

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1200857
BOARD DATE: 20130109

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20010924

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (71L/Administrative Specialist), medically separated for chronic low back pain (LBP). The CI developed LBP that did not improve adequately with treatment to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent P3 profile and later was referred for a Medical Evaluation Board (MEB). The MEB forwarded no other conditions for Physical Evaluation Board (PEB) adjudication. The PEB adjudicated the chronic LBP as unfitting, rated 10%, with application of the Department of Defense Instruction (DoDI) 1332.39 and Army regulation. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: "Degenerative Disc Disease"

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 condition, chronic LBP, will be reviewed by the Board. The other conditions rated by the VA at separation (headaches, pes planus) are not within the Board's purview. The CI's remaining contended conditions of right knee, left knee, eczema and non-cardiac chest pain are also not within the 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.

RATING COMPARISON:

Service PEB – Dated 20010611			VA (25 Mos. Post-Separation) – All Effective Date 20010925			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic low back pain	5299-5295	10%	Disc disease low back	5293-5292	40%	20021025
↓No Additional MEB/PEB Entries↓			Headaches	8100	30%	20021025
			Pes planus, bilateral	5276	10%	20021025
Combined: 10%			0% X 4 / Not Service-Connected x 1			
			Combined: 60%			

ANALYSIS SUMMARY:

Chronic low back pain. The CI developed LBP about 7 years prior to MEB without specific injury. Magnetic resonance imaging (MRI) of the lumbar spine 27 January 2000 documents degenerative changes of L5-S1, without intervertebral disc protrusion or herniation. A neurosurgical evaluation performed on 27 February 2001, 7 months before separation, recorded "good ROM in flexion and extension," and normal gait. The neurosurgeon noted the MRI showed no disc herniation and recommended non-surgical treatment. The CI declined

injections offered by a pain specialist. At the MEB examination, 3 May 2001, the CI's back range-of-motion (ROM) was limited by pain to 90 degrees of forward flexion, extension zero degrees. The CI stated he was unable to extend the back beyond normal anatomic plane stating that hyperextension increased his back pain. Lateral movements were 5 degrees bilaterally. He also stated that rotation of the lumbar spine worsened his pain. There was pain reported with a maneuver not expected to cause pain. Straight leg raising (SLR) was negative for nerve root irritation (he had pain in lower back with no radiation). Strength and sensation were normal. Both his heel and toe walking were normal without mention of antalgia. At the VA Compensation and Pension (C&P) exam on 25 October 2002, the CI underwent a general medical examination and a neurology assessment. At the general examination, the CI claimed tenderness to any percussion of the back and declined to participate in the ROM examination stating "something I can't do." The CI also declined to cooperate with the knee ROM examination "Because it hurts if I do." Gait was slow. During the separate neurology C&P examination on 25 October 2002, gait was normal with good tandem gait. There was percussion tenderness over the lumbar spine. ROM of the lumbar spine was 30 degrees of flexion, 5 degrees of extension, and 15 degrees of right and left lateral flexion, all with pain. Strength was normal (5/5) in all muscle groups bilaterally although there was some give-way weakness in the lower extremities secondary to back pain. Deep tendon reflexes and sensation were intact. Lumbar spine X-rays 25 October 2002 were normal including normal intervertebral disc spaces.

The Board directs attention to its rating recommendation based on the above evidence. In accordance with DoDI 6040.44, the Board is required to recommend a rating IAW the VASRD in effect at the time of separation. The Board notes that the 2001 Veteran Administration Schedule for Rating Disabilities (VASRD) standards for the spine, which were in effect at the time of separation, were changed to the current §4.71a rating standards in 2004. The Board must correlate the above clinical data with the 2001 rating schedule (applicable diagnostic codes include: 5292 limitation of lumbar spine motion; 5293 intervertebral disc syndrome; and 5295 Lumbosacral strain). The PEB rated the condition 10% citing "characteristic pain on motion, coded 5299-5295 (lumbosacral strain). The VA rated 40% citing limitation of motion at the time of the C&P examinations over a year after separation (coded 5293-5292). The Board considered the rating under the VASRD diagnostic code 5292 in effect at the time. The Board agreed that with the ROM at the time of the neurology examination 7 months before separation and the MEB examination 4 months before separation, supported the 10% rating but not a higher rating under code 5292. The Board noted the VA examinations over a year after separation showing moderate to severe limitation of motion without apparent cause for the marked reduction since the MEB examination. The neurology examination demonstrated an otherwise normal examination including gait. X-rays of the lumbar spine obtained at the time of the C&P examination were normal. The Board concluded the MEB examination which was more proximate to the time of separation, was more reflective of the disability at the time of separation. The Board then considered whether a higher rating was warranted under codes 5293 or 5295 of the VASRD in effect at date of separation. Magnetic resonance imaging (MRI) prior to separation did not demonstrate evidence of intervertebral disc disease and there was no evidence of sciatic neuropathy or radiculopathy to warrant consideration under the 5293 intervertebral disc syndrome code. All members agreed the MEB examination also supported a 10% rating under the 5295 code, lumbosacral stain, characteristic pain on motion but not a higher rating. 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 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. In the matter of the chronic 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 low back pain	5299-5295	10%
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120606, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXXX, DAF
President
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, AR20130001175 (PD201200857)

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