

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1200778
BOARD DATE: 20121213

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20011002

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (11B10/Infantryman), medically separated chronic mechanical low back pain (LBP). The CI strained his low back when he was moving a 55 gallon drum of wax from a forklift into the back of a HMMWV. Initially the CI had tightness in the back, however the pain worsened. Despite muscle relaxants, nonsteroidal anti-inflammatory drugs (NSAIDS), physical therapy (PT), back class, orthopedic consultations, an exercise program, the CI failed to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent P3 profile and referred for a Medical Evaluation Board (MEB). The MEB forwarded LBP 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 10%, with likely application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD) and AR 635-40. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: The CI elaborated no specific contention in his application.

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 chronic mechanical LBP condition meets the criteria prescribed in DoDI 6040.44 for Board purview. The remaining conditions rated by the VA at separation 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 IPEB – Dated 20010619			VA (~1 Mo. Post-Separation) – All Effective Date 20011003			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Mechanical LBP	5295	10%	Lumbosacral Strain*	5295	10%	20020207
↓ No Additional MEB/PEB Entries ↓			0% X 4**/ Not Service-Connected x 6			
Combined: 10%			Combined: 10%			

*Condition changed to 5010-5242 Osteoarthritis Lumbar Spine with 10% rating continued in 2005.
** Right and Left Knee Strain changed to Patellofemoral Degenerative Changes Right Knee and Patellofemoral Degenerative Changes Left Knee and ratings increased to 10% each effective 20050121. (Combined 30%)

ANALYSIS SUMMARY: The Board's authority as defined in DoDI 6040.44, resides in evaluating the fairness of 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 were two 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 ~4.5 Mos. Pre-Sep	VA C&P ~4 Mos. Post-Sep
Flexion (90° Normal)	45 ^{o*} , 80 ^{o**}	Full ROM*
Ext (0-30)	15 ^{o*} , 20 ^{o**}	Not measured
R Lat Flex (0-30)	20 ^{o*}	Not measured
L Lat Flex 0-30)	20 ^{o*}	Not measured
R Rotation (0-30)	Not measured; No Pain	Not measured
L Rotation (0-30)	Not measured; No Pain	Not measured
Combined (240°)	N/A	N/A
Comment	*pain free; ** with some pain; gait very stiff; no pain with axial compression; no point tenderness; straight leg raise neg; sits favoring left side, keeping pressure off left his left buttock; knee reflexes normal	* with pain at endpoint ROM stresses; gait and posture normal; reflexes, sensory, and balance normal; straight leg raise negative bilaterally at 90 degrees
§4.71a Rating		
5292	10%	10%
5295	10%	10%

The CI underwent magnetic resonance imaging (MRI) lumbar spine, X-rays, and a bone scan which were all normal. The MEB narrative summary (NARSUM) examination approximately 4 months prior to separation indicated that the CI had some improvement in his back pain after physical therapy. However, activities such as running, bending over, heavy lifting or carrying objects such as a rucksack caused significant pain exacerbation. The examiner further opined that there was not an expected improvement. The exam findings are summarized in the chart above. The VA Compensation & Pension (C&P) examination 4 months after separation noted residual pain with lifting or repetitive motion. The C&P exam findings are summarized in the chart above. Neither examination included any findings indicative of intervertebral disc syndrome or radiculopathy.

The chronic mechanical LBP condition was likely rated IAW the 2001 VASRD standards which are no longer in effect. The 2001 Veterans' Administration Schedule for Rating Disabilities (VASRD) coding and rating standards for the spine, which were in effect at the time of separation, were changed on 23 September 2002 for code 5293 (intervertebral disc syndrome) criteria, and then changed to the current §4.71a rating standards on 26 September 2003. The 2001 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. The current VASRD general spine formula also does not include similar 5295 criteria. 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

The Board directs attention to its rating recommendation based on the above evidence. The PEB and the VA chose the same disability code, 5295 (Lumbosacral strain-with characteristic pain on motion) and both rated at 10%. Both exams demonstrated painful ROM. At the MEB exam, the CI had limited flexion with pain, whereas at the C&P exam, the CI had full ROM with pain. VASRD code 5292 could have been used to rate this condition but would also result in a 10% rating. If today's VASRD rating criteria were applied, a 10% rating based on painful motion would result. 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	10%
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120612, 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, AR20130001605 (PD201200778)

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

XXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
 DoD PDBR
 DVA