

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1200783
BOARD DATE: 20130130

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20030126

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SFC/E-4 (13B10/Artillery), medically separated for mechanical low back pain (LBP) secondary to back strain. The CI initially injured his back in 1999 while lifting weights when he dropped the bar on his chest and tried to pick it up. In February 2001, the CI was seen in acute care for a month complaint of back pain of unknown cause. Despite physical therapy, chiropractic care, multiple courses of nonsteroidal anti-inflammatory Drugs, muscle relaxants, and activity modification, 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 lumbar spine: Mechanical LBP to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. The MEB also identified left hip: trochanteric bursitis; right ankle pain; recurrent pseudofolliculitis barbae; and hearing loss, left ear as medically acceptable conditions. The PEB adjudicated the mechanical LBP secondary to back strain as unfitting, rated 10%, with application of the Veterans Affairs Schedule for Rating Disabilities (VASRD). The remaining conditions were determined to be not unfitting. The CI made no appeals, and he was medically separated with a 10% disability rating.

CI CONTENTION: "Continue to have pain (low back, shoulder, and ankle), cause weight gain and sleep apnea."

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 unfitting low back condition and the not unfitting right ankle condition requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview, and are accordingly addressed below. The other requested conditions (shoulder, weight gain, and sleep apnea) are not within the Board's purview. Any condition 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 20021023			VA (1 day Post-Separation) – All Effective Date 20030127			
Condition	Code	Rating	Condition	Code	Rating	Exam
Mechanical Low Back Pain	5295	10%	Mechanical LBP	5299-5292	10%	STR
Left Hip: Trochanteric Bursitis	Not Unfitting		Trochanteric Bursitis Left Hip	5019	10%	20030123
Residual Right Ankle pain	Not Unfitting		Recurrent Right Ankle Sprains	5299-5271	0%	20030123
Pseudofolliculitis Barbae	Not Unfitting		Pseudofolliculitis Barbae	7899-7806	NSC	20030123
Hearing Loss, Left Ear	Not Unfitting		Bilateral Hearing Loss	6100	NSC	20030123
No Additional MEB/PEB Entries			0% X 1 Other / Not Service-Connected x 2 Others			20030123
Combined: 10%			Combined: 20%*			

*No disability rating change through 2011, although 5299-5292 changed to 5237 in 2005.

ANALYSIS SUMMARY: The Board’s authority as defined in DoDI 6040.44, resides in evaluating the fairness of Disability Evaluation System 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.

Mechanical Low Back Pain Condition. There were three 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	NARSUM ~5 Mo. Pre-Sep	NARSUM ~3 Mo. Pre-Sep	C&P ~29 Mo. Post-Sep
Flexion (90 Normal)	85°	90°	90° (102°)
Ext (0-30)	20°	25°	30°
R Lat Flex (0-30)	30° (40°)	30°	30° (40°)
L Lat Flex 0-30)	30° (40°)	30°	30° (40°)
R Rotation (0-30)	30° (35°)	30° (35°)	30 (45)
L Rotation (0-30)	30° (35°)	30° (35°)	30° (45°)
Combined (240)	225°	235°	240°
Comment	Goniometer not noted; able to do 10 toe raises bilaterally without difficulty; walks on heels/toes without difficulty; “intermittent numbness over lower back/thighs”; normal straight leg raising (SLR) sitting and supine; 0 to 5 Waddell signs present; motor/sensory intact	Goniometer not noted; + SLR; - radiation; Neurological exam normal; “chronic LBP radiating to left buttock”; tenderness to pressure (TTP) lumbosacral junction; SLR +	No spasms; no TTP; repeated testing did not evidence painful motion; negative SLR, sitting and supine; no focal weakness; sensory intact knee/ankle jerks +1; “back pain with associated spasms”
§4.71a Rating			
5295	10%	10%	0%
5237	10%	10%	10%

