

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXX
CASE NUMBER: PD1200570
BOARD DATE: 20121221

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20021107

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty, SGT/E-5, (91W/Combat Medic), medically separated for low back pain (LBP) status post (s/p) motor vehicle accident (MVA). The CI had an MVA in 2001 and was treated medically. No fractures were documented and no surgery was indicated. The CI did not improve adequately with treatment to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent L4 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded "mechanical LBP, therapy resistant" to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. The PEB adjudicated the mechanical LBP post MVA condition as unfitting, rated 10%, with application of the DoD Instruction 1332.39 and the Veterans Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: The CI elaborated no specific 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 unfitting mechanical LBP post MVA 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 20020808			VA (1 Mos. Pre-Separation) – All Effective Date 20021108			
Condition	Code	Rating	Condition	Code	Rating	Exam
Low Back Pain	5299-5295	10%	Mechanical Low Back Pain	5295	10%	20021007
↓No Additional MEB/PEB Entries↓			Myofascial Pain Thoracic spine	5021-5291	0%	20021007
			DJD R knee	5262-5010	10%	20021007
			DJD L knee	5262-5010	10%	20021007
			0% X 3 / Not Service-Connected x 3			20021007
Combined: 10%			Combined: 30%			

ANALYSIS SUMMARY. The 2003 VASRD coding and rating standards for the spine, which were in effect at the time of separation, were changed to the current §4.71a rating standards effective 26 September 2003. The 2003 standards for rating are based on the rater's interpretation and opinion of range-of-motion (ROM) impairment regarding degree of severity, whereas the current standards specify rating thresholds in degrees of ROM impairment measured with an instrument, the goniometer. For the reader's convenience, the 2003 rating

codes under discussion in this case are excerpted below. (effective 23 Sep 2002, prior to change of 26 September 2003)

5292 Spine, limitation of motion of, lumbar:
Severe..... 40
Moderate..... 20
Slight..... 10

5293 Intervertebral disc syndrome: (summarized)
... With incapacitating episodes having a total duration of at least ###
Note (1): For purposes of evaluations under 5293, an incapacitating episode is a period of acute signs and symptoms due to intervertebral disc syndrome that requires bed rest prescribed by a physician and treatment by a physician.

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

Low Back Condition. The narrative summary (NARSUM) notes the CI injured his back in a civilian motor vehicle accident April 2001 and was evaluated in at a local hospital in Germany. Initial evaluation revealed normal back X-rays with LBP and thoracic back pain, and was referred to physical therapy (PT). After 2 months of treatment, the CI was initially profiled for lack of improvement at PT. Field duties interrupted his recovery, and he had to be re-profiled and sent back to PT again. PT notes show thoracic back pain and lumbar back pain components. No recommendation for surgery was noted in the treatment record. Despite several courses of PT and orthopedic consults, he was permanently L4 profiled by orthopedics in March 2002. His commander's letter stated he had the "inability to perform very basic physical tasks such as running, jumping and lifting any weight (and that) has had a negative effect on his and his section's ability to complete their wartime mission." The member was referred to the MEB and the MEB forwarded; mechanical LBP, therapy resistant, to the PEB as medically unacceptable IAW AR 40-501. Three months prior to separation, the PEB adjudicated the mechanical LBP post MVA condition as unfitting, rated 10%, with application of the DoD Instruction 1332.39 and Application of the Veterans Administration Schedule for Rating Disabilities (VASRD) under spine rules applicable on or before 23 September 2002. A month prior to separation, the VA completed the Veteran's Affairs Rating Disability (VARD) for 10% disability citing painful and limited motion for mechanical low back pain diagnosis using the VA Compensation and Pension (C&P) exam of 7 October 2002 and applying the VASRD effective that date.

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	MEB ~5 Mo. Pre-Sep (20020612)	VA C&P ~1 Mo. Pre-Sep (20021007)
Flexion (95° Normal)	70°	94° dec to 83°
Ext (0-35)	--	16° dec to 13°
R Lat Flex (0-40)	40°	25° dec to 17°
L Lat Flex 0-40)	40°	28° dec to 18°
R Rotation (0-35)	45°	40° dec to 31°
L Rotation (0-35)	45°	45° dec to 28°
Combined (280)	---	220° to 200°
Comment: normal ranges are from VA exam	CI c/o pain; paravertebral muscle spasm is noted; slightly flattened lordotic curve; slight thoracic scoliosis; positive palpable lumbar tenderness, nl gait, (see text)	Decrease (dec) in ROM after 5 reps (DeLuca); a few palpable paraspinal muscle spasms L1-L2; slightly tender over L1-L2; mild scoliosis; nl gait (see text)
§4.71a Rating	10%	10%-20%

