

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXX
CASE NUMBER: PD1200756
BOARD DATE: 20130122

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20020528

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty, SGT/E-5, (95B/Military Police), medically separated for low back pain (LBP). The CI sustained his initial injury “on the job” in the summer of 1999 although the first entry in medical records for treatment is in December 1999. The LBP could not be adequately rehabilitated despite conservative treatment and physical therapy (PT). Surgery was not recommended and the CI did not improve adequately with treatment to meet the physical requirements of his Military Occupational Specialty (MOS). 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 LBP condition as unfitting, rated 0%. The CI made no appeals, and was medically separated with a 0% disability rating.

CI CONTENTION: “My condition is getting worse as I age; knees, back, ankle and my feet condition aren’t getting better. I have received back brace, leg brace and receive a letter statement that I was not eligible for clothing allowance even though my injuries are service connected. It’s just frustrating to send letter after letter and visit after visit to only get the same response.”

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 knees, ankle and feet are 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 PEB – Dated 20011231			VA – All Effective Date 20020520			
Condition	Code	Rating	Condition	Code	Rating	Exam
Low Back Pain	5299-5295	0%	Mechanical Low Back Pain	5295	0%*	20020208
			Thoracic Spine, Mild Dextroscoliosis	5291	0%	20020208
			Cervical Spine ...	5003	10%	20020208
↓No Additional MEB/PEB Entries↓			0% X 4 / Not Service-Connected x 2			
Combined: 0%			Combined: 10%*			

*Low back, 5295, changed to 5237 at 10% effective 20050706 with other conditions added for combined 60% rating.

ANALYSIS SUMMARY:

Low Back Condition. At the MEB narrative summary (NARSUM) the CI's history of back injuries and treatments was summarized. The CI had radiographs indicating "likely transitional vertebra (non rib-bearing lumbar shaped vertebral bodies) at the lumbosacral junction," and magnetic resonance imaging (MRI) indicated disc bulge with annular tear. There was no history of incapacitation and peripheral exam of the lower extremities. The CI was not a surgical candidate. Range-of-motion (ROM) exams from the MEB physical (DD Form 2808), 10 months prior to separation, was cited as "showed normal alignment of the spine without step-off or deviation. There was no tenderness. ROM was full without pain. Straight-leg raising was negative." The MEB orthopedic consult, 8 months prior to separation, documented "flexion of 0-80, extension 0-20, side bending on the right is 0-15 and left is 0-15 degrees. He is able to rotate to the right 30 degrees and left 20 degrees. He is mildly tender to palpation on the paraspinal musculature at around L4-5 region. He has a negative Faber test as well." Prior PT ROMs, the month prior, were exactly the same. Lumbar spine radiographs showed "likely transitional vertebra" and MRI of lumbar spine showed mild broad based bulge with annular tear at L4/5 level. There were multiple entries in the service treatment record (STR) that demonstrated full ROM, absence of neurological findings, absence of spasms, absence of pain with motion, and absence of gait disturbance. The VA Compensation and Pension examination information (3 months prior to separation), as extracted from the VA Rating Decision dated May 20, 2002, stated "There is a full ROM without pain or restriction in the lumbar spine with flexion to 95 degrees, extension to 35 degrees, bilateral lateral flexion to 40 degrees, and bilateral rotation to 35 degrees."

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 Veterans Affairs Schedule for Rating Disabilities (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 2003. 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
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
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

The PEB rated the back condition coded 5299-5295 at 0%, stating "Low back pain with physical exam noting full ROM with pain." A review of the records found no exam with painful motion documented prior to separation and the NARSUM noted ROM was full without pain. It is unclear how the PEB cited "with pain." The VA rated the CI at 0% under 5295 citing full ROM

without pain or restrictions. All Board members agreed that the scarcity of evidence for pain on motion and the limitation of motion described in the NARSUM and the STR entries warrant a 0% rating under code 5295. The Board also considered a rating under the 5292 code for limitation of motion; however, the NARSUM (6 months prior to separation) ROM was noted as full without pain. There was no tenderness and straight leg raise was negative. The Board also considered a rating under the 5293 code for intervertebral disc syndrome, as the result of magnetic resonance spine imaging findings of disc bulge with annular tear but while the CI had degenerative disc, there was no radiculopathy and there were no incapacitating episodes to support a minimum rating under this code in effect at the time of separation. 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 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 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
Mechanical Low Back Pain	5299-5295	0%
	COMBINED	0%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120609, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans’ Affairs Treatment Record

XXXXXXXXXXXXXXXXXXXX, DAF
 President
 Physical Disability Board of Review

SFMR-RB

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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for
XXXXXXXXXXXXXXXXXX, AR20130001598 (PD201200756)

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

XXXXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
 DoD PDBR
 DVA