

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1200748
BOARD DATE: 20121218

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20020711

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (92G20/Food Service Specialist), medically separated for chronic mechanical low back pain (LBP), multifactorial with spondylolysis L5/S1, facet hypertrophy, and degenerative disc disease (DDD) throughout the lumbar area, as well as an old minor (15%) compression fracture of L2. The CI sustained an injury to his lower back in a lifting injury involving a fall of a light set box. The CI had previously undergone a Medical Evaluation Board (MEB) in December 2001 and had been found fit for duty. However, his symptoms continued and despite medications, facet joint injections, physical therapy (PT), and orthopedic evaluations, the CI failed to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. The CI was issued a permanent L3 and referred for an MEB. The MEB forwarded chronic mechanical LBP secondary to diffuse spondylolisthesis; spondylolysis L5-S1; old L2 anterior compression fracture; and diffuse L1 to S1 DDD to the Physical Evaluation Board (PEB). The MEB forwarded no other conditions for PEB adjudication. The PEB adjudicated the chronic mechanical LBP condition as unfitting, rated 20% with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 20% disability rating.

CI CONTENTION: "There is a disparity in the rating I was given by the ARMY (20%) and the rating given by the VA awarded (40%). Also, I was given (0%) by the ARMY for spleen and the VA awarded 20%."

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 mechanical LBP condition as requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview; and, is addressed below. The other requested condition (splenectomy) is not within the Board's purview. The remaining condition rated by the VA at separation and listed on the DD Form 294 is not within the Board's purview. 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 20020528			VA (~3 Months Post-Separation) – All Effective Date 20020712			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Mechanical Low Back Pain	5295	20%	Degenerative Arthritis and Disc Disease Lumbar Spine and Old L2 Compression Fracture	5293-5292	20%*	20021007
↓ No Additional MEB/PEB Entries ↓			Splenectomy	7706	20%	20021007
			Irritable Bowel Syndrome, Chronic, Moderate	7319	10%**	20021007
			Hypertension	7101	0%***	20021007
			0% X 2 others / Not Service-Connected x 3			20021007
Combined: 20%			Combined: 40%			

*Increased to 40% and changed to 5242 Multi-Level Degenerative Joint and Disc Disease of Lumbar Spine with Foraminal Narrowing and Nerve Root Impingement and Combined Rating increased to 60% effective 20101101.

**Changed to 7319-7436 Gastroesophageal Reflux Disease with Hiatal Hernia and Irritable Bowel but rating unchanged, effective 20110207.

***Increased to 10% effective 20101209.

ANALYSIS SUMMARY: The Board’s authority as defined in DoDI 6040.44, resides in evaluating the fairness of the Disability Evaluation System (DES) fitness determinations and rating decisions for disability at the time of separation. The Board utilizes VA evidence proximal 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 only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Chronic Mechanical LBP Condition. There was one range-of-motion (ROM) evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation; as summarized in the chart below.

Thoracolumbar ROM	MEB ~3 Months Pre-Separation	VA C&P ~3 Months Post-Separation
Flexion (90° Normal)	Forward flex fingertips to 4” below patella	80°
Ext (0-30)		10°
R Lat Flex (0-30)	Lateral bend to level of fingertips of both knees	Full
L Lat Flex 0-30)		Full
R Rotation (0-30)		Full
L Rotation (0-30)		Full
Combined (240°)		
Comment	Antalgic gait; slightly slump posture; mild spinal asymmetry secondary to obvious spasm; bilateral L2 to SI joint paraspinous spasm more significant on left with focal tenderness at posterior superior iliac spines and level of facets at L5-S1 bilaterally, left more severe than right; able to heel and toe walk; negative straight leg raises, cross leg raises, and Faber’s test; motor 5/5 except left extensor hallucis longus 4+/5; sensory/reflexes normal	Pain on all ROM stresses; Normal gait and posture; straight leg raising negative to 90 degrees bilaterally; sensory normal; reflexes normal
§4.71a Rating		
5295	20% assigned by PEB	N/A
5293	20%	20%
5292	10%	

