

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXX
CASE NUMBER: PD1200708
BOARD DATE: 20130116

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20020119

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (92G10/Food Service Specialist), medically separated for chronic low back pain (LBP) with imaging findings of mild facet changes L4/L5. The CI had a one year history of gradually worsening LBP follow a fall. 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 chronic LBP with imaging findings of mild facet changes L4/L5 condition as unfitting, rated 10%. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: "Had major back and spine surgery in 2009. L4-L5, L5-S1 completely taken out and replaced with medal Rods, screws, pins and cased."

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 chronic LBP with imaging findings of mild facet changes L4/L5 condition as requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview; and, is 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 Army Board for Correction of Military Records.

RATING COMPARISON:

Service IPEB – Dated 20011022			VA (~1 Mo. Post-Separation) – All Effective Date 20020120			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Low Back Pain with Imaging Findings of Mild Facet Changes L4/L5	5299-5295	10%	Degenerative Disc Disease Due To Trauma, Lumbar Spine	5010-5292	20%*	20021108
↓No Additional MEB/PEB Entries↓			0% X 1 / Not Service-Connected x 1			
Combined: 10%			Combined: 20%*			

* Temporary 100% (convalescent) rating from 20090519-20091201

ANALYSIS SUMMARY: The Board acknowledges the CI's information regarding the significant impairment with which his service-connected condition continues to burden him, and his additional back surgery; but, must emphasize that the Disability Evaluation System has neither the role nor the authority to compensate 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 Veteran Affairs (DVA), operating under a different set of laws. The Board considers DVA evidence proximate 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 to the Board's recommendations only to the extent that it reasonably reflects the disability at the time of separation. The Board notes that the Veterans Affairs Schedule for Rating Disabilities (VASRD) standards for the spine which were in effect at the time of separation, were changed in September 2002 (for code 5293 only), and then to the current §4.71a rating standards in September 2003. The Board must correlate the above clinical data with the 2002 rating schedule (applicable diagnostic codes include: 5292 (limitation of lumbar spine motion); 5293 (Intervertebral disc syndrome); and 5295 (Lumbosacral strain). For the reader's convenience, the 2001 rating codes under discussion in this case are excerpted below.

5292 Spine, limitation of motion of, lumbar:
 Severe..... 40
 Moderate..... 20
 Slight..... 10

5293 Intervertebral disc syndrome:
 Pronounced; with persistent symptoms compatible with sciatic neuropathy with characteristic pain and demonstrable muscle spasm, absent ankle jerk, or other neurological findings appropriate to site of diseased disc, little intermittent relief..... 60
 Severe; recurring attacks, with intermittent relief..... 40
 Moderate; recurring attacks..... 20
 Mild..... 10
 Postoperative, cured..... 0

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 osteoarthritic 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

Chronic Low Back Pain: Service treatment records indicate a history of intermittent LBP since approximately 1997. An April 2001 physical therapy examination noted palpable muscle spasm; however, subsequent examinations did not note the presence of muscle spasm. An 11 June 2001 clinic encounter recorded complaint of radiating pain. On examination there was tenderness. Straight leg raising (SLR) was negative for nerve root irritation; and strength, reflexes and sensation were normal. X-rays were reported to show degenerative disc disease (DDD) at L4-5 and L5-S1. The MEB narrative summary (NARSUM), 11 July 2001, reported a one year history of increasing chronic LBP leading to referral for MEB. The CI complained of increased pain with prolonged sitting/standing, bending and activity. On examination, there was tenderness to palpation, and paraspinous musculature was "symmetric". Range-of-motion (ROM) was reported for the lumbar spine using a bubble inclinometer. Lumbar flexion was 50 degrees with extension of 15 degrees and lateral flexion of 20 degrees bilaterally (with no normal values stated). SLR was negative and there was no weakness or loss of sensation noted on exam. A magnetic resonance imaging (MRI) scan on 2 October 2001, 3 months prior to separation, demonstrated DDD at L4-5 and L5-S1 with disc protrusions at both levels and mild neural foraminal stenosis and mild canal stenosis.

At the VA Compensation and Pension (C&P) exam, 9 months after separation, the CI reported back pain that worsened with bending with origin in the neck radiating down to his lumbar spine. He reported occasional numbness in his arms and on the plantar surfaces of his feet. He denied weakness in his extremities and changes in bladder or bowel function. On examination, there was mild palpable tenderness noted in the lumbar region without mention of muscle spasm. Gait and posture were normal. Back ROM was flexion 90 degrees, extension 20 degrees, lateral bending 30 degrees both sides and rotation 30 degrees both sides (with no normal values stated). There was report of pain on flexion and extension of the spine. Strength and sensation were normal. Subsequent VA records indicate lumbar inter-body fusion surgery in May 2009 (over six years post-separation), with no post-surgical VA exams, but a return to a 20% VA rating effective December 1, 2009.

The Board directs attention to its rating recommendation based on the above evidence. The PEB rated the condition 10% based on pain on forward motion under the 5295 code for lumbosacral strain. The VA granted 20% for moderate limitation of motion (5292, limitation of motion) based on the C&P examination. Of particular note in this case was that the older VA criteria for the spine separated lumbar and thoracic (dorsal) spine segments for rating, and there were no VA-specified normal ROMs (guidance suggested the American Medical Association (AMA) guidelines, but any provider-specified normal ROM was applied). The current VA normal spine ROMs were added in September 2003 with Plate V and the General Rating Formula for Diseases and Injuries of the Spine which was not in effect at the time of the CI's separation. The VA reported 90 degrees of lumbar forward flexion and ROMs were consistent with near-normal ROMs from the AMA guidelines in effect at the time, and the Board adjudged these as slight limitation (IAW 5292, Spine, limitation of lumbar motion). The NARSUM reported the 50 degrees lumbar forward flexion was accomplished using a bubble inclinometer (not a goniometer), indicating measurement of isolated lumbar spine motion. No normal values were reported, however, normal ROMs in use at the time were from 60 to 80 degrees depending on the source and method of inclinometer use, which was not specified. The Board majority considered this slight limitation of motion. A rating under code 5293 for intervertebral disc syndrome to address MRI findings and radicular symptoms; however, there was a lack of evidence to support recurring attacks at the moderate level (20%). The Board considered the rating under 5295, lumbosacral strain, and agreed there was characteristic pain on motion supporting the 10% rating. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (Resolution of reasonable doubt) and §4.59 (Painful motion), the Board majority 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 LBP condition and IAW VASRD §4.71a, the Board, by a vote of 2:1, recommends no change in the PEB adjudication. The single voter for dissent (who recommended 20%, coded 5010-5292) did not elect to submit a minority opinion. 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 / XXXXXXXXXX), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation
for XXXXXXXXXXXXXXXX, AR20130002783 (PD201200708)

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

XXXXXXXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)