RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXXXX BRANCH OF SERVICE: ARMY
CASE NUMBER: PD1201106 SEPARATION DATE: 20020815
BOARD DATE: 20121102

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SSG/E-6 (92Y30 / Unit Supply Specialist), medically separated for degenerative disc disease (DDD) with low back pain and sciatic pain without neurologic abnormality or documented chronic paravertebral muscle spasms on repeated examinations, with characteristic pain on motion. Despite pain management, surgery, and physical therapy the CI did not improve adequately with treatment to meet the physical requirements of her Military Occupational Specialty (MOS) or satisfy physical fitness standards. She was issued a permanent L3/S3 profile and referred for a Medical Evaluation Board (MEB). Major depressive disorder condition, identified in the rating chart below, was also identified and forwarded by the MEB. The Physical Evaluation Board (PEB) adjudicated the low back condition as unfitting, rated 10% with application of the Department of Defense Instruction (DoDI) 1332.39. The remaining condition was determined to be not unfitting. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: "I feel this rating should be changed to medical retirement because of my medical condition I obtained from the military has worsen and I have developed more medical problems over the years in reference to disk degenerated disease. I have been in and out of medical facilities receiving medical treatments and medications to try and stay physically sane from the all physical ailments that I obtained in the military. The surgery (ALIF) that was performed on me in October 2001 repaired a herniated disc and evidently the surgeon left a bulging disc in L5-S1 area please see the radiology report date April 2002; in which caused more complications later after I was medically discharged I have suffered more lower back and neck pain constantly over past 16 years. As stated in my PEB attachment I was diagnosed by the military of having disc degenerated disease in several areas that's causing constant pain and spine problems. I was diagnosed with high blood pressure and irritable bowel syndrome as well other medical conditions that was not considered military related. I would ask for careful consideration when evaluating my packet for a full medical retirement."

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in the 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 ratings for unfitting conditions will be reviewed in all cases. The back condition as requested for consideration and the depression condition alluded to in the application meet the criteria prescribed in DoDI 6040.44 for Board purview; and, are addressed below, in addition to a review of the ratings for the unfitting condition. The remaining conditions rated by the VA at separation and listed on the DD Form 294 are not within the Board's purview. 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 20020719		
Condition	**Code**	**Rating**
Degenerative Disc Disease w/ Low Back and Sciatic Pain	5299-5295	10%
Major Depressive Disorder	Not Unfitting	
No Additional MEB/PEB Entries		
Combined: 10%		

VA (3 Mos. Pre -Separation) – All Effective Date 20020816			
Condition	**Code**	**Rating**	**Exam**
Early Degenerative Disc Disease L-Spine, S/P Fusion L4-L5	5010-5295	20%*	20020522
Depressive Disorder	9434	NSC*	20020522
DJD Changes C-Spine	5010-5290	10%	20020522
Degenerative T-Spine	5291	10%	20020522
Hypertension	7101	10%	20020522
Irritable Bowel Syndrome	7319	10%	20020522
0% X 6 / Not Service-Connected x 4			20020522
Combined: 50%			

* No change to rating or service connection in subsequent VARDs.

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. The Board notes that the 2002 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 September 2003. The 2002 standards for rating based on range-of-motion (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 and when the VASRD 2002 code 5292 (for limitation of motion, lumbar spine) is applicable, the Board reconciles (to the extent possible) its opinion regarding degree of severity for 5292 with the objective thresholds specified in the current §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.

Degenerative Disc Disease with Low Back Pain and Sciatic Pain without Neurologic Abnormality Condition. The CI had a history of chronic intermittent low back pain since 1995. She subsequently developed severe low back pain associated with bilateral sciatic pain refractory to conservative management. A discogram July 2001 was considered positive at the L4-5 disc and she underwent back surgery on 9 October 2001 with L4-5 discectomy, and fusion. Her pain did not improve sufficiently for return to full duty. At the neurosurgery MEB consult narrative summary (NARSUM), dated 12 March 2002, based on the neurosurgery examination performed

