

RECORD OF PROCEEDINGS  
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXX  
CASE NUMBER: PD1201145  
BOARD DATE: 20130207

BRANCH OF SERVICE: ARMY  
SEPARATION DATE: 20031107

**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/Line of Sight Operator), medically separated for chronic low back pain (LBP). Chronic LBP condition could not be adequately rehabilitated and the CI 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 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 US Army Physical Disability Agency (USAPDA) pain policy. The CI made no appeals, and was medically separated with a 10% disability rating.

**CI CONTENTION:** "More serious than thought"

**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 conditions will be reviewed in all cases. 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 the Correction of Military Records.

**RATING COMPARISON:**

Service IPEB – Dated 20030926			VA (1 Mos. Pre -Separation) – All Effective Date 20031108			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Low Back Pain	5293-5299-5295	10%	Herniated Nucleus Pulposus L4-5	5243-5237	10%	20031106
↓No Additional MEB/PEB Entries↓			0% X 13/ Not Service-Connected x 3			
<b>Combined: 10%</b>			<b>Combined: 10%</b>			

\*Per last VARD on record dated 20110219 combined rated was 80% effective 20081107

**ANALYSIS SUMMARY** The Board acknowledges the sentiment implied in the CI's application regarding the significant impairment with which his service-aggravated condition continues to burden him. It is a fact, however, 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. This role and authority is granted by Congress to the Department of Veterans Affairs (DVA). The DVA, operating under a different set of laws (Title 38, United States Code), is empowered to compensate 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 utilizes DVA evidence proximal to separation in arriving at its recommendations; and, DoDI 6040.44 defines a 12-month interval for special consideration to post-separation evidence. The Board's authority as defined in DoDI 6044.40, however, resides in evaluating the fairness of DES fitness determinations and rating decisions for disability at the time of separation. Post-separation evidence therefore is probative only to the extent that it reasonably reflects the disability and fitness implications at the time of separation.

Chronic Low Back Pain Condition. The narrative summary (NARSUM) notes the CI had a history of LBP which commenced in 1999. He was treated with anti-inflammatory medications, physical therapy (PT), and activity modification without relief of symptoms. Magnetic resonance imaging study (MRI) in Feb 2003 revealed a small disc herniation at L4-L5 and a small disc bulge at L5-S1 without cord or neuroforaminal compromise. The CI was not a surgical candidate. An outpatient clinical examination on 8 April 2003 (7 months prior to separation) noted the CI to sit comfortably in a chair and to comfortably get on to the exam table. Active range-of-motion (ROM) was documented as "full", forward flexion to 90 degrees with pain at extremes. The NARSUM examiner 3 months prior to separation (8 August 2003) noted that the CI experienced occasional numbness and tingling in the legs. Examination was significant for pain with flexion at 90 degrees, a negative straight leg raise (SLR) and normal gait. The neurologic examination, including lower extremity muscle strength, was normal. There were three goniometric ROM evaluations in evidence, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation; as summarized in the chart below. At the MEB exam 3 months prior to separation, the CI reported pain with running and standing greater than 20 minutes. At the VA Compensation and Pension (C&P) exam a day prior to separation, the CI reported back pain with movement. The C&P examination noted a normal gait, normal deep tendon reflexes (DTR) and no muscle atrophy of the lower extremities. SLR was negative bilaterally.

The Board directs attention to its rating recommendation based on the above evidence. It is noted in this case that the PEB's adjudication occurred on the day the current §4.71a criteria (General Rating Formula for Diseases and Injuries of the Spine) took effect (26 September 2003); but the condition was rated with application of the older VASRD spine criteria. The Board, IAW DoDI 6040.44, must apply the newer criteria to its recommendation. The PEB assigned a 10% rating under the old 5295 code (lumbosacral strain, analogously) combined with a 5293 code (intervertebral disc syndrome). The VA likewise assigned a 10% rating, but under the new lumbosacral strain code (5237) combined with intervertebral disc syndrome (5243). The Board agreed that limitation of motion in evidence did not support a rating higher than 10%. In deliberating the next higher 20% rating, the Board considered that although muscle spasm was not specifically mentioned, gait was normal. Board members agreed that the ability to comfortably sit and to get on an exam table, and the ROM in evidence, were not consistent with muscle spasm severe enough to cause abnormal spinal contour. Therefore a 20% rating was not justified. The Board also considered rating intervertebral disc disease under the alternative formula for incapacitating episodes, but could not find sufficient evidence which would meet even the 10% criteria under that formula. The Board finally deliberated if additional disability was justified for the history of lower extremity numbness and tingling. Although the MRI showed mild disc herniation, no neuroforaminal impingement or cord compression was present. All examiners recorded normal neurologic findings, including muscle strength. 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. There is no evidence in this case of functional impairment attributable to peripheral neuropathy. The Board therefore concludes that additional disability 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 rating for the chronic LBP condition, but recommends assigning the 5237 code IAW the current VASRD spine rules in effect at the time of separation.

**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 and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication, but recommends new code 5237. There were no other conditions within the Board's scope of review for consideration.

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**RECOMMENDATION:** The Board, therefore, recommends that there be no recharacterization of the CI's disability and separation determination, but recommends code 5237, as follows:

<b>UNFITTING CONDITION</b>	<b>VASRD CODE</b>	<b>RATING</b>
Chronic Low Back Pain	5237	10%
	<b>COMBINED</b>	<b>10%</b>

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The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120627, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

xxxxxxxxxxxxxxxxxxxxxxxxxxxx, DAF  
Acting Director  
Physical Disability Board of Review

SFMR-RB

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

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation  
for xxxxxxxxxxxxxxxxxxxxxx, AR20130002982 (PD201201145)

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 description without modification of the combined rating or 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

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Deputy Assistant Secretary  
(Army Review Boards)