

RECORD OF PROCEEDINGS  
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXX  
CASE NUMBER: PD1201181  
BOARD DATE: 20130111

BRANCH OF SERVICE: ARMY  
SEPARATION DATE: 20021117

**SUMMARY OF CASE:** Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty PFC/E-3 (92A10/Automated Logistical Specialist), medically separated for chronic mechanical low back pain (LBP). The condition began in basic training in September 2000. He was treated with anti-inflammatory pain medications and activity modifications; there was no surgical indication. During the course of his evaluation, a previously asymptomatic, stable thoracolumbar scoliosis was discovered. The CI did not improve adequately with rehabilitative treatment to meet the physical requirements of his Military Occupational Specialty (MOS). He was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). Stable thoracolumbar scoliosis with mechanical LBP was forwarded to the Physical Evaluation Board (PEB) as medically unacceptable IAW AR 40-501. No other conditions appeared on the MEB's submission. The PEB adjudicated the chronic mechanical LBP condition as unfitting, rated 10% with application of the Department of Defense Instruction (DoDI) 1332.39. The CI made no appeals, and was medically separated with a 10% disability rating.

**CI CONTENTION:** "I have two separate diagnoses while in the service and the Army decided to render me unfit for the less serious one. I received a disability rating for one condition however I was diagnosed for another condition which the Army overlooked. The additional diagnosis is documented in my file. I was separated as a result of scoliosis but one of the doctors diagnosed me with a "crack" in my spine but the Army overlooked it. I have since moved and lost my VA determination letter."

**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. The chronic mechanical LBP, thoracolumbar scoliosis and "cracked spine" conditions requested for consideration meet the criteria prescribed in DoDI 6040.44 for Board purview, and are accordingly addressed below. Any condition 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.

**RATING COMPARISON:**

Service IPEB – Dated 20020903			VA (<1 Month Pre-Separation) – All Effective Date 20021118			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Mechanical Low Back Pain	5299-5295	10%	Chronic Lumbosacral Strain	5295	20%	20021022
			Spondylolysis, L5	5299-5294	NSC	20021022
			Thoracolumbar Scoliosis, Stable	5299-5291	NSC	20021022
No Additional MEB/PEB Entries			0% X 1			20021022
<b>Combined: 10%</b>			<b>Combined: 20%</b>			

ANALYSIS SUMMARY:

Low Back Pain Condition. The 2003 Veteran Administration Schedule for Rating Disabilities (VASRD) coding and rating standards for the spine, which were in effect at the time of permanent separation, were changed to the current §4.71a rating standards on 26 September 2003, following the CI's permanent disability disposition. The older ratings were based on a judgment as to whether the disability was mild, moderate or severe. The current standards are grounded in range-of-motion (ROM) measurements. IAW DoDI 6040.44, this Board must consider the appropriate rating for the CI's back condition at separation based on the VASRD standards in effect at the time of separation. The first relevant clinical note (16 October 2000) stated that back pain was present for 3 weeks and was not associated with a history of trauma. A radiographic evaluation in September 2001 suggested the possibility of L5 spondylosis (a stress fracture or "crack"), however follow-up X-rays and a bone scan were negative for this condition. X-rays confirmed the presence of scoliosis. The narrative summary (NARSUM) examiner 5 months prior to separation indicated the condition began after falling down stairs during basic training. The LBP was daily and was exacerbated by load bearing activity, running, push-ups and sit-ups. Pain medication was occasionally helpful. There was no leg pain and a back brace was not used. Physical examination revealed a normal gait. A mild thoracic prominence on forward bending was present. There was mild superficial paraspinal and midline tenderness, but no spasm. Forward flexion was "limited." Straight leg testing (SLR) was negative. Muscle strength, sensation and deep tendon reflexes (DTR) were normal. The examiner's assessment was that scoliosis was idiopathic, likely pre-existed entry into the service and may have predisposed to the development of LBP. At the VA Compensation and Pension (C&P) exam a month prior to separation, the CI reported daily and constant LBP that waxed and waned throughout the day. Bending, weight lifting or load-bearing activities caused the most pain. No back supports were used. There were no symptoms of radiculopathy. Examination revealed a normal gait and a mild rightward thoracolumbar curvature. Tenderness of the bilateral thoracolumbar paraspinal muscles was present. Lower extremity strength was normal and SLR was negative. ROM measurements revealed flexion of 50 degrees (normal to 90 degrees by current standards), extension of 30 degrees (normal 30 degrees) and bilateral flexion of 30 degrees (normal 30 degrees). Painful motion, fatigability and increased pain with repetitive use were present.

The Board must correlate the above clinical data with the 24 September 2002 rating schedule which, for convenience, is excerpted below:

<b>5292</b> Spine, limitation of motion of, lumbar:	
Severe .....	40
Moderate .....	20
Slight .....	10
<b>5294</b> Sacro-iliac injury and weakness:	
<b>5295</b> Lumbosacral strain:	
Severe; with listing of whole spine to opposite side, positive Goldthwaite's sign, marked limitation of forward bending in standing position, loss of lateral motion with osteo-arthritic changes, or narrowing or irregularity of joint space, or some of the above with abnormal mobility on forced motion .....	40
With muscle spasm on extreme forward bending, loss of lateral spine motion, unilateral, in standing' position ....	20
With characteristic pain on motion .....	10
With slight subjective symptoms only .....	0

The PEB and VA assigned 10% and 20% ratings respectively under the 5295 code (analogously by the PEB). Board members agreed that criteria supporting a rating higher than 10% under this code were not in evidence, but debated if a higher rating is supported under the 5292

code. The VA examiner noted lumbar flexion of 50 degrees, which supports a 20% rating under current VASRD ROM standards. The NARSUM examiner also noted “limited” flexion, although measured ROM was not specified. The Board majority agreed that the ROM in evidence most closely approximated “moderate” under this code, and thus justified a 20% rating. The Board also considered whether a higher rating could be achieved under the formula for rating intervertebral disc disease based on incapacitating episodes; however, the minimum rating under that formula was not met. Finally the Board noted that the presence of a “crack” (spondylolysis) was not confirmed by specialized testing; however, even if the condition’s existence was conceded, a separate rating could not be assigned under VASRD §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 20% for the chronic mechanical LBP condition, coded 5292.

**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. As discussed above, PEB reliance on DoDI 1332.39 for rating chronic mechanical LBP was operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the chronic mechanical LBP condition, the Board, by a vote of 2:1, recommends a disability rating of 20%, coded 5292 IAW VASRD §4.71a. The single voter for dissent (who recommended no change in the PEB adjudication) did not elect to submit a minority opinion. 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 Mechanical Low Back Pain	5292	20%
	<b>COMBINED</b>	<b>20%</b>

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120607, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans’ Affairs Treatment Record

XXXXXXXXXXXXXXXXXXXX, DAF  
 Acting Director  
 Physical Disability Board of Review

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, AR20130003051 (PD201201181)

1. I have reviewed the enclosed Department of Defense Physical Disability Board of Review (DoD PDDBR) 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)