

RECORD OF PROCEEDINGS  
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX  
CASE NUMBER: PD1201090  
BOARD DATE: 20130130

BRANCH OF SERVICE: ARMY  
SEPARATION DATE: 20030805

**SUMMARY OF CASE:** Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (31R/Telecommunication Operator), medically separated for chronic low back pain (LBP). The CI sustained a low back injury while lifting a heavy cable reel in June of 1999 and extensive non-surgical treatment provided no relief of his symptoms. He did not improve adequately to meet the physical requirements of his Military Occupational Specialty. He was issued a permanent L3 profile and 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 condition as unfitting, rated 10%, with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals and he was medically separated with a 10% disability rating.

**CI CONTENTION:** The CI elaborated no specific contention in his application.

**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 rating for the unfitting chronic LBP condition will be reviewed. 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 IPEB – Dated 20030429			VA (1 Mo. Pre -Separation) – All Effective Date 20030806			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Low Back Pain	5299-5295	10%	Low Back Pain	5292	10%	20030703
			Left Radiculopathy	8599-8520	10%	20030703
			Right Radiculopathy	8599-8520	10%	20030703
↓ No Additional MEB/PEB Entries ↓			Obstructive Sleep Apnea	6847	30%	20030703
			Bilateral Ankle Sprain	5271-5010	10%	20030703
			0% x5			
<b>Combined: 10%</b>			<b>Combined: 60*%</b>			

\*Combined rating eventually increased to 80% effective 20100728 with no changes to the low back or bilateral radiculopathy ratings

**ANALYSIS SUMMARY:** 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. The Board notes the current VA ratings for all of his service-connected conditions, but must emphasize that its recommendations are

premised on severity at the time of separation. The VA ratings that it considers in that regard are those rendered most proximate to separation. 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.

Chronic Low Back Pain Condition. The narrative summary (NARSUM) prepared 8 months prior to separation, noted the CI had a 3-year history of intermittent LBP that got progressively worse. The onset of symptoms was in June 1999 when the CI suffered a lifting injury and experienced immediate pain in his back. The pain had both a constant dull, burning component and a sharp sensation with certain activities. The severity was described as seven out of ten and exacerbating factors included include running, jumping, lifting, many physical activities, and driving more than 45 minutes. Alleviating factors included rest, frequent changing of position, and taking medication. Most of the CI's pain originated from the midsection of his low back and radiated pain and paresthesias distally to the low back and into the legs, left greater than right. The pain was worse in the morning. The CI denied sensation loss, weakness, bowel or bladder incontinence, night sweats, fevers, or unexplained weight loss. Medications, which the CI had tried, included non-steroidal anti-inflammatories, muscle relaxers, and narcotic medications resulted in only incomplete relief of symptoms. A trial of physical therapy (PT) included transcutaneous electrical nerve stimulation (TENS), ultrasound, lumbar traction, electrical stimulation, manipulation, lumbar stabilization, strengthening and stretching exercises; all with no relief of symptoms. Significant physical exam findings are summarized in the chart below. Radiographic data consisted of magnetic resonance imaging (MRI) of the lumbosacral spine and was normal. Plain film X-rays of the SI joints revealed osteoarthritis, sacralization of L5, and focal sclerosis on both sides of SI joint. The CI was treated on an outpatient basis. On subsequent follow-up examinations, there was no change from his previous examination except now his referred pain was worse to his buttocks, coccyx, and inner leg, left greater than right. It was the commander's recommendation that this soldier was not worldwide deployable. It was unlikely that the CI will improve in pain level and function to the point where he would reach a level consistent with active duty service. Prognosis for civilian employment was fair. The diagnosis was chronic LBP and sacroiliac (SI) joint arthritis, both medically unacceptable in accordance with Army Regulation 40-501. The recommendation was that the CI was unable to satisfactorily perform the duties of a member of his rank and station; therefore, it was recommended that he be found unfit for retention on active duty. At the MEB exam accomplished 4 months prior to separation, the CI reported a problem caused by his back injury. "My back cause (sic) me to have tingling & numbness in my legs. My back problem is cause by arthritis and my shoulder blade be (sic) hurting because of my back pain." The MEB physical exam noted no specific entries related to the CI's LBP.

The VA Compensation and Pension (C&P) exam accomplished a month prior to separation, was consistent with the above history and physical examination with the following additions. He complained of daily constant pain located on the left side of his lower back that radiated down his left buttock in a radicular fashion down to his left knee. He also had right sided radicular pain less frequently. The CI reported he always had to lift up his left leg in order to bend over to pick up something off the floor. He could not bend over to tie his shoes. He could not lean to his left side. He was unable to lie on his back for more than a few minutes. Prolonged sitting bothered him and he could not travel long distances in a car. The CI had previously enjoyed all sports but no longer did because of his back condition. He exercised two to three times per week on a stationary bicycle and did some weight training. Current medication was Motrin as needed. Significant physical exam findings are summarized in the chart below. The diagnosis was mechanical LBP with radiculopathy and bilateral SI joint arthritis. The functional

assessment was mild decrease in range of motion, pain with weight-bearing activities, and pain on range-of-motion (ROM).

