

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXX
CASE NUMBER: PD1200628
BOARD DATE: 20121107

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20011222

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (75B/Personnel Administration Specialist), medically separated for chronic low back pain. The condition began as a consequence of injury in 1999 and was not associated with a surgical indication. 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 L3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded chronic low back pain with L5-S1 spondylolysis and Grade I spondylolisthesis (slippage of the L5 vertebra on S1) to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB's submission. The PEB adjudicated the chronic low back pain condition as unfitting, rated 10% with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: "Spondylolysis and Spondylolisthesis (Back Condition)."

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. 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 PEB – Dated 20011017			VA (4 Mos. Post-Separation) – All Effective Date 20011223			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Low Back Pain	5299-5295	10%	Residuals, Lumbar Spine Injury	5292	10%	20020423
↓No Additional MEB/PEB Entries↓			Not Service-Connected x 2			20020423
Combined: 10%			Combined: 10%			

ANALYSIS SUMMARY:

Chronic Low Back Pain Condition. The 2001 VASRD coding and rating standards for the spine, which were in effect at the time of permanent separation, were changed to the current VASRD §4.71a rating standards on 26 September 2003, following the CI's permanent disability disposition. The older ratings were based on a judgment as to whether the disability was mild, moderate or severe. The current standards are grounded in range-of-motion (ROM)

measurements. IAW DoDI 6040.44, this Board must consider the appropriate rating for the CI's back condition at separation based on the VASRD standards in effect at the time of separation. The CI injured his lumbar spine in a motor vehicle accident on 2 November 1999. Ongoing pain led to the diagnosis by X-rays and magnetic resonance imaging (MRI) of mild spondylolisthesis, but without spinal stenosis or neuro-foraminal impingement. ROM in evidence is provided in the following table:

Thoracolumbar ROM	PT ~3.5 Mo. Pre-Sep	VA C&P ~4 Mo. Post-Sep
Flexion (90° Normal)	75°	70°
Ext (0-30)	20°	10°
R Lat Flex (0-30)	30° (35°)	20°
L Lat Flex 0-30)	30° (35°)	20°
R Rotation (0-30)	30° (45°)	30°
L Rotation (0-30)	30° (45°)	30°
Combined (240°)	215°	180°
Comment	+ Tenderness; painful motion	+ Tenderness
§4.71a Rating	10%	10%

At the MEB exam, the CI reported constant back pain rated at 7 on a 0-10 scale, with worsening to 10 with any activity. Examination revealed no spinal step-off or deviation. Tenderness was present at the lower lumbar areas and bilateral sacro-iliac joints, but muscle spasm was absent. Straight leg raise (SLR) testing was negative and neurologic examination was normal. At the VA Compensation and Pension (C&P) exam, performed 4 months after separation, the CI reported back pain that was intermittent, did not radiate and was not associated with lower extremity symptoms. Activities did not increase his pain, and he lost no time from work due to his condition. Examination revealed tenderness of the left lumbar area.

The Board must correlate the above clinical data with the 2001 rating schedule which, for convenience, is excerpted below:

- 5285** Vertebra, fracture of, residuals:
 With cord involvement, bedridden, or requiring long leg braces 100
 Consider special monthly compensation; with lesser involvements rate for limited motion, nerve paralysis.
 Without cord involvement; abnormal mobility requiring neck brace (jury mast) 60
 In other cases rate in accordance with definite limited motion or muscle spasm, adding 10 percent for demonstrable deformity of vertebral body.
 NOTE: Both under ankylosis and limited motion, ratings should not be assigned for more than one segment by reason of involvement of only the first or last vertebrae of an adjacent segment
- 5292** Spine, limitation of motion of, lumbar:
 Severe 40
 Moderate 20
 Slight 10
- 5294** Sacro-iliac injury and weakness:
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 osteo-arthritic 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

The PEB and VA each assigned a 10% rating under different but equally applicable codes. The Board debated if the next higher 20% rating was justified using the older VASRD rules in effect at the time, but agreed that elements supporting this approach were not present on any of the cited examinations. All Board members agreed that the condition more nearly approximated the criteria for the 10% rating. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication 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 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	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

XXXXXXXXXXXXXXXXXXXX
 President
 Physical Disability Board of Review

SFMR-RB

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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for
XXXXXXXXXXXXXXXXXXXX, AR20120021430 (PD201200628)

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

XXXXXXXXXXXXXXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
() DoD PDBR
() DVA