At the MEB exam, 5 months before separation, the CI reported pain-“pains that radiate down the leg from back pains” on the DD 2807 without elaboration in the NARSUM. Neurological exam showed straight leg raising (SLR) to 90 degrees without significant radicular pain. Reflexes were described as brisk bilaterally, and muscle strength 5/5 in the lower extremities. Full ROM was noted at the hips and knees. Heel and toe walk was stated as “without great discomfort or difficulty.” The MEB exam is summarized in the table above. Spine exam and neurological exam on the DD 2808 medical exam 2 weeks prior to the NARSUM were marked normal. However, the NARSUM and an orthopedic evaluation both dated 5 months before separation documented lumbar muscle spasm.

At the C&P exam, a month prior to separation, the CI reported “spasms in his mid and low back, intermittently.” Physical activity and riding in vehicles was reported to cause spasm with early morning stiffness, while stretching helped eliminate discomfort. He used muscle relaxants and Motrin for treatment. He reported no radiating pain down either leg and no bowel or bladder changes. Exercise tolerance was “walking 1 to 1-1/2miles 5 to 6 times per week.” Exam noted normal posture and gait, without kyphosis or lordosis, but with a mild scoliosis. Foot dorsiflexion strength was reported as strong. The VA examiner stated “There is increased pain with physical activity and there is decreased in range of motion.” The VA examiner also noted “There were inconsistencies noted with these ranges of motion values with respect to the veteran's ability to remove his shoes and to go from a sitting to a lying and vice versa position on the examination table,” and “The inconsistencies with respect of the veteran's ability to perform activities of daily living normally and the documented range of motion readings are of concern.” The C&P exam referenced a February 2001 X-ray showing lumbar spine scoliosis and an October 2001 thoracic spine X-ray post-accident showing right convex scoliosis, otherwise normal.

The Board directs attention to its rating recommendation based on the above evidence. The PEB used DODI 1332.39 E2.A1.1.20.2 Application of the VASRD under an analogous code 5299-5295 lumbosacral strain with demonstrable pain on spinal motion associated with positive radiographic findings shall warrant a 10% rating. And also goes on to say “If paravertebral muscle spasms are also present, a 20% rating may be awarded. Such paravertebral muscle spasms, however, must be chronic and evident on repeated examinations.” The PEB explained lumbar spasm was not evident on repeated exams and coded analogously to 5299-5295; lumbosacral strain with characteristic pain on motion for 10% disability, and was unable to find enough evidence of muscle spasm or loss of lateral spine motion for 20%. There was no

evidence of deformity of a vertebral body fracture to rate for 10% more under 5285. Residuals of Fracture of Vertebra or by the 2003 VASRD rules for 5285 Vertebra, fracture of, residuals. The VA used the 2003 VASRD in effect at the time of separation and coded 5295, lumbosacral strain, in a similar fashion for “characteristic painful and limited motion” for 10% disability. The VA did not cite any evidence in the service treatment record to apply the July 2002 VASRD code 5293, Intervertebral disc syndrome at a level of post-operative cured, or mild or moderate recurring sciatic neuropathy. Nor did the VA find other neurological findings appropriate to diseased disc, little intermittent relief, or moderate limitation of lumbar motion under code 5292 beyond a level of 10%, or any ankylosis under 5289; for any higher rating. Both the PEB exam and the VA exam met VASRD code 5295, Lumbar Strain, criteria of “characteristic pain on motion” for a 10% rating. The Board deliberated whether the presence of lumbar muscle spasm in the NARSUM, orthopedic and VA exams proximate to separation, without stipulation of spasm on extreme forward bending, elevated the rating to 20% by itself. Only the VA exam demonstrated a loss of lateral spine motion, and those ROM values had decreased probative value based on the examiner’s comments. 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 mechanical LBP post MVA 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 for rating LBP s/p MVA was operant in this case as was a version of the VASRD rules from 2002 that were superseded by a newer version by the member’s date of separation, and the condition was adjudicated independently of those instructions by the Board. In the matter of the LBP post MVA 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
Mechanical Low Back Pain Post MVA	5299-5295	10%
	COMBINED	10%

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

XXXXXXXXXXXXXXXXXXXXXXX, 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
XXXXXXXXXXXXXXXXXXXXXXXXX, AR20130002009 (PD201200570)

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's concerned spouse, 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

XXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
() DoD PDBR
() DVA