Low Back Physical Exam Findings	NARSUM 8 Mos. Pre-Sep	VA C&P exam 1Mo. Pre-Sep
Comments	Pos. tenderness over SI joint, right greater than left, Negative Straight leg raise Faber test with pain in SI joint bilaterally DTRs - normal bilaterally Sensation - normal bilaterally	Normal posture and gait No kyphosis, lordosis, or scoliosis Normal - Strength, DTRs and sensory exam able to reach his fingertips to within five inches of the floor on forward flexion Negative Straight leg raise No paraspinal muscle spasms Pos. tender to palpation over left SI joint No tenderness to palpation over lumbar spine
§4.71a Rating (1 July 2002 Edition)	10%*	10%*

\*IAW VASRD code 5295 or 5292 with adequate evidence of painful motion IAW §4.59

The Board directs attention to its rating recommendation based on the above evidence. The PEB adjudicated the CI's chronic LBP as 10% disabling, based on painful motion, and applied the analogous VASRD code of 5299-5295, lumbosacral strain. It also cited a normal MRI, a non-focal neurological examination, and plain film radiographs showed L5 sacralization and SI joint osteoarthritis. This coding and rating scheme met VASRD principle §4.66, SI joint, which states, "The lumbosacral and SI joints should be considered as one anatomical segment for rating purposes." The VA applied VASRD code 5292, limitation of lumbar spine motion, and rated it 10% citing slightly limited motion of the lumbar spine. In the 2002 VASRD in effect at the time of separation, VASRD code 5295, (Lumbosacral strain), was rated with considerations of limited motion, radiographic findings, muscle spasm and pain; while VASRD code 5292, limitation of lumbar spine motion, was subjectively rated as slight, moderate or severe. The evidence present for review would support a "slight" limitation in motion and a corresponding 10% rating if VASRD code 5292 were to be applied. At the time of separation, the CI only had X-ray findings consistent with the 40% rating with VASRD code 5295, therefore, the deliberations settled on a 20% versus 10% rating discussion. The 20% rating criteria required muscle spasm on extreme forward bending and unilateral loss of lateral spine motion in standing position. The CI complained of having a component of the 20% rating, inability to lean to the left side, however, on examination he had no muscle spasm and there was no documented loss of lateral motion. The examiner's functional assessment was that there was a mild decrease in the ROM with pain, which is consistent with the 10% rating. The constellation of, X-ray findings (consistent with 40% rating), subjective loss of the ability to lean left (consistent with 20% rating) and documented painful motion (consistent with 10% rating) is overall most consistent with a 20% disability rating. Board precedent is that a functional impairment tied to fitness is required to support a recommendation for addition of a peripheral nerve rating at separation. There were no sensory or motor changes evident in the documentation present for review. Since no evidence of functional impairment exists in this case, the Board cannot support a recommendation for additional rating based on peripheral nerve impairment. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 20% for the chronic 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. 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 chronic LBP condition, the Board unanimously recommends a disability rating of 20%, coded 5299-5295 IAW VASRD §4.71a. There were no other conditions within the Board's scope of review for consideration.

**RECOMMENDATION:** The Board recommends that the CI's prior determination be modified as follows, effective as of the date of his prior medical separation:

<b>UNFITTING CONDITION</b>	<b>VASRD CODE</b>	<b>RATING</b>
Chronic Low Back Pain Condition	5299-5295	20%
	<b>COMBINED</b>	<b>20%</b>

---

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120621, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXXX, DAF  
Acting Director  
Physical Disability Board of Review

SFMR-RB

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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation  
for XXXXXXXXXXXXX, AR20130003102 (PD201201090)

1. 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 to modify the individual's disability rating to 20% without recharacterization of the individual's separation. This decision is final.
2. I direct that all the Department of the Army records of the individual concerned be corrected accordingly no later than 120 days from the date of this memorandum.
3. I request that a copy of the corrections and any related correspondence be provided to the individual concerned, counsel (if any), any Members of Congress who have shown interest, and to the Army Review Boards Agency with a copy of this memorandum without enclosures.

BY ORDER OF THE SECRETARY OF THE ARMY:

Encl

XXXXXXXXXXXXXXXXXXXX  
Deputy Assistant Secretary  
(Army Review Boards)