The CI had an old minor compression fracture of L2. The CI injured his lower back in 1994, which was initially diagnosed as a severe lumbar strain and the history is well documented in the service treatment record (STR). A lumbar spine X-ray demonstrated left L5 spondylolysis and mild degenerative change at L1. The CI was treated conservatively as well as sporadically for LBP until 1998 when the frequency of exacerbations with occasional radiation in his left buttock progressively worsened in severity. Magnetic resonance imaging (MRI) exam

(incomplete) performed in May 1998 revealed L1-3 intervertebral disc narrowing and dessication and a mild broad based posterior annular bulge at L4-5, the completion of the MRI done later in the month revealed no spinal stenosis. The CI was given multiple temporary profiles over a 3-year period; however he failed to improve with conservative treatment. The CI was granted a P3 profile with restrictions of no running, jumping, bending, stooping, push-ups or sit-ups. At the MEB narrative summary (NARSUM) examination completed 3 months prior to separation the CI reported that while he was able to perform his job, he had a great deal of discomfort with frequent trips to sick call for exacerbations usually attributed to long periods of standing or lifting. The MEB NARSUM physical exam findings are summarized in the chart above. The CI was also evaluated by another physician as a second opinion in January 2002, 2 months prior to the NARSUM evaluation. The physical findings were similar except that no spasm was present on that day. The MEB examination recorded on DD Form 2808 dated 8 November 2001, noted full flexion without pain. The commander's statement indicated that the CI's profile limitations rendered him of performing his MOS. The VA Compensation & Pension (C&P) examination completed 3 months after separation noted a similar clinical history and also noted that the CI would soon start work as a Correctional Officer. The C&P physical exam findings are summarized in the chart above.

The 2002 Veterans Administration Schedule for Rating Disabilities (VASRD) coding and rating standards for the spine, were in effect at the time of separation and then changed to the current §4.71a rating standards on 26 September 2003. The 2002 standards for rating based on ROM impairment were subject to the rater's opinion regarding degree of severity, whereas the current standards specify rating thresholds in degrees of ROM impairment. When older cases have goniometric measurements in evidence, the Board reconciles (to the extent possible) its opinion regarding degree of severity for the older spine codes and ratings with the objective thresholds specified in the current VASRD §4.71a general rating formula for the spine. This promotes uniformity of its recommendations for different cases from the same period and more conformity across dates of separation, without sacrificing compliance with the DoDI 6040.44 requirement for rating IAW the VASRD in effect at the time of separation.

The Board directs attention to its rating recommendation based on the above evidence. The PEB coded the chronic mechanical LBP condition 5295 Lumbosacral strain and assigned a 20% disability rating for muscle spasm on extreme forward bending. The VA coded the degenerative arthritis and disc disease lumbar spine and old L2 compression fracture condition under the combined code 5293-5292 including both intervertebral disc syndrome and limitation of motion and assigned a 20% rating based on moderate limitation of motion. The Board noted that both the PEB and VA examinations were sufficiently documented in terms of ratable data for the criteria in place at the time of their rating determinations and that the CI's overall condition and described history were congruent between these two examinations. The VA exam was as complete as the MEB exam and both examinations were equidistant in time from the date of separation. However, the MEB NARSUM examination was completed prior to separation and is therefore adjudged to have a higher probative value. With significant muscle spasm and spinal symmetry secondary to that spasm, the MEB NARSUM examination meets the 20% rating criteria for the 2002 VASRD 5295. This condition would also satisfy the 20% rating criteria for the 2002 VASRD 5293 Intervertebral disc syndrome based on the clinical history of intermittent exacerbations after long periods of standing or lifting that were required by his MOS. Without full ROM measurements or at least a better description of the limitations of motion, it is difficult to assign a rating based on the 2002 VASRD 5292. The MEB NARSUM examination would also satisfy the 20% rating criteria for today's VASRD General Rating Formula for Diseases and Injuries of the Spine based on muscle spasm severe enough to result in an abnormal gait or abnormal spinal contour. The Board determined that no rating scheme offered any advantage and after due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the chronic mechanical 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 chronic mechanical LBP 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, as follows:

UNFITTING CONDITION	VASRD CODE	RATING
Chronic Mechanical Low Back Pain	5295	20%
	COMBINED	20%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20020711, 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, AR20130001597 (PD201200748)

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

XXXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
 DoD PDBR
 DVA