

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1200817
BOARD DATE: 20130118

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20020507

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty PFC/E-3 (92G/Food Service Specialist) medically separated for a lumbar spine condition. She developed a worsening of chronic back pain in 2000 and was diagnosed with mechanical back pain without surgical indications. The condition could not be adequately rehabilitated to meet the physical requirements of her Military Occupational Specialty or satisfy physical fitness standards. She was consequently issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The back condition was forwarded to the Physical Evaluation Board (PEB) IAW AR 40-501; and, no other conditions were submitted by the MEB. The PEB adjudicated the lumbar spine condition as unfitting, rated 10%, citing criteria of the Veterans Administration Schedule for Rating Disabilities (VASRD), but also referencing Department of Defense Instruction (DoDI) 1332.39 and Army Regulation (AR) 635-40. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: "Physical Therapist states neck, arm, legs also related to military, so did Dr. due to lifting and strain. Have days unable to get up, but have 2 young kids, 1 with disabilities."

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in DoDI 6040.44 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 conditions "identified but not determined to be unfitting by the PEB." The rating for the unfitting lumbar spine condition is addressed below. The requested cervical and extremity conditions were not identified and adjudicated by the PEB, and are thus not within the Board's purview. These or 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 20020313			VA (~1 Mo. Pre-Separation) – Effective 20020508			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Mechanical Low Back Pain	5299-5295	10%	Low Back Strain	5295	10%	20020415
No Additional MEB/PEB Entries			No Additional VA Ratings or Service Connected Conditions			
Combined: 10%			Combined: 10%			

ANALYSIS SUMMARY:

Lumbar Spine Condition. The CI had a history of intermittent back pain and a prior to service history of scoliosis, which became more severe and constant after a vaginal delivery in September 2000. X-rays were normal except for 10 degrees of dextroscoliosis (mild), and she was managed with physical therapy and temporary profiles. Some outpatient notes document radiation of pain down both legs, but no diagnosed radiculopathy or abnormal neurological findings are in evidence. An orthopedic consultant (6 months prior to separation) recommended continued conservative management and MEB referral. That entry documented a “slow gait,” but anatomically normal range-of-motion (ROM) and normal neurologic testing. The narrative summary (NARSUM) noted constant pain, without mention of radiation or neurologic symptoms, imposing restrictions on running and heavy lifting. The NARSUM cited the above findings of the orthopedic consultant, and documented prior goniometric ROM measurements of flexion to 90 degrees (normal) and combined ROM of 220 degrees (normal 240 degrees) with pain. The VA Compensation and Pension exam (3 weeks prior to separation) noted “8/10 constant pain, aggravated with normal daily activities.” No radiation or neurologic symptoms were noted. The VA physical exam noted a normal gait with no comment on spasm or tenderness. Neurologic testing was normal, although the examiner commented, “The joints below were weaker throughout range of motion when resistance was applied.” The ROM measurements recorded were flexion of 90 degrees and combined ROM of 240 degrees with pain increased by repetition.

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 applicable coding options for 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 osteo-arthritic 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

The PEB’s DA Form 199 cited “characteristic pain on motion” for its 10% rating under 5295, and the criteria for the higher ratings under 5295 were not in evidence. The VA rating decision cited the same criterion under the same code yielding the same rating. Application of VASRD §4.59 (Painful motion) to achieve the minimum compensable rating under code 5292 can be supported, but is not advantageous. The only remaining code available in the 2002 VASRD schedule was 5293 (intervertebral disc syndrome), which is clearly not applicable to this case. There was no evidence of ratable peripheral nerve impairment in this case which would provide for additional 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 of the lumbar spine 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. As discussed above, the PEB referenced DoDI 1332.39 and AR 635-40 in its rating of the lumbar condition, but it was adjudicated independently of those directives by the Board. In the matter of the lumbar spine 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 Back Pain	5299-5295	10%
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120613, w/atchs.
- Exhibit B. Service Treatment Record.
- Exhibit C. Department of Veterans Affairs Treatment Record.

XXXXXXXXXXXXXX, 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 XXXXXXXXXXXXXXXX, AR20130002537 (PD201200817)

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

XXXXXXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)