

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1200713
BOARD DATE: 20130110

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20020601

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty Soldier, SPC/E-4 (11B/Infantryman), medically separated for low back pain (LBP) in June 2002. In July 1999 he began having back pain while running. He was treated non-surgically. His LBP 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 L4 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded mechanical LBP as medically unacceptable IAW AR 40-501. The MEB forwarded no other conditions for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated the "low back pain without any history of trauma/injury" as unfitting, rated 0%, with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 0% disability rating. The records indicate that the CI was in the National Guard (NG) (military policeman) from 2008 until at least August 2012 (Annual Training Orders). He was activated in 2009 and separated from that tour in 2010 after serving 10 months in Iraq.

CI CONTENTION: The CI states: "My condition was lower back pain which I still have every once and awhile."

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 unfitting condition, LBP without any history of trauma/injury, meets the criteria prescribed in DoDI 6040.44 for board purview and is accordingly 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 PEB – Dated 20020220			VA (1 Mos. Pre-Separation) – All Effective Date 20020602			
Condition	Code	Rating	Condition	Code	Rating	Exam
Low Back Pain	5299-5295	0%	DDD, L-Spine	5293	10%*	20020517
↓ No Additional MEB/PEB Entries ↓			0% X 0 / Not Service-Connected x 0			20020517
Combined: 0%			Combined: 10%			

*Increased to 20% effective 20050328 (combined 20%) by VARD of 20060206.

ANALYSIS SUMMARY: The back condition was rated IAW 2002 VASRD standards which are no longer in effect, but applicable by this Board at the time of separation. The current spine formula is based on range-of-motion (ROM) measurements. The 2002 ratings were based on the examiner's or rater's opinion as to whether the disability was mild, moderate or severe. For

the reader's convenience, the 2002 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 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

Low Back Pain. Six months before separation, the narrative summary (NARSUM) noted the CI developed back pain while running in July 1999. Other history notes he fell in July 1999, while running with a ruck sac. Nonetheless, he was diagnosed with mechanical LBP and treated conservatively with rest, non-steroidal anti-inflammatory drugs (NSAIDs) as well as profiling. He was seen for back pain again in August 1999, and didn't note a history of prior significant back pain. He did well until June 2000 where he again strained his back. The CI was profiled and again treated with physical therapy, NSAIDs and muscle relaxants. The CI did not improve and was referred to orthopedic surgery in April 2001. At orthopedic evaluation he demonstrated tenderness to palpation, lumbar flexion to 80 degrees, and X-rays showed sacralization of L5. After no improvement with medical treatment and 10 months of consecutive profiling, a permanent L4 profile was issued in September 2001 and he was referred for evaluation at the MEB. His commander's letter of November 2001 noted he could not meet the basic activities required of soldiers in his MOS or wear his fragmentation vest. The back exams and goniometric ROM evaluations in evidence which the Board weighed in arriving at its rating recommendation, with documentation of additional ratable criteria, are summarized in the chart below. Listed ROM "normals" are from the VA lumbar spine exam; current VASRD normal ROMs were not in effect prior to 26 September 2003.

Lumbar ROM	MEB ~7 Mo. Pre-Sep	VA C&P ~2 Weeks Pre-Sep
Flexion (80° Normal)	"2.5 feet from the floor"	60°(*55°)
Ext (0-20)	-	20°
R Lat Flex (0-35)	45°	35°
L Lat Flex 0-35)	45°	35°
R Rotation (0-45)	-	45°
L Rotation (0-45)	-	45°
Comment:	+ Tenderness; normal toe and heel walk; +SLR bilaterally; normal neurologic and motor exams	+ Tenderness; painful motion; normal gait, heel and toe walk; normal contour; -SLR *DeLuca 55° flexion,
§4.71a Rating	10%-20% (PEB 0%)	10%-20% (VA 10%)

