 3			20040730
			Combined: 20%		Combined: 80%*	

*Original VARD dated 20040826 did not include the MH or left shoulder conditions; combined rating was 40%. Left shoulder and combined ratings were temporarily increased to 100% effective 20041004 due to shoulder surgery and then decreased back down to 10% / 80% respectively effective 20050101, per VARD dated 20050405.

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed in the CI’s application regarding the significant impairment with which his service-connected condition continues to burden him and his contention that suggests ratings should have been conferred for other conditions documented at the time of separation. The Board wishes to clarify that it is subject to the same laws for disability entitlements as those under which the Disability Evaluation System (DES) operates. 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. However the Department of Veterans Affairs (DVA), operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions and to periodically reevaluate said conditions for the purpose of adjusting the Veteran’s disability rating should the degree of impairment vary over time. 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 6040.44, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation and is limited to conditions adjudicated by the PEB as either unfitting or not unfitting. 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 Neck Pain with Associated Headaches, without Neurologic or Electrodiagnostic Abnormality Condition. The goniometric range-of-motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation, with documentation of additional ratable criteria, are summarized in the chart below:

Cervical ROM (Degrees)	MEB /PT ~4 Mo. Pre-Sep	VA C&P ~5.5 Mo. Post-Sep
Flexion (45 Normal)	40	(45) 50
Extension (45)	45	(45) 65
R Lat Flexion (45)	30	30
L Lat Flexion (45)	30	30
R Rotation (80)	70	70
L Rotation (80)	65	70
Combined (340)	280	290

Comment: Spine note 2 applied (limit to VA normal ROM)	Mildly decreased flexion and combined ROM; right trapezius muscle spasm	Numbness/tingling in hands, pin prick sensation decreased, mildly positive Tinel's sign
§4.71a Rating	10%	10%

Magnetic resonance imaging (MRI) in July 2002, 18 months before separation, showed mild degenerative changes at C6/7. The CI was evaluated by a neurosurgeon in July-August 2002 who did not recommend surgical intervention. An electromyogram (EMG) and a nerve conduction study (NCS) of the upper extremities in August 2002 were normal. At the neurology evaluation in April 2003, 9 months prior to separation, the neurologist noted prior epidural injections to treat neck pain and reported that "ever since he had epidural, he has been having bad headaches." The neurologist described his headaches as a "pressure-type sensation at the back of the head (occipital area) more on right than on left side," with occasional "pounding" headaches. The headaches were not associated with nausea, focal weakness, or visual alterations. The physical exam found "well-localized tenderness in the right occipital nerve origin." The neurological exam was otherwise normal. The neurologist opined that the CI's headaches (and neck pain) were likely due to occipital neuralgia. X-rays of the cervical spine in June 2003, 7 months prior to separation, showed no abnormalities. A brain MRI in September 2003, 4 months prior to separation, was normal. The MEB physical exam in September 2003, 4 months prior to separation, noted tenderness (spasm) in the right trapezius muscle, normal deep tendon reflexes (DTRs), and no muscle atrophy or sensory abnormality. The examiner noted "no limitation of neck movement." The ROM is summarized in the chart above. The PEB's 10% rating for neck pain with associated headaches for code 5299-5237 noted "combined ROM 280 degrees." At the VA Compensation and Pension (C&P) exam performed in June 2004, 5 months after separation, the CI reported daily posterior cervical neck pain without radicular pain in his upper extremities. He described numbness and tingling primarily involving the palms of both hands, which awoke him at night, was worsened by driving, and caused some difficulty in firing a weapon (he was a police officer). The examiner noted almost daily, non-prostrating occipital headaches, with occasional nausea. On physical exam, he had "full ROM." Strength and tone of upper extremity muscle groups were normal. Pin prick sensation was decreased and there was a mildly positive Tinel sign over the wrist. There was no other sensory abnormality. DTRs were normal and symmetrical. X-rays of the cervical spine in June 2004 showed normal disc spaces, no bony abnormalities, no subluxations with flexion and extension, and no spinal stenosis. The VA Rating Decision (VARD) assigned a 10% rating under code 5237-5010, for "painful or limited motion and degenerative changes confirmed by MRI (July 2002)." The ROM is summarized in the chart, above. The VARD assigned a separate 0% rating for chronic occipital headaches under the analogous code 8199-8100.

The Board directs attention to its rating recommendation based on the above evidence. The PEB rated the chronic neck pain with associated headaches condition under the single analogous 5237-5010, cervical strain and degenerative arthritis codes. This coding approach is countenanced by AR 635-40 (B.24 f.), but IAW DoDI 6040.44 the Board must apply only VASRD guidance to its recommendation. The Board must therefore apply separate codes and ratings in its recommendations if compensable ratings for each condition are achieved IAW VASRD §4.71a. The Board exercises the prerogative of separate fitness recommendations in this circumstance, with the caveat that its recommendations may not produce a lower combined rating than that of the PEB. If the Board judges that two or more separate ratings are warranted in such cases, however, it must satisfy the requirement that each "unbundled" condition was unfitting in and of itself. Since §4.71a and 4.124a criteria are met for separate ratings for chronic neck pain and headaches, respectively, the Board considered separate rating and fitness evaluations as follows. The Board first considered whether the headaches, having been de-coupled from the combined PEB adjudication, remained independently unfitting as

