

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1200837
BOARD DATE: 20130122

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20030302

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (11B/Infantry) medically separated for a lumbosacral spine condition. He had a long standing history of chronic low back pain (LBP), with an initial diagnosis of sacroiliac (SI) degenerative arthritis and a subsequent additional diagnosis of lumbar spine degenerative disc disease (DDD). No surgical interventions were indicated and the condition did not improve adequately with conservative measures to meet the physical requirements of his Military Occupational Specialty or satisfy physical fitness standards. He was consequently issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). The condition was forwarded to the Physical Evaluation Board (PEB) under separate diagnoses of SI joint osteoarthritis and lumbar spine DDD, each judged to be medically unacceptable IAW AR 40-501. No other conditions were submitted by the MEB. The PEB combined the separate lumbar spine and sacroiliac diagnoses as a single unfitting condition "(chronic pain, due to bilateral sacroiliac joint osteoarthritis and lumbar spine degenerative disc disease)" rated 20%, referencing Army Regulation (AR) 635-40 (paragraph B, 24f). The CI made no appeals, and was medically separated with a 20% disability rating.

CI CONTENTION: The application states simply, "Because my condition is not getting any better."

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in Department of Defense Instruction (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 rating for the unfitting lumbar/sacroiliac condition is addressed below; and, no additional conditions are within the DoDI 6040.44 defined purview of the Board. 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.

The Board acknowledges the CI's statement regarding the significant impairment with which his service-connected condition 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 PEB – Dated 20021223			VA (1 Mo. Post-Separation) – Effective 20030303			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Pain, SI Joint Arthritis and Lumbar Spine DDD	5003	20%	Bilateral SI Joint Osteoarthritis and Lumbar Spine DDD	5010-5295	10%*	20030414
No Additional MEB/PEB Entries			PFS, Right Knee	5099-5024	10%	20030414
			PFS, Left Knee	5099-5024	10%	20030414
			Right Wrist Strain	5215	10%	20030414
			Gastroesophageal Reflux Disease	7399-7346	10%	20030414
			Urticaria	7825	10%	20041023
			0% X 3			20030414
Combined: 20%			Combined: 40%			

*Increased to 20% by Review Decision dated 20041220, citing exam of 20040821 (17 mo. post-separation).

ANALYSIS SUMMARY:

Lumbar Spine/Sacroiliac Condition(s). The CI began experiencing LBP approximately 12 years prior to separation, and symptoms worsened in 1995. There was no history of discrete trauma or other precipitant; X-ray findings demonstrated mild degenerative changes bilaterally of the SI joints; and, the pain was managed conservatively with temporary profiles. In 2002 the CI began experiencing radiation of the pain (buttocks, posterior legs, left > right), and magnetic resonance imaging diagnosed mild DDD at L3/4 and L5/S1 without disc herniation, stenosis, or neuroforaminal involvement). The radicular pain was not associated with motor symptoms, and electrodiagnostic testing in August 2002 was normal. The Physical Medicine (PM) consultant at that time noted the radicular pain (as above) with occasional paresthesias on the left, but no weakness or bowel/bladder symptoms. Pain was constant and aggravated by prolonged standing and sitting. The physical examination made no comment on gait, curvature, spinal tenderness, or spasm; other MEB clinical entries document normal gait and curvature, and occasionally paraspinal tenderness. Motor strength and reflexes were normal, with mild sensory decrease to fine touch on the left. Formal range-of-motion (ROM) measurements of the thoracolumbar spine were flexion of 90 degrees (normal) and a combined ROM of 240 degrees (normal). The PM consultant recommended continuance of the MEB; and, the narrative summary composed 3 months later essentially duplicated the PM history and findings. The VA Compensation and Pension exam (a month post-separation) reported “10/10 sharp pain two times per month with bending and lifting.” The VA physical exam noted a “slight limp favoring the left leg”, with no comment on direct spinal findings. Neurologic findings were normal. Complete thoracolumbar ROM measurements by the VA were normal in all planes.

The Board directs attention to its rating recommendation based on the above evidence. The Board first considered if separate ratings could be recommended for the separate lumbar spine and SI joint diagnoses evidenced in the case. It is noted, however, that VASRD §4.71a separate coding options for SI disease default to lumbar spine ratings (as below); and, this notwithstanding, the pathology and disability are linked as such that any attempt at separate ratings would not comply with VASRD §4.14 (Avoidance of pyramiding). The 2003 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

5294 Sacro-iliac injury and weakness: *[Defaults to 5295 criteria below.]*

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 rating under 5003 (degenerative arthritis) cited the AR 635-40 provision for a maximum 20% rating for pain. The criterion of pain on motion was met for a 10% rating under 5295, as initially conferred by the VA; but, the criteria for a higher rating under that code were not met. The normal ROMs in evidence would clearly not support an advantageous rating under 5292. The only remaining code available in the 2003 VASRD schedule was 5293 (intervertebral disc syndrome), which is clearly not applicable to this case. The VA's later increase in rating as footnoted above in the rating comparison chart was premised on incapacitating episodes that developed after separation. It is thus apparent, based on the evidence at the time of separation, that a maximum rating of 10% is achievable IAW the VASRD in effect at separation. IAW DoDI 6040.44, however, the Board may not lower the rating conferred by the service PEB; which takes precedence if service or DoD guidance is more favorable to rating than the VASRD. 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, PEB reliance on AR 635-40 for rating the lumbar spine/sacroiliac condition was operant in this case; but DoDI 6040.44 caveats the above mandate with the stipulation that the service combined rating may not be lowered; and the Board's recommendation for this condition is thus derived from AR 635-40. In the matter of the lumbar spine/sacroiliac condition, 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
Sacroiliac Joint Osteoarthritis and Degenerative Disc Disease, Lumbosacral Spine	5003	20%
	COMBINED	20%

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
Director
Physical Disability Board of Review

SFMR-RB

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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation
for XXXXXXXXXXXXXXXXXXXX, AR20130002541 (PD201200837)

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)