The NARSUM dictated 6 months prior to separation indicated failure of medical/non-surgical treatment. Orthopedic evaluation demonstrated tenderness to palpation, lumbar flexion to 80 degrees, negative straight leg raise (SLR) and X-rays showed sacralization of L5. At the MEB exam, 7 months prior to separation, the examiner reported "The soldier complains of low back pain with occasional sharp stabbing pain in the left lower extremity in the posterior leg to the knee. He denies any bladder or bowel dysfunction. He has pain with activities. He is unable to run, carry a rucksack, do push-ups or sit-ups." The MEB physical exam cited "decreased range of motion with forward flexion to 2.5 feet from the floor and side bending to 45 degrees bilaterally" and "Straight leg raises are negative in bilateral lower extremities. Soldier is able to perform a normal toe as well as heel walk. There is bilateral tenderness to palpation in the L2 to S1 area of the low back." Neurologic and motor examinations were essentially normal. Lumbar spine radiographs were stated as normal; however the lumbar spine radiograph report from September 2001 indicated early degenerative disc disease with arthritic changes, and an earlier orthopedic treatment note indicated sacralization of L5.

At the VA Compensation and Pension (C&P) exam 2 weeks before separation, the examiner noted "He complains of pain down the right leg with tingling in his lower back. Overhead reaching was also noted as a problem." The CI said "The pain is an 8/10. I have learned to live with the pain. I don't like the way muscle relaxants make me feel. The NSAIDs help the pain, but I stopped them because I don't want to be on medication the rest of my life." The C&P history shows the CI was not taking any medications at that time. The C&P physical exam showed posture and gait were normal, musculoskeletal strength was normal and neurological exam was unremarkable. There was decreased ROM as summarized above. The VA examiner noted "DeLuca issues are present. There is increased pain with increased physical activity" and flexion reduced to 55 degrees. There was tenderness to palpation lumbar L2 to S1. Lumbar spine films September 2001 showed early degenerative disk disease with arthritic changes of the facet joint L5-S1, and no compression fractures. Of note, the VA exam was accomplished at a military treatment facility with a military physician co-signing.

The Board directs attention to its rating recommendation based on the above evidence. The Board noted that the CI returned to military service in 2008, but considered the likelihood of post-separation improvement, and focused on the CI's disability picture proximate to his medical separation in 2002. The PEB coded analogous rating 5299-5295 (Lumbosacral strain), and assigned a 0% rating (with slight subjective symptoms only). The VA coded 5293 (intervertebral disc syndrome) and rated the lumbar condition at 10% (mild symptoms), with application of the spine rules in effect on 20 February 2002. The PEB did not note characteristic pain on motion to rise to a level of 10%. The Board adjudged that any of the exams of record could be rated at 10% either citing VASRD §4.59 for painful motion under 5003-5295 (lumbosacral strain), or 5003-5293 (intervertebral disc syndrome), or at least slight limitation of motion under 5099-5292 (Spine, limitation of motion of, lumbar).

Next the Board considered the probative value of the MEB exam 7 months prior to separation and the C&P exam 2 weeks prior to separation. The Board found great detail and evidence of Deluca criteria of increased pain with increased physical activity in the more proximate C&P exam. The Board considered code 5292, spine, limitation of motion, lumbar as a better match of the CI's disability. The Board deliberated if the documented restricted flexion to 55 degrees (normal 80 degrees) was closer to the moderate or slight levels of limitation of motion.

After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 10% under 5292 for limitation of lumbar motion of the spine 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 LBP condition, the Board, by a vote of 2:1 recommends a disability rating of 10% coded 5292 IAW VASRD §4.71a. The single voter for dissent (who recommended 20% coded 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 recommends that the CI's prior determination be modified as follows, effective as of the date of his prior medical separation:

UNFITTING CONDITION	VASRD CODE	RATING
Low back pain without any history of trauma/injury Condition	5292	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

XXXXXXXXXXXXXXXXXXXX, DAF
Director
Physical Disability Board of Review

SFMR-RB

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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation
for XXXXXXXXXXXXXXXX, AR20130001607 (PD201200713)

1. 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 to modify the individual's disability rating to 10% without recharacterization of the individual's separation. This decision is final.
2. I direct that all the Department of the Army records of the individual concerned be corrected accordingly no later than 120 days from the date of this memorandum.
3. I request that a copy of the corrections and any related correspondence be provided to the individual concerned, counsel (if any), any Members of Congress who have shown interest, and to the Army Review Boards Agency with a copy of this memorandum without enclosures.

BY ORDER OF THE SECRETARY OF THE ARMY:

Encl

XXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
() DoD PDBR
() DVA