

RECORD OF PROCEEDINGS  
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXXXXXX  
CASE NUMBER: PD1201312  
BOARD DATE: 20130214

BRANCH OF SERVICE: ARMY  
SEPARATION DATE: 20080818

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**SUMMARY OF CASE:** Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SPC/E-4 (42A10/Human Resources Specialist), medically separated for degenerative disc disease (DDD) of the lumbar spine with back pain status post (s/p) L5-S1 decompression L2-L5, laminectomy and L3, L4, and L5 microdiscectomy. He had insidious onset of increasing lower back pain (LBP) since 2005, with an evaluation in 2006 diagnosing him with multilevel discogenic disease confirmed by magnetic resonance imaging (MRI) showing moderate to severe degenerative disc changes throughout the lumbar spine. On 12 September 2006, he had an L5-S1 decompression, L2-L5 laminectomy and L3, L4, L5 microdiscectomy which did nothing to relieve his left lower extremity pain or reduce his overall pain below a 6/10. The CI met his first Medical Retention Board (MRB) in February 2005 based on the limitations imposed by his permanent physical profile and was reclassified from a 13B10 Cannon Crewmember into his current Human Resources Specialist Military Occupational Specialty (MOS). Despite this reclassification and the subsequent surgery, the CI did not improve adequately with treatment to meet the physical requirements of his MOS or satisfy physical fitness standards. He was issued a permanent L3 profile and referred for a Medical Evaluation Board (MEB). Chronic right foot pain s/p bunionectomy, chronic right knee pain, chronic right shoulder pain, chronic polycystic kidney disease and hemorrhoid conditions, identified in the rating chart below, were 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 Veteran's Affairs Schedule for Rating Disabilities (VASRD). The chronic right foot pain condition was determined to be not separately unfitting and the remaining conditions were determined to be not unfitting and therefore not rated. The CI made no appeals, and was medically separated with a 10% disability rating.

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**CI CONTENTION:** "There are many reason [sic] why I feel my rating was unfit for my disability. I was not able to Re class for any other job in the Army. I was unusable for the military. That also means I am unfit for civilian employment also. I came out broken hearted, wanting to retire in 25yr but couldn't due to my back/mental problems. I feel I was unjustly discharge [sic] from the Army to be thrown out into the civilian [sic] world, which I am not able to work in also. I tried to provied [sic] for my family and give them a future but I can't I tried to go to school, use my GI bill but couldn't because my Lumbar and legs keep giving out under me. My PTSD is so bad I can't handle being in public. My atrophy in my left leg is worse. I have no action reflex in my left leg and I must use a cane to walk at all times. My lumbar stenosis is back AGAIN in my lower part of the sacrum bone which is causing me to have atrophy AGAIN in my left leg just like as before the laminectomy surgery. I now have more herniation to my discs, which I was told I will again need back surgery. I will HAVE to have spinal fusion. I was suppose to get fusion from my the first time I had my back surgery but Dr. XXXXXXXX asked me to wait due to my young age so we can prolong problems from the fusion to later. I was told by the military Dr my back is worse than an 80yr old man. I have lots of back pain which is not letting me work and on 15 meds to help me with pain, mental status, and to help me function in my everyday life. I tried to work for the TN Dept. of Corrections and that was the only job I was able to try to work and didnt

even last a whole yr. I was hired Nov 18, 2010 and was terminated in Nov 2011. I was/ am having very bad back/PTSD issues and TN Dept. of Corr. didnt want to honor my VA letter from my doctor to work with me. I was admitted in the VA hospital for being suicidal, I am currently not working/not ABLE to work. I am also waiting for SS to approve me for benefits. I am not able to take care of myself properly/safely due to my back and PTSD. My wife is not able to work due to VA putting my wife through caregiver program to care for me. I should have been given full 100% medical retirement.” The CI also provided two additional information packages in November and December 2012 with newer VA ratings (100%) and SSA disability information.