on 7 March 2002, the CI complained of continued radiating pain into both legs without complaints regarding gait or bowel/bladder function. She continued to use a brace to allow for healing of the fusion and post operative X-rays demonstrated bony fusion. On examination, ROM was recorded as flexion 90 degrees, and extension 15 degrees, limited by pain. There was moderate myofascial tenderness to palpation in the paraspinal region of lumbar spine. Neurologic examination was noted for normal lower extremity strength (5/5), intact sensation, and normal (2+) reflexes at the knees and ankles. The CI was able to perform tandem walk (intact balance and coordination) and heel and toe walk (indicating normal strength). The neurosurgeon noted a post operative magnetic resonance imaging (MRI) demonstrating residual degenerative disk disease at L4-5 with mild bilateral lateral recess stenosis and mild right sided neuroforaminal stenosis at L5-S1. The neurosurgeon also noted electrodiagnostic studies performed on 26 February 2002 (EMG, NCV) of the lower extremities which were negative for radiculopathy. At a 6 May 2002 physical therapy (PT) appointment, the physical therapist recorded there was some decrease in back pain as well as no longer has radiating pain. ROM was non-goniometrically recorded. Strength was normal (5/5), the right ankle reflex was decreased and there was decreased sensation over the left anterolateral thigh. The MEB NARSUM (15 May 2002) cited the neurosurgery examination of 7 March 2002 noted above. A neurosurgery MEB addendum, dated 17 June 2002 (based on neurosurgery examination 13 June 2002) noted X-rays demonstrated "solid interbody fusion." The CI was stated to tolerate a full duty day within confines of her profile restrictions (no running, PT test, riding in tactical vehicles, wearing of load bearing equipment). On examination, flexion was 80 degrees and extension 20 degrees. There was mild myofascial tenderness to palpation of the low lumbar spine. Strength of the lower extremities was normal (5/5), sensation and reflexes were intact. Gait was normal and the CI was able to heel and toe walk and had intact tandem gait. The neurosurgeon cited a repeat EMG performed after the 12 March 2002 neurosurgery consult which was again negative for evidence of radiculopathy. At the VA Compensation and Pension examination (C&P) performed on 22 May 2002, 3 months prior to separation, the CI reported continued symptoms. On examination, there was muscle spasm and tenderness bilaterally. Straight leg raising test was stated as positive bilaterally without specifying what symptoms were provoked. ROM was flexion 75 degrees, extension 30 degrees, right and left lateral bending 40 degrees, right and left rotation 35 degrees, all with pain at end point of motion (i.e. flexion 75 degrees with pain at 75 degrees). There was normal lower extremity strength without atrophy, and reflexes and sensation were reported as normal (but elsewhere the examiner noted decreased sensation in the left thigh). Posture was normal, and gait was normal without limited function of standing or walking or use of assistive devices (cane, brace, etc.).

The Board directs attention to its rating recommendation based on the above evidence. The Board must correlate the above clinical data with the 2002 Rating Schedule (applicable diagnostic codes include: 5292 limitation of lumbar spine motion; 5293 intervertebral disc syndrome; and 5295 Lumbosacral strain). The PEB rated the back condition 10%, and VA rated the condition 20%, both using the 5295 code, lumbosacral strain. The Board considered the rating under the 5295 code for lumbosacral strain used by the PEB and VA. Board members agreed the evidence did not support the 40% rating under this code. There was no loss of lateral spine motion (both measured at 40 degrees on a VA C&P examination) to support the 20% rating. The Board noted the presence of muscle spasm at the time of the C&P examination, but while there was pain at the end range of forward bending to 75 degrees there was no indication that muscle spasm was produced by that movement. Further it was noted that posture was normal indicating normal spinal contour, and gait was normal. The Board next considered the rating under the VASRD diagnostic code 5292 in effect at the time as well as current VASRD guidelines. The Board agreed that the ROM documented at the time of the MEB

