

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXX
CASE NUMBER: PD1201084
BOARD DATE: 20121106

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20030110

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (92Y/Supply Specialist), medically separated for mechanical low back pain. The CI developed hip and low back pain in 2001. She could not be adequately rehabilitated to meet the physical requirements of her Military Occupational Specialty or satisfy physical fitness standards. She was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). Mechanical low back pain and myofascial pain of the right hip were forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. Three other conditions (identified in the rating chart below) were addressed by the MEB, and forwarded as meeting retention standards. The PEB adjudicated the mechanical low back pain condition as unfitting, rated 10%, citing criteria of the Veterans Administration Schedule for Rating Disabilities (VASRD). The myofascial pain of the right hip condition and the remaining conditions were determined to be not unfitting. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: "I have several ratings of 0% 10% and 20%. During and through the years my conditions have become worse." The CI attached a one page statement to her application which was reviewed and considered by the Board.

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 mechanical low back pain condition is addressed below. Any other conditions intended in request for Board consideration, or any condition or contention 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 20021125			VA (1 Mos. Post-Separation) – All Effective Date 20030111			
Condition	Code	Rating	Condition	Code	Rating	Exam
Mechanical Low Back Pain	5295	10%	SI Dys.. w/ Chr. Low Back Pain	5294-5295	10%	20030221
Myofascial Pain Right Hip	Not Unfitting		Left Hip Sprain	5299-5252	0%	20030221
			Right Hip Pain		NSC	20030221
Recurrent Plantar Fasciitis	Not Unfitting		Bilateral Plantar Fasciitis	5276	0%	20030221
Intermittent Shoulder Pain	Not Unfitting		Right Shoulder Sprain	5299-5201	0%	20030221
Recur Tinea Versicolor	Not Unfitting		Left Shoulder Sprain	5299-5201	0%	20030221
			Tinea Versicolor	7813-7806	0%	20030221
↓No Additional MEB/PEB Entries↓			Cervical Spine Sprain	5299-5290	20%	20030221
			Left Knee Retropatellar Syn	5260-5014	10%	20030221
			Right Knee Retropatellar Syn	5260-5014	10%	20030221
			Right Elbow Tenosynovitis	5206-5024	10%	20030221
			0% X 2 / Not Service-Connected x 3			
Combined: 10%			Combined: 50%			

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. While the DES considers all of the member's medical conditions, compensation can only be offered for those medical conditions that cut short a member's career, and then only to the degree of severity present at the time of final disposition. The DES has neither the role nor the authority to compensate members for anticipated future severity or potential complications of conditions resulting in medical separation nor for conditions determined to be service-connected by the Department of Veteran Affairs (DVA) but not determined to be unfitting by the PEB. However the DVA, operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions and to periodically re-evaluate said conditions for the purpose of adjusting the Veteran's disability rating should the degree of impairment vary over time. The Board's role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to VASRD standards, based on severity at the time of separation.

Mechanical Low Back Pain Condition. The CI developed pain in right hip and low back in 2001 during routine military duties. X-rays of the lumbar spine were normal. Treatment with physical therapy and medication resulted in unsustained improvement. There were two goniometric range-of-motion (ROM) evaluation 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 (Degrees)	Ortho Consult ~5 Mo. Pre-Sep (20020806)	MEB ~ 2 Mo. Pre-Sep (20021107)
Flexion (90 Normal)	80	90
Extension (30)	20	15
Combined (240)	NA	230
Comment	Motor,sensory,reflexes wnl; No pain recorded; SLR without pain; all ROM without difficulty	Tenderness over sacrum motor/sensory/reflexes wnl; no spasm
§4.71a Rating	10%	10%

On orthopedic evaluation performed on 6 August 2002, the CI reported back pain with running, jumping, sit-ups and wearing rucksack and individual battle armor (IBA). She reported intermittent numbness and tingling down the lateral back of her right leg but not present at time of this exam. Findings on this examination are contained above. At the MEB/narrative summary (NARSUM) exam, performed on 7 November 2002, the CI reported pain and leg numbness aggravated by repeated bending, lifting walking or standing for more than 15 minutes or sitting greater than 20 minutes. Findings on physical examination are reported above. The VA Compensation and Pension (C&P) evaluation performed on 21 February 2003, a month after separation, utilized the MEB examination in its assessment of the back condition. The Board directs attention to its rating recommendation based on the above evidence. The PEB and VA both rated the back condition 10% code 5295, lumbosacral strain. A higher rating of 20% under this code requires muscle spasm on extreme forward bending with loss of lateral spine motion, not supported by the record in evidence. The 2003 VASRD coding and rating standards for the spine, which were in effect at the time of separation, were changed to the current §4.71a rating standards on 27 September 2003. The 2003 VASRD 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 unanimously agreed with the 10% rating for the back condition at separation and noted that this decision was consistent with subsequent VASRD §4.71 standards as discussed above. There was no evidence of ratable peripheral nerve impairment in this case since no motor weakness was present, and the sensory component had no functional implications. There was no evidence of intervertebral disc syndrome with incapacitating episodes for higher rating under the 5293 code. 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 low back pain 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. 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 low back pain 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
Mechanical Low Back Pain	5295	10%
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120706, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXX
President
Physical Disability Board of Review

SFMR-RB

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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for
XXXXXXXXXXXXXXXXXXXX, AR20120021214 (PD201201084)

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)

CF:
() DoD PDBR
() DVA