

RECORD OF PROCEEDINGS  
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX  
CASE NUMBER: PD1200683  
BOARD DATE: 20130116

BRANCH OF SERVICE: ARMY  
SEPARATION DATE: 20030530

**SUMMARY OF CASE:** Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (31U/Signal Support System Specialist), medically separated for back pain secondary to herniated nucleus pulposus (HNP) w/o radicular signs. The CI developed back pain approximately 2 years prior to separation, subsequently diagnosed to be secondary to herniated nucleus pulposus. Non-surgical treatment was recommended by neurosurgery. The CI did not improve adequately with treatment 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 lumbar 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:** "The medical condition that rendered me unfit for continued service was rated at 10% by the physical evaluation board. The VA also initially rated my condition at 10%. My VA disability rating was appealed numerous times throughout the years following my discharge. Approximately 4-5 years ago, my VA disability rating appeal went before an Appeals Judge at my regional VA office. The appeal was for the medical condition that rendered me unfit for continued duty. To my understanding, we (DAV representative and myself) appealed the VA's initial disability rating from 2003. After successfully appealing the VA's initial decision, the condition that rendered me unfit for duty was changed from 10% to 40%. Because my initial rating was successfully appealed, I believe my DoD rating was inaccurate and unfair."

**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 the unfitting condition, back pain secondary to L5-S1 HNP, without radicular signs, will be reviewed. 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 20030408			VA (2 Mos. Pre-Separation and 7.5 Mos. Post-Separation) Effective Date 20030531			
Condition	Code	Rating	Condition	Code	Rating	Exam
Back Pain secondary to HNP w/o radicular signs	5293-5299-5295	10%	DDD Lumbar	5292	10%*	20030401
			DDD Thoracic	5291	0%	20030401
			Stress FX R Tibia	5262	0%*	20040119
↓No Additional MEB/PEB Entries↓			0% X 3 / Not Service-Connected x 0			
<b>Combined: 10%</b>			<b>Combined: 10%*</b>			

\* DDD lumbar increased to 40% effective 20080123 (Combined 60%); Stress FX R Tibia increased to 10% effective 20031124 (combined 20%). [Depression added at 10% effective 20061026; Radiculopathy RLE added at 10% effective 20070412]

**ANALYSIS SUMMARY:** The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. 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 DES has neither the role nor the authority to compensate members for anticipated future severity or potential complications of conditions resulting in medical separation nor for conditions determined to be service-connected by the Department of Veterans Affairs (DVA) but not determined to be unfitting by the PEB. However the DVA, operating under a different set of laws (Title 38, United States Code), is empowered to compensate all 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. The Board's role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to VASRD standards, based on severity at the time of separation.

**Low Back Pain Condition:** The CI developed low back pain 2 years prior to the MEB without specific injury. Magnetic resonance imaging demonstrated a moderate to severe disc protrusion at L5-S1 without neural compression, and degenerative changes at other levels. There were no radicular signs or symptoms. Neurosurgical consultation recommended non-surgical treatment. The neurosurgery examination 11 February 2003, 4 months before separation, recorded flexion of 80 degrees with normal extension (30 degrees), lateral flexion (30 degrees), and rotation (40 degrees). At the time of the MEB narrative summary (NARSUM), 28 February 2003, there was tenderness to palpation at L4-L5 bilaterally. Range-of-motion (ROM) was normal, flexion greater than 90 degrees with pain over 90 degrees. Straight leg raising was negative for nerve root irritation and strength was normal with intact reflexes. At the time of the VA Compensation and Pension (C&P) examination on 1 April, 2003, 2 months before separation, the examiner measured lumbar and thoracic ROM separately showing 30 degrees of lumbar flexion and 95 degrees of thoracic flexion which is similar to the ROM recorded at the time of the MEB examination. There was no muscle spasm or tenderness of thoracic or lumbar spines, and the CI's posture and gait were normal. Although SLR was said to be positive, the examiner concluded there was no radiculopathy present.

The Board directs attention to its rating recommendation based on the above evidence. In accordance with DoDI 6040.44, the Board is required to recommend a rating IAW the VASRD in effect at the time of separation. The Board notes that the 2002 VASRD standards for the spine, which were in effect at the time of separation, were changed to the current §4.71a rating standards in 2004. The Board must correlate the above clinical data with the 2003 rating schedule (applicable diagnostic codes include: 5292 limitation of lumbar spine motion; 5293 intervertebral disc syndrome; and 5295 Lumbosacral strain). The PEB rated the condition 10% citing characteristic pain on motion consistent with rating using the lumbar strain code 5295 (PEB coded the condition 5293-5299-5295, intervertebral syndrome – lumbar strain). The VA rated 10% citing limitation of motion coded 5292. The Board considered the rating under the VASRD diagnostic code 5292 in effect at the time. The Board agreed that the ROM documented at the time of the neurosurgery evaluation and NARSUM supported the 10% under the VASRD diagnostic code 5292 in effect at the time (as well as current VASRD guidelines). The Board noted the C&P examination which provided separate ROM values for the lumbar and thoracic spines. When combined, these values closely approximate the examinations prior to separation and as well as C&P examination 3 years later in February 2006. Examinations recorded the presence of painful motion. The Board next considered whether a higher rating was warranted under the guidelines for intervertebral syndrome, code 5293. At the time of separation, the 5293 rating guidelines were based on incapacitating episodes. The CI had intervertebral disc disease without radicular symptoms or objective neurologic findings.

Review of service treatment records did not show any incapacitating episodes to warrant a minimum rating under this code. The Board also considered the rating under the code, 5295, lumbosacral strain. All members agreed there was characteristic pain on motion supporting the 10% rating adjudicated by the PEB. Board members agreed, the evidence did not support the 40% rating under this code. There was no loss of lateral spine motion (both measured at 40 degrees on a C&P examination) to support the 20% rating. The Board noted at the time of the C&P examination spasm was absent and gait was normal. The Board concluded the 10% rating was appropriate for characteristic pain on motion. There was no associated radiculopathy for separate peripheral nerve rating. 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 5295 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 back pain secondary to HNP w/o radicular signs 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, unanimously recommends that there be no recharacterization of the CI’s disability and separation determination, as follows:

<b>UNFITTING CONDITION</b>	<b>VASRD CODE</b>	<b>RATING</b>
Back Pain Secondary to HNP w/o Radicular Signs	5293-5299-5295	10%
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120608, 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 / XXXXXX), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for  
 XXXXXXXXXXXXXXXXXXXX, AR20130001404 (PD201200683)

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

XXXXXXXXXXXXX  
Deputy Assistant Secretary  
(Army Review Boards)

CF:  
 DoD PDBR  
 DVA