

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1200612
BOARD DATE: 20130115

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20030819

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty, SPC/E-4, (92R/Parachute Rigger), medically separated for chronic low back pain (LBP). The CI injured his back during a nighttime airborne operation in June 2002. The CI had no improvement with rest, multiple medications, physical therapy, or chiropractic therapy and was unable 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 forwarded no other conditions for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated the low back condition as unfitting, rated 10%, with application of the Veterans Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals and was medically separated with a 10% disability rating.

CI CONTENTION: "My condition has considerably worsened. Also the medical condition has branched off into other medical 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 lumbar condition requested for consideration meets the criteria prescribed in DoDI 6040.44 for Board purview, and is accordingly addressed below. No other conditions are 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 20030428			VA (3 Months Pre-Separation) – All Effective Date 20030820			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Low Back Pain with Herniated Disc L5-S1	5293-5299-5295	10%	Herniated Disc L5-S1, Residuals of Injury also claimed as Numbness in Both Legs	5292	20%*	20030521
↓No Additional MEB/PEB Entries↓			Bilateral Recurrent Tinnitus	6260	10%	20030521
Combined: 10%			0% X 2 / Not Service-Connected x 2			20030521
			Combined: 30%			

*Increased to 30% and combined rating increased to 40% effective 20090608

ANALYSIS SUMMARY: The Board's authority as defined in DoDI 6040.44, resides in evaluating the fairness of Disability Evaluation System fitness determinations and rating decisions for disability at the time of separation. The Board utilizes VA 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. Post-separation evidence is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Chronic Low Back Pain. There were four range-of-motion (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	Physical Medicine ~10 Months Pre-Separation	Ortho ~ 7 Months Pre-Separation	MEB with PT ROM ~4.5 Months Pre-Separation	VA C&P ~3 Months Pre-Separation
Flexion (90° Normal)	60°	70° with symptoms	90° (100)	60° (Pain)
Ext (0-30)	30°	20° asymptomatic	20°	20° (Pain)
R Lat Flex (0-30)	30° (45)		30° (30)	30° (40)
L Lat Flex (0-30)	30° (45)		30° (40)	30° (40)
R Rotation (0-30)			30° (45)	30°
L Rotation (0-30)			30° (45)	30°
Combined (240°)			230°	200°
Comment	Tenderness at L5-S1; straight leg raise and Faber's negative; motor 5/5 bilateral lower extremities; sensation intact to light touch, pinprick, and proprioception bilateral lower extremities	Tender to light touch at L4 level; negative axial load symptoms; reflexes 2+ throughout bilateral lower extremities; motor 5/5 bilateral; heel and toe walk led to back pain	PT: active ROM was same as passive ROM MEB: tenderness to palpation L4 to S1; no paralumbar tenderness or spasms; negative straight leg raise; negative Waddell's signs; reflexes 2+ throughout; strength 5/5 throughout; sensation intact to light touch with hypersensitivity to palpation in both feet, greater on the left.	Normal gait, able to walk on heels and toes without difficulty; normal curvature and no spasm; tenderness to palpation of paraspinal muscles, lumbar vertebra, sacrum, and coccyx; painful motion; radiation pain in R leg; straight leg raise positive bilaterally at 20 degrees; reflexes brisk and equal—3/3 bilaterally; sensation to light touch is decreased at the anterior, lateral, and posterior aspects of the right upper leg and at the posterior aspect of the right lower leg; sensation to light touch is normal in the left leg; motor is 5/5 in all muscles;
§4.71a Rating				
5292	20%	10%	10%	20%
5293				
5295	10%	10%	10%	10%

The MEB narrative summary (NARSUM) examination was completed approximately 4 months prior to separation. The CI had a history of several minor back injuries that had all resolved with conservative treatment. However, in June 2002 he suffered a significant back injury during nighttime airborne operations that did not resolve with conservative therapy including, rest, medication, physical therapy, and chiropractic care. Surgery was not indicated. The CI reported constant LBP rated at 4/10 that increased to 10/10 with any physical activity or standing or sitting for any length of time. He also reported tingling, coldness, and numbness in both legs. Magnetic resonance imaging performed in November 2002 noted a moderate L5-S1 left paracentral, wide-based disc protrusion with effect on the thecal sac and bilateral S1 nerve roots. An electromyogram of right lower extremity was normal in January 2003. The NARSUM reports the findings of three other examinations, one from physical medicine completed in October 2002, one from April 2003 recorded on a DD Form 2808, and ROM testing by physical therapy obtained in April 2003. The source documents are present in the record and the physical findings are recorded in the chart above.

The VA Compensation and Pension (C&P) exam completed 3 months prior to separation, reported a similar clinical history; functional impairments and the physical examination findings are located in the chart above. A second C&P examination in July 2005 noted similar findings with thoracolumbar flexion limited to 55 degrees with an additional loss of 10 degrees with repetition. A subsequent C&P examination completed in July 2009 noted a significantly more limited thoracolumbar flexion of 15 degrees. The disability rating was increased to 30% after this examination.

The 2003 VASRD coding and rating standards for the spine, which were in effect at the time of separation, had been modified on 23 September 2002 to add incapacitating episodes (5293 Intervertebral disc syndrome), and were later changed to the current §4.71a rating standards on 26 September 2003. The 2003 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. When older cases have goniometric measurements in evidence, the Board reconciles (to the extent possible) its opinion regarding degree of severity for the older spine codes and ratings with the objective thresholds specified in the current VASRD §4.71a general rating formula for the spine. This promotes uniformity of its recommendations for different cases from the same period and more conformity across dates of separation, without sacrificing compliance with the DoDI 6040.44 requirement for rating IAW the VASRD in effect at the time of separation.

The Board directs attention to its rating recommendation based on the above evidence. The PEB used an analogous code that included both 5293 and 5295; but it is not clear if the 5293 code used is based on the previous criteria, or the new criteria based on incapacitating episodes. A 10% disability rating was assigned based on painful motion. The VA used VASRD code 5292 and assigned a 20% disability rating based on moderate limitation of motion. No evidence of incapacitating episodes as defined in the VASRD was present in the record and a rating using code 5293 based on the frequency of incapacitating episodes cannot be determined. Both the NARSUM examination with ROM measured by physical therapy and the initial VA C&P examination appear to be valid and complete and both were completed prior to separation. The VA C&P examination is closer to the time of separation, but still prior to separation and therefore greater probative value is given to this examination. This examination supports a 20% rating using 5292. While the NARSUM examination does not support a 20% rating, previous examinations support the 20% rating. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (Resolution of reasonable doubt), the Board recommends a disability rating of 20% for the chronic low back pain 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 low back pain with herniated disc condition, the Board unanimously recommends a disability rating of 20%, coded 5292 IAW VASRD §4.71a. 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
Low Back Pain with Herniated Disc at L5-S1	5292	20%
	RATING	20%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120606, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXXX, DAF
President
Physical Disability Board of Review

SFMR-RB

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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation
for XXXXXXXXXXXXXXXX, AR20130001357 (PD201200612)

1. 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 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

XXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
 DoD PDBR
 DVA