established above. In analyzing the intrinsic impairment for fitness, coding and rating the headache condition, the Board is left with a questionable basis for arguing that this condition was independently unfitting. The headaches and chronic neck pain were determined to have a common etiologic basis in occipital neuralgia; the headaches were non-prostrating and never profiled; and there was no evidence of unfitting or ratable peripheral nerve deficit due to the spine condition. Any apportionment of limitations to residuals of the CI's headaches as opposed to the chronic neck pain condition would be mere speculation. After due deliberation, the Board agreed that the evidence does not support a conclusion that the headaches, as an isolated condition separate from the chronic neck pain condition, would have rendered the CI incapable of continued service within his MOS, and accordingly cannot recommend a separate disability rating for it. The Board therefore recommends rating the headache and chronic neck pain conditions together as one unfitting condition as discussed below. The Board members agreed that the MEB evaluation was more complete and held greater probative value in its deliberation of the chronic neck pain and associated headaches at separation. The forward flexion of 40 degrees and combined ROM of 280 degrees separately met criteria for a 10% rating under code 5299-5237; stated as forward flexion greater than 30 degrees but not greater than 40 degrees, and combined ROM greater than 170 degrees but not greater than 335 degrees, respectively; with or without symptoms such as pain (whether or not it radiates), stiffness, or aching in the area of the spine affected by residuals of injury or disease; and without evidence of abnormal spinal contour. There was insufficient evidence of additional functional loss IAW §4.40, to warrant consideration of a higher evaluation. 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 neck pain with associated headaches, without neurologic or electrodiagnostic abnormality condition.

Low Back Pain, without Neurologic or Electrodiagnostic Abnormality Condition. The goniometric ROM evaluations in evidence which the Board weighed in arriving at its rating recommendation, with documentation of additional ratable criteria, are summarized in the chart below.

Thoracolumbar ROM (Degrees)	MEB /PT ~4 Mo. Pre-Sep	VA C&P ~6 Mo. Post-Sep
Flexion (90 Normal)	70	60
Extension (30)	30	10
R Lat Flexion (30)	15	20
L Lat Flexion (30)	25	20
R Rotation (30)	(30) 40	20
L Rotation (30)	(30) 50	20
Combined (240)	200	150
Comment: Spine note 2 applied (limit to VA normal ROM)	Mild lumbar DJD, mild paravertebral lumbar tenderness	Tenderness at L3-5 and midline, intermittent LE numbness w/o radiation of pain
§4.71a Rating	10%	20%

An MRI of the lumbar spine in May 2003, 8 months prior to separation, was reported as a "normal study." An EMG of the lower extremities in May 2003 was normal. The examining neurologist reported no evidence of peripheral nerve entrapment and no radiculopathy based on a limited needle test. The neurologist also reviewed the MRI and noted mild degenerative joint disease (DJD) with no herniated disc, spinal stenosis, or nerve impingement. At the MEB

exam in September 2003 the CI reported chronic upper and lower back pain. The physical exam noted mild tenderness in the right paravertebral lumbar region. Reflexes were normal. There was no muscle atrophy or sensory abnormality. Straight leg raising (SLR) and Waddell sign were negative. He could walk on his heels and toes. The forward flexion and combined ROM were mildly reduced per chart, above. The PEB's 10% rating for neck pain with associated headaches under code 5299-5237 noted "thoracolumbar combined ROM 230 degrees." At the C&P exam in July 2004, 5 month after separation, the CI reported intermittent, LBP without radiation. His pain increased with all activities. He experienced intermittent numbness in his legs. He reported no functional losses. He had no bladder or bowel dysfunction. He reported erectile difficulty which was evaluated and no specific cause was determined. He had no hospitalizations for the back condition or incapacitating episodes. The physical exam found tenderness to palpation at the L3-5 level and midline. On the neurological exam, strength, sensation, and DTRs were normal. SLR and Babinski tests were negative. His gait was unimpaired. X-rays of the lumbar spine in July 2004 showed normal height and alignment of the vertebral bodies; normal disc spaces; symmetry of the pars, pedicles, and sacroiliac joints; and a probable bone island in the L2 vertebral body, of undetermined clinical significance. The ROM is summarized in the chart, above. The VARD assigned a 20% rating under code 5237 based on forward flexion of 60 degrees.

The Board directs attention to its rating recommendation based on the above evidence. The Board members agreed that the MEB evaluation was more complete and held greater probative value in its deliberation of the LBP at separation. The forward flexion of 70 degrees and combined ROM of 230 degrees separately met criteria for a 10% rating under code 5299-5237, stated as forward flexion greater than 60 degrees but not greater than 85 degrees and combined ROM greater than 120 degrees but not greater than 235 degrees, respectively; with or without symptoms such as pain (whether or not it radiates), stiffness, or aching in the area of the spine affected by residuals of injury or disease; without muscle spasm or guarding severe enough to result in an abnormal gait or abnormal spinal contour which would support a higher rating. There was no evidence of incapacitating episodes, or associated objective non-pain neurologic abnormalities, such as peripheral nerve deficit, which would warrant other rating considerations. There was insufficient evidence of additional functional loss IAW §4.40, to warrant consideration of a higher evaluation. 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 (without neurologic or electrodiagnostic abnormality) 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 chronic neck pain with associated headaches, without neurologic or electrodiagnostic abnormality, and the low back pain, without neurologic or electrodiagnostic abnormality, conditions 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.

UNFITTING CONDITION	VASRD CODE	RATING
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Chronic Neck Pain with Associated Headaches, ...	5299-5237	10%
Low Back Pain, ...	5299-5237	10%
	COMBINED	20%

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120605, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXXXXX, DAF
Acting Director
Physical Disability Board of Review

SFMR-RB

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 XXXXXXXXXXXXX, AR20130003826 (PD201200541)

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

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Deputy Assistant Secretary
(Army Review Boards)