

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXX
CASE NUMBER: PD1200575
BOARD DATE: 20130123

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20021226

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (63B20/Wheel Vehicle Repairer), medically separated for chronic low back pain (LBP). The CI developed LBP in 1992, 10 years prior to separation, while deployed. Despite conservative management, he did not improve adequately to meet the physical requirements of his Military Occupational Specialty or satisfy physical fitness standards; additionally, the CI occasionally required narcotic medications for pain control. He was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB) which determined the LBP to be medically unacceptable. The MEB forwarded no other conditions for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated the chronic LBP condition as unfitting, rated 10%, with application of DoDI 1332.39. The CI made no appeals and was medically separated with a 10% disability rating.

CI CONTENTION: "Progressing low back pain and continued problems with hypertension and continued knee problems."

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 back condition requested for consideration meets the criteria prescribed in DoDI 6040.44 for Board purview, and is accordingly addressed below. The other requested conditions [hypertension and knees] 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 20021106			VA (STR Pre-Sep) – All Effective Date 20021227			
Condition	Code	Rating	Condition	Code	Rating	Exam*
Chronic Low Back Pain...	5299-5295	10%	Residual Low Back Inj	5299-5295	10%	STR & VARD 19970108
No Additional MEB/PEB Entries			HTN	7101	10%	STR & VARD 19970108
			0% X 1 / Not Service-Connected x 11			STR & VARD 19970108
Combined: 10%			Combined: 20%**			

*CI failed to report to VA exams scheduled 20030508 and 20030512.

**Pre-separation and subsequent VARDs are outside of the adjudication window

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 first noted LBP while deployed to Desert Storm when he fell off of a truck while loading it. He was noted to have marked scoliosis and treated conservatively. The CI separated, but then returned to active duty in 1997. There were multiple entries for the bilateral knee pain, but he was not seen again for his LBP until 24 January 2002, 11 months prior to separation. He was noted to have a "backache" and treated with medications and duty limitations. He was next seen for his LBP on 15 May 2002 when he complained of "severe muscle spasm" and was again treated conservatively. An X-ray 2 days later was normal. He was seen again 4 days later and noted to have "marked lumbarsacral spasm". A straight leg raise (SLR), a proactive test for nerve root irritation, was negative. He was referred to physical therapy (PT) and initially was a "no show" but later attended and participated in PT. A chest X-ray showed dextrothoracic scoliosis on 30 July 2002. The CI initially improved with traction, but was noted to also have tightness of the hamstrings as well as irritation with hip movement and over the iliotibial band. Although the record documents continued increase in resistance, the range-of-motion (ROM) was noted to decrease. The final PT note in the record, dated 16 October 2002, documented that the pain was better with home transcutaneous electrical stimulation and that he slept through the night better. His pain was noted to be decreased even though his function was unchanged. An antalgic gait was noted and he used a cane with good ambulation. The ROM was significantly reduced from the values obtained prior to entry into the DES process. No spasm was documented. At the MEB examination on 17 August 2002, 4 months prior to separation, the CI reported that he was unable to sleep secondary to his LBP and knee pain. The examiner noted tenderness over L4-S1 and a positive SLR. Sensation and reflexes were normal without comment on motor function. The gait was noted as "soft." The narrative summary dictated on 18 October 2002, 2 months prior to separation, but relied on a physical examination accomplished 20 July 2002. The examiner noted that the CI had never missed work secondary to his LBP, but that he took daily medicines including the occasional use of narcotics. He denied radicular symptoms or incontinence. The examination of his back was remarkable for some lumbar flattening and slightly reduced ROM in flexion. The neurological examination and gait were normal and no atrophy was present. The CI failed to report for VA Compensation and Pension examinations scheduled on 8 May 2003 and 12 May 2003. It did have the service treatment records available for review, but continued a 10% rating granted in 1995.

The Board directs attention to its rating recommendation based on the above evidence. It noted that the VA did not change the 1995 rating decision after review of the STRs and continued the 10% rating and 5299-5295 code. The PEB chose the same coding option and also rated the condition at 10%. The Board then considered the rating. It noted that the two ROM sets available, from prior to initiation of the MEB process, are markedly better than the two obtained afterwards. It is obvious that there is a clear disparity between these examinations, with very significant implications regarding the Board's rating recommendation. The Board

thus carefully deliberated its probative value assignment to these conflicting evaluations, and carefully reviewed the service file for corroborating evidence in the 12-month period prior to separation. In assigning probative value to these somewhat conflicting examinations, the Board notes that: the MEB measurements are consistent with the diagnostic and clinical pathology in evidence; there is not a reasonable accounting for increased impairment in ROM in the fairly short interval between the MEB and final two PT examinations. Therefore, based on all evidence and associated conclusions just elaborated, the Board is assigning preponderant probative value to the MEB evaluation. The Board noted that there was both limitation in motion and painful motion noted on the MEB examination. The Board considered the different coding options and determined that this best fit the description for a 20% rating under the code 5295. After due deliberation, considering all of the evidence and mindful of Veterans Affairs Schedule for Rating Disabilities (VASRD) §4.3 (Resolution of reasonable doubt), the Board recommends a disability rating of 20% for the back 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 chronic back pain was operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the back condition, the Board, by a 2:1 vote, recommends a disability rating of 20%, coded 5299-5295 IAW VASRD §4.71a. The minority voter recommended no recharacterization, but did not submit a minority opinion. There were no other conditions within the Board’s scope of review for consideration.

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows, effective as of the date of his prior medical separation:

UNFITTING CONDITION	VASRD CODE	RATING
Chronic Low Back Pain...	5299-5295	20%
	COMBINED	20%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20121226, 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 / XXXXXX), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation
for XXXXXXXXXXXXXXXX, AR20130001612 (PD201200575)

1. I have reviewed the enclosed Department of Defense Physical Disability Board of Review (DoD PDDBR) 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 to modify the individual's disability rating to 20% without recharacterization of the individual's separation. This decision is final.
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.
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

XXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
 DoD PDDBR
 DVA