

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1200719
BOARD DATE: 20130116

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20021225

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (11C/Indirect Fire Infantryman) medically separated for chronic low back pain (LBP) due to lumbar degenerative disc disease (DDD). He was treated, but did not adequately improve to fully perform his military duties or meet physical fitness standards. He was issued a permanent profile and underwent a Medical Evaluation Board (MEB). The MEB found the lumbar DDD medically unacceptable, and referred him to a Physical Evaluation Board (PEB). No other conditions were listed on the DD Form 3947. The PEB found the LBP condition unfitting, and rated it 10% IAW DoD Instruction 1332.39. The CI accepted the PEB findings, and was medically separated with 10% disability.

CI's CONTENTION: "My disability increased. It is very hard to complete simple daily activities. Single parent."

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 back condition (chronic low back pain status post intradiscal electrothermal therapy) 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 20021017			VA (4 mos. Post-Separation) – Effective 20021226			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Low Back Pain	5299-5295	10%	Degenerative Disc Disease	5010-5293	0%*	(no exam)
Combined: 10%			Combined: 0%*			

*The VA rating for Lumbar DDD was later increased to 20%, by a subsequent VA Rating Decision (VARD) dated 20030910

ANALYSIS SUMMARY: The Board acknowledges the sentiment expressed by the CI regarding the impairment with which his back condition continues to burden him, and the significant impact that it has had on his quality of life. It is noted for the record that the Board is subject to the same laws for disability entitlements as those under which the military Disability Evaluation System (DES) operates. The DES has neither the role nor the authority to compensate members for future severity or potential complications of conditions. That role and authority is granted to the Department of Veterans Administration (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. Compensation can only be granted for the degree of severity present at the time of separation. The DVA, however, is empowered

to periodically re-evaluate a CI's conditions for the purpose of adjusting the disability rating should the degree of impairment change over time.

Chronic Low Back Pain (LBP). In May 2001, the CI suffered onset of LBP during physical training. Magnetic resonance imaging (MRI) showed mild L5-S1 central disc protrusion, and mild central canal stenosis. In January 2002, he had intradiscal electrothermal therapy (IDET) at Brooke Army Medical Center, San Antonio TX. After that procedure, he continued to have problems with LBP and an MEB was initiated. His MEB physical examination was on 1 August 2002. At that exam, there was slight tenderness to palpation (TTP) in the paravertebral lumbar region. Deep tendon reflexes (DTRs) and straight leg raise (SLR) tests were normal. Neurological exam of the lower extremities revealed no motor or sensory deficits. Range-of-motion (ROM) had been measured by physical therapy (PT) a few days earlier, and it is summarized in the chart below.

On 14 July 2003, the CI had a VA Compensation and Pension (C&P) exam. Posture, gait, and spinal curvature were all normal. Sacroiliac joints were mildly tender, but nothing significant. No paraspinal tenderness or spasms were noted. Neurological exam (sensory and motor) was essentially within normal limits. ROM was measured by kinesiotherapy and is summarized below:

Thoracolumbar ROM	MEB/PT ~5 mo. Pre-Sep (July 2002)	VA ~7 Mo. Post-Sep (July 2003)
Flexion	45°	68°
Combined	155°	164°

The Board carefully reviewed all evidentiary information available, and directs attention to its rating recommendation based on the above evidence. The VA Schedule for Rating Disabilities (VASRD) coding and rating standards for the spine, which were in effect at the time of separation, were changed to the current §4.71a rating standards in September 2003. The older standards for rating were subject to the rater's opinion regarding degree of severity, whereas current standards specify rating thresholds in actual degrees of ROM impairment. The Board must comply with the DoDI 6040.44 requirement for rating IAW the VASRD in effect at the time of separation from service. The Board noted that the Army PEB and the VA chose different coding options for the LBP condition. The VA used diagnostic code 5010-5293 (arthritis-intervertebral disc syndrome). The PEB used code 5299-5295 (low back condition analogous to lumbosacral strain). The Board determined that the most appropriate coding option was 5292, and the CI's LBP condition was best described as "moderate." There was insufficient evidence in the treatment record to support classifying his LBP condition as "severe." After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends by majority decision (2:1 vote) a disability rating of 20% for the chronic LBP condition. It is appropriately coded 5292, and meets VASRD §4.71a criteria for the 20% rating.

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 1332.39 was operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the chronic LBP condition, the Board recommends by majority decision (2:1 vote) a rating of 20%, coded 5292, IAW §4.71a of the VASRD in effect at the time of separation. The single voter for dissent (who recommended a 10% rating) 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 the CI's prior determination be modified as follows, effective as of the date of his prior medical separation:

UNFITTING CONDITION	VASRD CODE	RATING
Chronic Low Back Pain, status post IDET	5292	20%
	COMBINED	20%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120604, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXXXXXX, 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 XXXXXXXXXXXXXXXXXXXXXXXX, AR20130001628 (PD201200719)

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 20% 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

XXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
() DoD PDBR
() DVA