

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXX
CASE NUMBER: PD1200674
BOARD DATE: 20130207

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20030620

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSG/E-6 (54B, Chemical Ops Specialist) medically separated for spondylolisthesis L4 on L5 with degenerative disc disease of L4-5. The CI could not be adequately rehabilitated to meet the requirements of his Military Occupational Specialty or physical fitness standards despite physical therapy (PT) and medication; he declined surgical intervention. He was consequently issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded two diagnoses to the PEB; "1) Spondylolisthesis L4 on L5," and "2) degenerative disc disease L4-5," as medically unacceptable IAW AR 40-501. No other conditions were submitted by the MEB. The CI disagreed with the MEB pain characterization, which was addressed by the MEB approving authority. The PEB adjudicated "spondylolisthesis L4 on L5 with degenerative disc disease of the L4-5..." as unfitting and rated 10% citing "IAW Department of Defense (DoDI) 1332.29 and AR 635-40." The CI made no appeals and was medically separated with a 10% disability rating.

CI CONTENTION: The application states "My back conditions are irreversible and have lead to numerous other medical problems. Numbness and chronic pain in back, hips and legs, migraine headaches, acid reflux disease from the numerous medications, knee pain, anger issues, depression, also, on the Diagnosis of the Medical Eval Board Proceedings, I was diagnosed with 2 separate conditions (1) Spondylolisthesis L4-L5 (2) Degenerative disc disease L4-5, but on the rating dication they were combined and rated as 1 condition. Also according to W--- A. S---, COL, the appeal to the dication was solely based on the amount of narcotic medications I had been given in previous years. They didn't even consider the numerous other pain meds I was taking for chronic pain or all the physical therapy attended, back braces issued, physical profile limitations for 3 plus years Additional paperwork attached. A list of medications currently taking"[sic]. He does not elaborate further or specify a request for Board consideration of any additional conditions.

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 unfitting spondylolisthesis and degenerative disc disease are 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 Service Board for Correction of Military Records.

RATING COMPARISON:

Service PEB – Dated 20030321			VA (1 Mo. Pre-Separation) – Effective 20030621			
Condition	Code	Rating	Condition	Code	Rating	Exam
L4-5 Spondylolisthesis and Degenerative Disc Disease	5299-5295	10%	Lower Back Degenerative Disc Disease and Herniated Nucleus Pulposus	5293-5295	10%	20030512
↓No Additional MEB/PEB Entries↓			Right Ankle Sprain	5271-5024	10%	20030512
			Left Knee Strain	5024	10%	20030512
			0% X 2			20030512
Combined: 10%			Combined: 30%			

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 service 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.

Lower back Condition. The narrative summary notes a 5-year history of lower back pain (LBP) dating to 1996 when the CI reported back pain after heavy lifting. The pain was worse with physical activity and walking greater than 300 yards. He reported stabbing pain in the lower back region with pins and needles in the left posterior leg to the bottom of his foot. The CI reported that he was unable to sleep because of the pain. He was treated with PT, anti-inflammatory medications, narcotic medication, and a back brace with intermittent relief of his symptoms. A magnetic resonance imaging study revealed pars defect at the L 4 level with a significant disc bulge at L4-5 without neuroforaminal stenosis. Physical examination on 4 December 2002 (6 months prior to separation) documented forward flexion with fingers to toes and pain at the extremes of motion. Extension and lateral bending were noted as “adequate.” There was diffuse tenderness over the left paravertebral area at L4-L5. Motor strength was documented as 5/5 with a negative straight leg raise. At the MEB examination, 3 months prior to separation, the CI reported back pain that keeps him up at night and numbness in his legs. He also reported use of a back brace for pain. The MEB examination documented tenderness to palpation along the left paraspinal area at L4-L5 with decreased flexion and extension strength and a slightly decreased deep tendon reflex (DTR) at the left patella. The examiner also noted an antalgic gait. At VA Compensation and Pension examination a month prior to separation, the CI reported sharp back pain 3 times a week with normal activity. He also reported left leg pain and numbness, an inability to lift greater than 20 pounds, inability to perform running or jarring activities, and an inability to stand greater than 20 minutes. The examiner documented normal gait and posture, painful motion, and tenderness to palpation in the lower back. The range of motion was normal: flexion to 90°, extension to 30°, left and right

lateral flexion to 35° and left and right rotation to 30°. Deluca factors of pain, fatigability, and lack of endurance with repetition were noted. Sensation and DTR were intact. Lasegue test elicited pain in the lower back.

The Board directs attention to its rating recommendation based on the above evidence. The PEB and VA each assigned a 10% rating under similar 5295 (lumbosacral strain) coding pathways. The PEB rated analogously while the VA combined the 5293 code (intervertebral disc syndrome). The Board agreed that elements of the 20% rating under the 5295 code were not present on any of the cited examinations, and further noted that there was no evidence of “incapacitating episodes” that would justify a minimal rating under the 5293 code. Board members also agreed that there was no evidence to support a higher rating under the 5292 code (limitation of lumbar motion). The Board further considered that two diagnoses, spondylolisthesis of L4 on L5 and degenerative disc disease of L4-5, were forwarded by the MEB as not meeting retention standards. However, because the pain manifested by one is indistinguishable from the other, the Board concluded that assigning separate ratings would not comply with Veterans Affairs Schedule for Rating Disabilities (VASRD) §4.14 (Avoidance of pyramiding). The Board finally deliberated if additional disability was justified for the history of lower extremity pain and numbness. However, the evidence of record did not demonstrate functional impairment due to radiculopathy at the time of separation, and the Board therefore concludes that additional disability was not justified on this basis. 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 of 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. As discussed above, PEB reliance on (DoDI) 1332.29 and AR 635-40 for rating spondylolisthesis L4 on L5 with degenerative disc disease was operant in this case and it was adjudicated independently of those policies by the Board. In the matter of the spondylolisthesis L4 on L5 with degenerative disc disease 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.

UNFITTING CONDITION	VASRD CODE	RATING
Spondylolisthesis L4 on L5 With Degenerative Disc Disease	5299-5295	10%
	COMBINED	10%

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120613, w/atchs.

Exhibit B. Service Treatment Record.

Exhibit C. Department of Veterans Affairs Treatment Record.

XXXXXXXXXXXXXXXXXXXX, DAF
Director
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 xxxxxxxxxxxxxxxxxxxx, AR20130003760 (PD201200674)

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)