

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1200661
BOARD DATE: 20130108

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20010926

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/Infantryman) medically separated for chronic low back pain (LBP). He was treated, but did not improve adequately to fully perform his military duties or meet physical fitness standards. He was issued a permanent L3 profile and underwent a Medical Evaluation Board (MEB). The MEB found his chronic LBP medically unacceptable IAW AR 40-501, and referred him to a Physical Evaluation Board (PEB). No other conditions were listed on DA Form 3947. The PEB found the chronic LBP unfitting, and rated it 10% for painful motion IAW the Veterans Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% disability rating.

CI's CONTENTION: "Condition is worsening. Back pain in upper back also."

SCOPE OF REVIEW: The Board's scope of review as defined in DoDI 6040.44, 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 unfitting LBP condition meets the criteria prescribed in DoDI 6040.44, and is accordingly addressed below. No other conditions are within the Board's purview. Any condition outside the Board's defined scope of review may be eligible for future consideration by the Army Board for Correction of Military Records.

RATING COMPARISON:

Army PEB – dated 20010604			VA (~1 mo. Post-Separation) – All Effective 20010927			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Low Back Pain	5299-5295	10%	Status Post Lumbar Fusion	5293	20%	20010816
↓No Additional MEB/PEB Entries↓						
Combined: 10%			Combined: 20%			

ANALYSIS SUMMARY: The Board acknowledges the CI's assertion that his condition is worsening, and that he also has pain in the upper back. It is noted for the record that the Board 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 service members for future severity or potential complications of conditions. That role and authority is granted to the Department of Veterans Affairs (DVA). The Board evaluates DVA evidence in arriving at its recommendations, but its authority resides in evaluating the fairness of DES fitness and rating determinations at the time of separation. While the DES considers all of the CI's medical conditions, compensation can only be offered for those conditions that cut short a member's career, and then only to the degree of severity present at

the time of separation. The DVA, however, is empowered to compensate for 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 change over time.

Chronic Low Back Pain (LBP). The CI presented with back pain in 1998. In May 1999, he fell and injured his back during a field training exercise. He was evaluated at Walter Reed Army Medical Center and was diagnosed with L5-S1 spondylolisthesis. The CI underwent spinal surgery (lumbar fusion and pedicle screws). In spite of treatment, the problem with LBP persisted and an MEB was initiated. His MEB physical examination was on 14 February 2001. At that exam, he was in no acute distress and his gait was normal. There was mild point tenderness at the L5-S1 area, but no evidence of paravertebral spasm. Back flexion was approximately 100 degrees, with mild discomfort. Extension was 5-10 degrees, also with discomfort. In August 2001, the CI had a VA Compensation and Pension exam. At that exam, his posture was relatively stiff and there was some tenderness present. Back flexion was 80 degrees, and extension was 5 degrees. Deep tendon reflexes and straight leg raise tests were normal.

The Board carefully reviewed all evidentiary information available, and directs attention to its rating recommendation based on the above evidence. The 2001 VASRD coding and rating standards for the spine, which were in effect at the time of the CI's separation, were modified in September 2002, and then were changed again in September 2003. The older 2001 standards were based on the rater's opinion regarding degree of severity, whereas current standards specify certain rating thresholds, with measured degrees of ROM impairment. IAW DoDI 6040.44, the Board must use the VASRD coding and rating standards which were in effect at the time of the CI's separation. Based on the evidence in the treatment record, the Board unanimously agreed that the CI's low back condition was best described as "slight." There was insufficient evidence in the treatment record to support classifying the LBP condition as "moderate" or "severe." IAW VASRD §4.71a, the Board unanimously recommends a rating of 10% for the chronic LBP condition. 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 LBP 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 20120611, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXXX, DAF

Director

Physical Disability Board of Review

SFMR-RB

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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation
for XXXXXXXXXXXXXXXX, AR20130003038 (PD201200661)

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

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Deputy Assistant Secretary
(Army Review Boards)