Due to chronic LBP complaints the CI had lumbar spine X-rays in both 2001 and 2002 which were both normal. A bone scan done in 2002 was normal. The initial MEB narrative summary (NARSUM) examination was completed by a physician assistant 5 months prior to separation indicated nonradicular LBP; intermittent numbness over lower back and bilateral thighs with one to two episodes per week; and daily LBP which increased with activities. The examiner opined that the CI was not a surgical candidate and had achieved maximal medical intervention. The NARSUM physical exam findings are summarized in the chart above. The CI was granted a L3 profile with specific restrictions of no running, no jumping, and no rucksack marching. The

second NARSUM examination completed by a physician 3 months prior to separation documented chronic LBP that radiated to the left buttock and was aggravated by running, heavy lifting, repeated bending, and fitness bike riding for more than 25 minutes. The examiner referred to the DD Form 2807 and DD Form 2808 completed in August 2002 by the same physician, but also stated a focused physical examination was completed on the day of the new NARSUM examination. The ROM measurements noted in the NARSUM were the same as those noted on the DD Form 2808 and they are recorded in the ROM chart above. Neither examination mentions a goniometer. The commander's statement noted that the CI's condition left him "incapable of enduring the severe stress and physical exertion that he would encounter in a combat environment." The CI had a VA Compensation and Pension (C&P) general exam 3 days prior to separation, however this examination did not include the lumbar spine and the CI's initial VA disability rating was based on the August 2002 NARSUM ROM measurements. The C&P examination 29 months after separation noted LBP associated with spasms; increased pain by lifting anything heavy; and doing sit-ups, standing for long periods, and walking for more than 30 minutes caused pain and stiffness. The physical exam findings are summarized in the chart above. Subsequent lumbar spine X-rays done in 2005 and 2011 were all normal.

The 2002 VASRD coding and rating standards for the spine, were in effect at the time of separation, but were modified on 23 September 2002 to add incapacitating episodes (5293 Intervertebral disc syndrome) and were 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 LBP condition 5295 Lumbosacral strain (with characteristic pain on motion) and rated 10%. The VA coded the back condition 5299 analogous to 5292 Spine, limitation of motion of, lumbar (slight) and rated 10%. The initial VA rating was based on the pain-limited ROM noted on the August 2002 NARSUM examination. The VA continued this 10% rating based on painful motion after the June 2005 C&P examination. If today's VASRD were utilized, these same ratings would result. All exams indicated that the CI experienced LBP on motion with activities. Neither NARSUM indicated muscle spasms or loss of lateral spine motion. The C&P exam noted a subjective complaint of muscle spasms; however, this exam was 29 months remote from separation and has a lower probative value. The Board considered rating under 5292; however the CI's condition would not result in a higher rating. 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.

Contended PEB Conditions. The contended condition adjudicated as not unfitting by the PEB was residual right ankle pain. The Board's first charge with respect to these conditions is an assessment of the appropriateness of the PEB's fitness adjudications. The Board's threshold for countering fitness determinations is higher than the VASRD §4.3 (Resolution of reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI

6040.44 "fair and equitable" standard. Both NARSUM's mentioned a bone scan that noted a mildly increased uptake in the right ankle. However, the right ankle was asymptomatic on exam and adjudged to meet retention standards. The right ankle condition was not profiled; the CI was granted an L3/H3 profile for LBP and hearing loss with no mention of a right ankle restriction. The commander's statement only discussed the LBP problem and how it interfered with the CI accomplishing his MOS duties. The residual right ankle pain condition was reviewed by the action officer and considered by the Board. There was no indication from the record that this condition significantly interfered with satisfactory duty performance. After due deliberation in consideration of the preponderance of the evidence, the Board concluded that there was insufficient cause to recommend a change in the PEB fitness determination for the residual right ankle pain contended condition; and, therefore, no additional disability ratings can be recommended.

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. In the matter of the contended residual right ankle pain condition, the Board unanimously recommends no change from the PEB determination as not unfitting. 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	5295	10%
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120607, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXXXXX, DAF
Acting 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 XXXXXXXXXXXXXXXX, AR20130003031 (PD201200783)

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

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Deputy Assistant Secretary