

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXX
CASE: PD1200779
BOARD DATE: 20121218

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20020629

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty, SGT/E-5, (97B20/Counterintelligence Agent) medically separated for a thoracolumbar spine condition. He suffered persistent pain after injuring his back in 1997, and was ultimately diagnosed with thoracic disc disease without surgical indications. He did not respond adequately to conservative measures, and was unable to perform within his Military Occupational Specialty (MOS) or meet physical fitness standards. He was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The back condition was forwarded to the Informal Physical Evaluation Board (IPEB) as two diagnoses, "T-7-8 degenerative disk disease with disk bulge" and "chronic back pain," IAW AR 40-501. No other conditions appeared on the MEB's submission. The IPEB appropriately combined the separate thoracic and lumbar diagnoses as a single unfitting condition ("chronic back pain with degenerative T7-T8 disc disease"), rated 10%, citing criteria of the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI appealed to a Formal PEB (FPEB), which affirmed the IPEB finding and rating; and, was thus medically separated with a 10% disability rating.

CI CONTENTION: "Board failed to consider all injuries sustained in the line of duty. VA records indicate hip, knee, neck and skull fracture as service connected despite knowing of these at time of separation. Board only considered the single disk between T7-T8. Within a few months I was seen at an emergency room for a full spine "spasm" that caused visible muscle rigidity from my head to my legs. I have had to live with the risk of sudden onset back pain severe at first, but now usually mild due to weekly chiropractic and physical therapy... Due to service connected head injury I suffer from chronic headaches. Knee, hip and back problems have made exercise less enjoyable (painful) especially in the colder months."

SCOPE OF REVIEW:

The Board's scope of review is defined in DoDI 6040.44, Enclosure 3, paragraph 5.e.(2). It is limited to those conditions determined by the PEB to be unfitting for continued military and those conditions identified but not determined to be unfitting by the PEB when specifically requested by the CI. The rating for the unfitting spine condition is addressed below. The hip, knee, neck, skull fracture, and headache conditions, and 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.

IAW DoDI 6040.44, the Board's authority is limited to making recommendations on correcting disability determinations. The Board's role is thus confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to Veteran's Affairs Schedule for Rating Disabilities (VASRD), based on ratable severity at the time of separation. The Board acknowledges the CI's information regarding the significant impairment with which his service-connected conditions continues to burden him; but, must emphasize that the Disability Evaluation System (DES) has neither the role nor the authority to compensate members for anticipated future severity or potential complications of conditions

resulting in medical separation. That role and authority is granted by Congress to the Department of Veterans' Affairs (DVA), operating under a different set of laws.

RATING COMPARISON:

Service FPEB – Dated 20020405			VA (1 Mo. Pre-Separation) - VARD 20020613			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Back Pain/Degenerative T7-T8 Disc Disease	5299-5295	10%	Thoracic Disc Disease	5291	10%	20020530
No Additional MEB/PEB Entries			Recurrent Lumbosacral Strain	5295	0%	20020530
			Left Shoulder Strain	5299-5019	10%	20020530
			Muscular Tension Headaches	8045	10%	20020530
			0% X 1 / Not Service-Connected x 3			20020530
Combined: 10%			Combined: 30%			

ANALYSIS SUMMARY:

Chronic Back Pain Condition. The CI first injured his back in a truck accident in October 1997. He initially recovered, but experienced a recurrence of pain the following year preceding his entry on active duty in 1999. He fell while ruck marching in June 2001 and his symptoms worsened. Magnetic resonance imaging (MRI) in November 2001 demonstrated a disc bulge at T-7/8 with cord encroachment, but no nerve root compromise. A neurosurgical consultant a month later opined that there was no surgical indication. Although subsequent trials of physical therapy (PT), chiropractic intervention, and medication resulted in some improvement; the CI continued to suffer pain incompatible with his duties. The pain was predominantly mid-back, with a low back component; and, no radiation or neurological symptoms were reported. The narrative summary (NARSUM) noted worsening pain, but a stable condition. The physical exam provided detailed normal neurological findings, but not general spine findings. Range-of-motion (ROM) measurements from PT were attached to the NARSUM, recording a flexion of 40 degrees (normal 90 degrees) and minimal limitations in other planes. At the VA Compensation and Pension (C&P) exam (a month prior to separation), the examiner stated, “[CI] continues to complain of daily low back pain ... especially after sitting in one position for a long period of time. He reports no radicular symptoms.” The VA physical exam noted a normal gait and spinal contour, no spasm, and normal neurological findings. The ROM measurements were separated into thoracic and lumbar segments, yielding thoracic flexion of 50 degrees and lumbar flexion of 95 degrees; combined ROM (incomplete) was normal for both thoracic and lumbar segments.

The Board directs attention to its rating recommendation based on the above evidence. The 2002 VASRD coding and rating standards for the spine, which must be applied to the Board’s recommendation IAW DoDI 6040.44, differ significantly from the current §4.71a general rating formula for the spine. The earlier criteria were more subject to the rater’s opinion regarding degree of severity, as opposed to the more objective current standards with quantifiable rating thresholds grounded in ROM measurements. The PEB’s 10% rating under 5295 (lumbosacral strain) quoted the criterion of “characteristic pain on motion” as per the rating language; and, the next higher (20%) rating under the code requires “muscle spasm on extreme forward bending, loss of lateral spine motion, unilateral, in standing position.” The latter criteria are not in evidence. The VA 10% rating under 5291 was for ‘moderate’ limitation of motion of the thoracic spine. The VA’s second 0% rating under 5295 is not eligible for consideration as a second compensable rating, since separate thoracic and lumbar disability cannot be distinguished by the Army or VA evidence. Members agreed that the MEB’s ROM measurements, along with the VA’s thoracic ROM measurements, quite reasonably justified a moderate-level rating for limitation of motion; and, it was further deliberated whether

application of 5292 for lumbar ROM, yielding a 20% rating for moderate limitation, could be justified in lieu of the 5291 code for thoracic ROM. It was agreed, however, that since the pathology was clearly more attributable to the thoracic spine, and since the VA lumbar ROMs did not support the higher rating under 5292; the thoracic code 5291 should serve as the rating benchmark. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends no change in the 10% rating of the thoracolumbar spine condition; although, a change in VASRD code to 5291 is indicated to support the Board's rating rationale.

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 spine condition, the Board unanimously recommends a disability rating of 10%, coded 5291 IAW VASRD §4.71a. 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
Chronic Back Pain with Thoracic Degenerative Disc Disease	5291	10%
	COMBINED	10%

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

XXXXXXXXXXXXXXXXX
Director
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 xxxxxxxxxxxxxx, AR20130001979 (PD201200779)

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 description without modification of the combined rating or 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

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Deputy Assistant Secretary
(Army Review Boards)