**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 back (DDD L-spine) and general leg conditions (Right foot pain s/p bunionectomy and right knee pain) as requested for consideration 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 other requested posttraumatic stress disorder (PTSD) and left leg atrophy conditions 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 20080516			VA (10 Mos. Pre-Separation) – All Effective Date 20080819			
Condition	Code	Rating	Condition	Code	Rating	Exam
DDD L-Spine S/P L5-S1 Decompression, L2-L5 Laminectomy & L3,L4,L5 Microdiscectomy	5299-5242	10%	L-Spine DDD S/P Laminectomy w/Radiculopathy and Back Scar	5242	40%	20071016
Chronic Rt Foot Pain S/P Bunionectomy	Not Separately Unfitting		Rt Foot Hallux Valgus w/ Calcaneal Spurs, S/P Bunionectomy w/ Scar	5280	0%	20071016
Chronic Rt Knee Pain	Medically Acceptable		S/P Rt Knee Arthroscopy w/ Excision of Hypertrophic Plica	5260	0%	20071016
Chronic Rt Shoulder Pain	Medically Acceptable		Rt Shoulder Condition	5201	NSC	20071016
Chronic Polycystic Kidney Disease	Medically Acceptable		Bilateral Kidney Cysts	7533	0%	20071016
Hemorrhoids	Medically Acceptable		Hemorrhoids	7336	0%*	20071016
No Additional MEB/PEB Entries			PTSD	9411	30%	20080624
			0% X 5 / Not Service-Connected x 2			
<b>Combined: 10%</b>			<b>Combined: 60%*</b>			

\*VA increased 7336 to 20% effective 20090813 (combined 70%) Subsequent VA changes (to 100%) effective January 2012 are not charted, but were noted by the Board.

**ANALYSIS SUMMARY:**

**Low Back Condition.** The narrative summary (NARSUM) noted that “the service member had the insidious onset of increasing back pain for at least three years.” Magnetic resonance imaging (MRI) showed moderate to severe DDD throughout the lumbar spine. At L5-S1 there was a large left paracentral disk protrusion. Surgery on 12 September 2006 consisted of an L5-S1 decompression, L2-L5 laminectomy and L3-5 microdiscectomy. Surgery did not relieve his

left lower extremity pain. He noted rare shooting pain in the upper posterior left leg and consistent numbness and tingling in the left lower extremity prior to surgery, but after surgery only slight numbness in one toe. He reported constant chronic LBP which he rated at 4/9/10. It changed with humidity, rainy weather, cold weather, and with any type of strenuous exercise. He used Lidoderm patches 2-4 times per week for pain, but no other medications. There were no bowel or bladder dysfunctions. Because of his consistent LBP he was unable to perform his MOS duties and was referred for an MEB.

The goniometric range-of-motion (ROM) evaluations in evidence which the Board weighed in arriving at its rating recommendation, with documentation of additional ratable criteria, are summarized in the chart below.

Thoracolumbar ROM	VA C&P ~10 Mo. Pre-Sep	MEB ~5 Mo. Pre-Sep	PT for MEB ~3 Mo. Pre-Sep
Flexion (90° Normal)	20°	(35) 37°	65°
Ext (0-30)	30°	15°	15°
R Lat Flex (0-30)	30°	(20) 22°	20°
L Lat Flex 0-30)	30°	15°	20°
R Rotation (0-30)	30°	(35) 34°	(30) 45°
L Rotation (0-30)	30°	(30) 31°	(30) 45°
Combined (240°)	170°	150°	180°
Comment: Surgery 23 Mo. Pre-Sep; VASRD General Rating...Spine Note (2) applied	+ Complained of pain, but no change in motion due to pain; No spasm; Gait normal	All ROM limited by pain, no further Deluca criteria other than pain	Pain on forward flexion and Lat Flex; Gait & contour normal; No spasm; No scarring
§4.71a Rating	40% (VA 40%)	20%	10%

The MEB physical exam noted no acute or chronic distress, normal gait, ability to heel-walk, but did not test toe-walk due to the CI's recent bunionectomy surgery. Low back exam showed a well healed scar and tenderness to palpation from L3-S1. S1 joints and sciatic notch were not tender. Straight leg raise (SLR) testing was negative bilaterally. Reflexes were 1+ and equal in the lower extremities. There were no neurological deficits noted and muscle strength was normal in the lower extremities. There were no muscle spasms or guarding at the lower back. ROM of the spine is noted above. It was noted that the "radicular pain he had prior to surgery has been cured with this surgery." It was not felt that he would ever be able to resume the rigorous activities required of soldiering. A physical therapy note dated 2 May 2008, 3 months prior to separation, noted chief complaint of 1/10 pain at knee, LBP today, feels stiff. Knee has been doing well, no problems with any functional activity. No problems with up and down stairs. He was cleared to return to walking and light jogging, "no reason for pt to be running at all due to increased stress at knee and back with impact." There was a formal ROM measurement of the thoracolumbar spine with a reason for request as "MEB-sm needs new ROM of lumbar spine with de Luca criteria." This exam is summarized above and was referenced by the PEB.

