

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXX
CASE NUMBER: PD1200558
BOARD DATE: 20130123

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20020531

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (11B20/Infantry), medically separated for chronic low back pain (LBP) post L4/5 fusion. The CI injured his back in 2000. He was treated with a L4-5 microdiscectomy on 30 January 2001, but had recurrent symptoms leading to a L4-5 fusion on 21 September 2001. Despite a good radiographic outcome and rehabilitation, he did not improve adequately 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). The MEB determined the chronic LBP status post (s/p) fusion condition to be medically unacceptable and forwarded the case to the Physical Evaluation Board (PEB) for adjudication. A recurrent left hallux ingrown toenail condition, identified in the rating chart below, was also forwarded by the MEB as medically unacceptable. The PEB adjudicated the chronic LBP as unfitting, rated 10%, with application of the Veterans Affairs Schedule for Rating Disabilities (VASRD). It determined that the left ingrown toenail condition was not unfitting. The CI made no appeals and was medically separated with a 10% disability rating.

CI CONTENTION: Due to previous surgical additions (i.e. Pins and Rods) and age, my condition is worsening (I.E. Degenerative Joint Disease of Spine).

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 unfitting chronic LBP condition meets the criteria prescribed in DoDI 6040.44 for Board purview and is accordingly addressed below. 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 200450203			VA (~2 Mos. Post-Separation) – All Effective Date 20020601			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Low Back Pain...	5299—5295	10%	S/P Left L4-5 Microdiscectomy...	5293	20%	20020805
Left Hallux Ingrown Toenail	Not Unfitting		Onychocryptosis, Left Great Toe	5299-5284	0%	20020805
No Additional MEB/PEB Entries			Psoriasis	7806	10%	20020805
			0% X 4 (To include above)			
Combined: 10%			Combined: 30%*			

* No subsequent VARDs or C&P exams in evidence

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. 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. 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. That role and authority is granted by Congress to the Department of Veterans Affairs (DVA), operating under a different set of laws (Title 38, United States Code). The Board evaluates DVA evidence proximal to separation in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness decisions and rating determinations for disability at the time of separation. The Board further acknowledges the CI's contention for ratings for other conditions documented at the time of separation, and notes that its recommendations in that regard must comply with the same governance. 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 DVA, however, is empowered to compensate 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.

Chronic Low Back Pain Condition. The CI injured his back on 18 September 2000 while lifting his duffle bag. He was treated conservatively with medications, duty limitations and physical therapy without adequate relief. Magnetic resonance imaging showed a large herniated disc at L4-5 and he underwent a micro-discectomy on 30 January 2001. Initially, he enjoyed significant pain relief, but then had recurrent symptoms leading to a fusion with hardware on 21 September 2001. His pain was minimal after the procedure, but the treating neurosurgeon determined that he would not improve sufficiently to remain on active duty and recommended an MEB. At the MEB examination on 1 December 2001, the CI reported periodic tingling in the lower back and waist. The MEB physical examiner noted a healed scar and normal neurological examination. The narrative summary was dictated on 17 December 2001, 5 months prior to separation. The CI reported continued pain with prolonged sitting or standing as well as with impact activities. On examination, a scar was noted as present. However, moderate to severe spasm was noted about the scar. The range-of-motion (ROM) was reduced in flexion, extension and right lateral bending. He used a lumbar brace which was removed for the examination. The neurological examination was noted to be normal. At the VA Compensation and Pension (C&P) examination on 5 August 2002, 2 months after separation and 10 months after the fusion, the CI reported constant pain with intermittent left sciatica. He was unrestricted in sitting as long as he sat up straight or even leaning forward. He avoided impact activities and took no medications. Tenderness was noted over the entire lumbar spine, but not specific to the midline scar. There was no spasm or guarding. No sciatic tenderness was noted. Testing for nerve root irritation was borderline positive on the left. Gait was normal as were heel and toe walk. The reflexes were normal, but no comment made on sensation or strength although the CI was noted as being able to fully squat. The ROM was reduced, but improved from the MEB values. The Board noted that the latter were obtained within 3 months of the second surgery.

The Board directs attention to its rating recommendation based on the above evidence. The PEB rated the back condition at 10% and coded it 5299-5295, analogous to lumbosacral strain. The VA rated the back at 20% and coded it 5293, intervertebral disc syndrome. The Board determined that the C&P examination had a higher probative value due both to proximity to separation, but also because it was more remote from the surgery. The Board noted that the CI could sit without limit as long as he stayed up straight or leaned forward. No spasm was present. Gait and the ability to squat were normal implying normal or near normal motor function. The ROM was reduced from normal, but by a minimal amount. The CI did not require the use of medications for pain control. 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 LBP post L4/5 fusion 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 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 and separation determination, as follows:

UNFITTING CONDITION	VASRD CODE	RATING
Chronic Low Back Pain (LBP) Post L4/5 Fusion	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

XXXXXXXXXXXXXXXXXXXXX, DAF
Director
Physical Disability Board of Review

SFMR-RB

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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for
XXXXXXXXXXXXXXXXXXXXX, AR20130002001 (PD201200558)

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

XXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
 DoD PDBR
 DVA