

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXX
CASE NUMBER: PD1201159
BOARD DATE: 20120118

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20031113

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (92A/Automated Logistical Specialist) medically separated for a lumbar spine condition. He injured his back in 1999 and was eventually diagnosed with degenerative disc disease (DDD). The condition worsened with time and did not improve adequately with conservative measures to meet the 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 back condition was forwarded to the Physical Evaluation Board (PEB) IAW AR 40-501. No other conditions were submitted by the MEB. The PEB adjudicated the lumbar spine condition as unfitting, rated 10%, citing criteria of the Veterans Administration Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: "Buldge [sic] disc in Lower back, I'm doing what I can driving 18 wheelers for a living and always in constant pain; numbness and tingling. Driving 18 wheelers for Postal Service I'm constantly bouncing around and up and down truck steps all day."

SCOPE OF REVIEW: The Board's scope of review is defined in DoDI 6040.44, Enclosure 3, paragraph 5.e.(2). It is limited to those conditions determined by the PEB to be unfitting for continued military service and those conditions identified but not determined to be unfitting by the PEB when specifically requested by the CI. The rating for the unfitting lumbar spine condition is addressed below. No additional conditions are within the DoDI 6040.44 defined 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 service Board for Correction of Military Records. The Board further acknowledges the CI's information regarding the significant impairment with which his service-connected condition continues to burden him but must emphasize that the Disability Evaluation System 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 Veteran Affairs, operating under a different set of laws.

RATING COMPARISON:

Service IPEB – Dated 20030808			VA (2 Mo. Post-Separation) - VARD Dated 20040415			
Condition	Code	Rating	Condition	Code	Rating	Exam
Back Pain...Degenerative Changes	5299-5295	10%	Lumbar DDD w/o Radiculopathy	5242	20%	20040120
No Additional MEB/PEB Entries			Not Service Connected x 7			20040120
Combined: 10%			Combined: 20%			

ANALYSIS SUMMARY:

Lumbar Spine Condition. The CI first developed back pain in April 1999 while running with a loaded pack. The pain was intermittent and related to more strenuous activity initially, but evolved into a constant complaint with intermittent radiation down the left leg. Initial imaging suggested DDD at the L4/5 level, and he was referred to orthopedics. He was managed over an extended period with physical therapy (PT), medication and temporary profile. By 2002, the pain and limitations were significant and imaging confirmed a mild bulging disc at L4/5. Also noted were findings (sacralization and pseudoarthrosis at L5/S1) consistent with a congenital condition (Bertolotti Syndrome). Although there was radicular pain in a left L4/5 pattern, there were no sensory or motor deficits. Neurosurgery did not recommend surgical intervention. Continued PT and a trial of epidural injections were unsuccessful in restoring adequate function, and a MEB was initiated. The narrative summary (NARSUM) noted constant pain rated 4/10, with exacerbations to 10/10 with "prolonged standing, running or heavy lifting." The CI was quoted as relaying that, "Any little thing that puts stress on my back brings me extreme pain. I can simply do almost nothing without causing pain. Treatments have provided no relief." The physical exam recorded the absence of deformity or spasm, the presence of paravertebral tenderness, and normal motor/sensory/reflex findings. The range-of-motion (ROM) measurements recorded in the NARSUM were a flexion of 80 degrees (normal 90 degrees) and a combined ROM of 210 degrees (normal 240 degrees). A MEB outpatient note (9 months prior to separation) documents a severely limited flexion of 10 degrees; but, this is not corroborated by any other contemporary entries. A PT note 3 months prior to separation (after the NARSUM measurements) documents normal flexion, "fingers to feet with no complaints of low back pain," a 50% reduction in left lateral flexion, and normal ROM in remaining planes. At the VA Compensation and Pension (C&P) exam performed 2 months after separation, the CI reported constant pain at the same ratings noted in the NARSUM with similar limitations (e.g., pain after 1/2 block of walking, inability to tie shoes, etc.). The VA physical exam noted the absence of spasm and normal neurologic findings. The VA examiner expressed ROM measurements for the lumbar segment only, noting 30° flexion (normal 40°) with moderate decreases in all planes, "limited by pain and stiffness." The examiner stated, "I interpret his back pain to be due to disc disease and muscle spasm rather than to nerve root compression."

The Board directs attention to its rating recommendation based on the above evidence. It must be noted that in the interim between the PEB adjudication and the date of separation the VASRD codes and rating criteria for the spine underwent a significant transition. The VASRD §4.71a general rating formula for the spine, currently in effect and for the VA rating decision, became effective 25 August 2003; IAW DoDI 6040.44, the Board's recommendation must be premised on the VASRD in effect at the time of separation. The PEB's 10% rating under the older code 5295 (lumbosacral strain) was supported by the criteria of that code, and the criteria for a higher rating under that or any other code in effect were not in evidence. The VA rating under 5242 (degenerative arthritis of the spine), although defaulting to the applicable VASRD criteria, is difficult to reconcile with ROM measurements confined to the lumbar segment (with rating criteria premised on full thoracolumbar ROM). Citing the examiner's 30 degrees (segmental lumbar) flexion, which would yield a 40% rating under the full thoracolumbar criteria in effect, the rating decision assigned a 20% rating determination. Since 30 degrees is a 25% reduction in normal lumbar segmental flexion, mathematical extrapolation to the ratable range (an imprecise speculation) would yield >65 degrees, still within the 10% rating criteria range for the standards in effect. Board members furthermore agreed that the segmental measurements were a significant probative value concern for the VA ROM evidence in general. Both the NARSUM ROMs and the subsequent PT ROMs clearly support a 10% rating under the

standards in effect at separation; and, the NARSUM ROM evaluation is the only one in evidence which is compliant with VASRD §4.46 (accurate measurement). Board members also agreed that the earlier PT note documenting a flexion of 10 degrees was too atypical and uncorroborated to carry significant probative value.

The Board additionally considered if the residual L4/5 radiculopathy (unrated by the VA) warranted additional disability rating; but, members agreed that the requisite link of the neuropathy with unfitting impairment was not in evidence. The pain component of a radiculopathy is subsumed under the general spine rating as specified in §4.71a. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board recommends a disability rating of 10% for the lumbar spine condition complying with the applicable VASRD criteria. The action officer agrees with the 5242 coding choice applied by the VA, and the members concurred.

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 lumbar spine condition, the Board unanimously recommends a disability rating of 10%, coded 5242, IAW VASRD §4.71a in effect at separation. 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:

UNFITTING CONDITION	VASRD CODE	RATING
Lumbar Degenerative Disc Disease	5242	10%
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120610, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

XXXXXXXXXXXXXXXXXXXX, DAF
Acting Director
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 XXXXXXXXXXXXXXXXXXXX, AR20130003116 (PD201201159)

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

XXXXXXXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)