neurosurgery examinations and the C&P examination supported the 10% under the VASRD diagnostic code 5292 in effect at the time as well as current VASRD guidelines (general rating formula for diseases and injuries of the spine). The Board finally considered whether a higher rating was warranted under the guidelines for intervertebral syndrome, code 5293. The CI had intervertebral disc disease with ridicular symptoms, but without objective neurologic findings, and had a normal EMG. Board members agreed the absence of objective neurologic findings did not support the 60% rating under the 5293 diagnostic code. The evidence of the record did not describe recurring attacks described in the 20% or 40% level. No care for exacerbations was documented in the service treatment records (STRs) nor mentioned in the C&P examination. Board members concluded that using the guidelines under 5293, the CI's back condition did not approach the 20% rating as there were no recurring attacks. There were no incapacitating episodes that warranted consideration under the updated 5293 VASRD criteria based on incapacitating episodes that became effective in September 2003. The Board discussed whether the CI's back condition more nearly approximated the 20% rating under this code based on an assessment of the impairment as moderate even though recurring attacks were not documented. After reviewing the evidence, Board members agreed the 20% rating was not more nearly approximated. The Board concluded the 10% rating was appropriate for motion limited by pain noted on both the neurosurgery and C&P examinations as well as under the other applicable rating codes. The Board also considered if additional disability rating was justified for peripheral nerve impairment due to radiculopathy. The CI had DDD with radiating pain; however, examinations indicated normal strength, reflexes and gait. Electrodiagnostic testing was negative for evidence of radiculopathy. The left thigh sensory changes were not consistent with the disc disease (most consistent with a common peripheral nerve condition of the lateral femoral cutaneous nerve) and did not affect functioning. The presence of functional impairment with a direct impact on fitness is the key determinant in the Board's decision to recommend any condition for rating as additionally unfitting. Therefore the critical decision is whether or not there was a significant motor weakness, which would impact military occupation specific activities. There is no evidence in this case that motor weakness existed to any degree that could be described as functionally impairing. The Board therefore concludes that additional disability rating was not justified on this basis. 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 degenerative disc disease with low back pain condition.

Contended PEB Conditions. The contended condition adjudicated as not unfitting by the PEB was major depressive disorder. The Board's first charge with respect to these conditions is an assessment of the appropriateness of the PEB's fitness adjudications. The Board's threshold for countering fitness determinations is higher than the VASRD §4.3 (reasonable doubt) standard used for its rating recommendations, but remains adherent to the DoDI 6040.44 "fair and equitable" standard. The MEB psychiatry NARSUM addendum, 7 May 2002, noted a 9 month history of depressive symptoms associated with marital discord and possible divorce. At that time, a new medication had been initiated 2 weeks before and the examiner noted that not enough time had elapsed to establish whether it would be effective. The examiner concluded the impairment for military duty was mild and assigned a physical profile of S3 (satisfactory remission from an acute psychotic or neurotic episode that permits utilization under specific conditions [assignment when outpatient psychiatric treatment is available or certain duties can be avoided]). At the C&P examination 2 weeks later on 24 May 2002, the CI reported depressed feelings with some insomnia and low energy for about 15 months associated with being turned down for a drill sergeant position and marital stress. The examiner rendered no psychiatric diagnosis concluding the CI's condition did not meet diagnostic criteria for either

major depression or dysthymia. The examiner estimated the Global Assessment of Functioning (GAF) of 85 to 90 (absent or minimal symptoms). The condition was not implicated in the commander's statement. The condition was reviewed by the action officer and considered by the Board. There was no indication from the record that this condition significantly interfered with satisfactory duty performance. After due deliberation in consideration of the preponderance of the evidence, the Board concluded that there was insufficient cause to recommend a change in the PEB fitness determination for the contended condition; and, therefore, no additional disability ratings can be recommended.

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 degenerative disc disease with low back pain and sciatic pain without neurologic abnormality condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended major depressive disorder condition, the Board unanimously recommends no change from the PEB determination as not unfitting. 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
Degenerative Disc Disease w/ Low Back Pain and Sciatic Pain…	5299-5295	10%
	COMBINED	**10%**

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20120709, w/atchs
Exhibit B. Service Treatment Record
Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXXX
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 XXXXXXXXXXXXXXXXXXXXX, AR20120020626 (PD201201106)

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

XXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
( ) DoD PDBR
( ) DVA