At the VA Compensation and Pension (C&P) exam 10 months prior to separation, the CI reported lumbar pain; tingling and numbness aggravated by prolonged standing, bending; and changes in weather. Symptoms were relieved by stretching and medications. Flare ups were daily and rated at 8/10. Physical examination noted no lumbar pain to palpation, no muscle spasms, 5/5 muscle strength, negative SLR and ROM as noted above. The CI complained of pain with ROM testing, but there was no change in motion with repetition. No other DeLuca criteria were noted.

The Board directs attention to its rating recommendation based on the above evidence. Both the PEB and VA rated the CI using the criteria of 5242 (Degenerative arthritis of the spine) using the MEB/PT or VA exams summarized above. It is obvious that there is a clear disparity between these examinations, with very significant implications regarding the Board's rating recommendation. The Board thus carefully deliberated the probative value assignment to these conflicting evaluations, and carefully reviewed the file for corroborating evidence from the period preceding separation. Of significant import, however, is the close temporal alignment of the evidence with the date of separation, which must remain as the Board's definitive benchmark in its recommendations. Both the MEB and PT exams are similar for all ROMs except for forward flexion, where the NARSUM referenced ROM was more limited. The PT ROM was less comprehensive than the NARSUM exam and also indicated "no scarring," despite the CI's prior surgery and VA noted 18x3 cm mid lumbar surgical scar. The Board therefore placed its highest probative value on the NARSUM exam results as being consistent with the remainder of the record and IAW VASRD §4.7 (Higher of two evaluations). This exam met the 20% rating criteria of "forward flexion of the thoracolumbar spine greater than 30°, but not greater than 60°." The General Rating Formula for Diseases and Injuries of the Spine coding is with or without symptoms such as pain (whether or not it radiates), stiffness, or aching in the area of the spine affected by residuals of injury or disease. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (Reasonable doubt) and §4.7 (Higher of two evaluations), the Board recommends a disability rating of 20% for the lumbar spine condition.

Contended PEB Conditions. The contended conditions adjudicated as not unfitting by the PEB were chronic right foot pain s/p bunionectomy and chronic right knee pain. 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 NARSUM documented the CI's bunionectomy surgery in December 2007 reduced his pain from 8/10/10 to 4/10, but that the CI was unable to make attempts at running. He also noted right knee pain for 3-4 years which he rated as 2/5-10, but it was not constant. It was made worse by certain types of exercise and prevented him from running. MRI was performed on 28 December 2007 and was normal. Orthopedic evaluation recommended physical therapy only with no anticipation of surgery. The NARSUM documented examination of the right knee as normal with no ligamentous or meniscal signs, no tenderness and normal ROM. The CI underwent right foot bunionectomy in December 2007 and the NARSUM indicated the CI could not toe walk due to recent surgery and that the CI was "unable to do the bike because it significantly increases the pain in his knee, back and right foot." None of these conditions were previously unfitting for duty and all conditions were documented as improved by the time of the CI's MEB evaluation. None were profiled, none were mentioned in the commander's statement and none were judged to fail retention standards. The PEB specifically addressed the right foot condition and stated:

"MEB Diag 2 (chronic right foot pain s/p bunionectomy) is not separately unfitting. There are minimal health record entries regarding this condition prior to surgery in December 07, which indicates it was not affecting his duty performance. NARSUM reflects pain at 8-10/10 prior to surgery and 4/10 after surgery. If it was not an unfitting condition prior to surgery and was improved after surgery, there is no basis for finding this condition unfitting."

Both conditions were reviewed by the action officer and considered by the Board. There was no indication from the record that any of these conditions 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 chronic right foot pain s/p bunionectomy or chronic right knee pain conditions; and, therefore, no additional disability ratings can be recommended.

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**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 pain condition, the Board unanimously recommends a disability rating of 20%, coded 5299-5242 IAW VASRD §4.71a. In the matter of the chronic right foot pain s/p bunionectomy and the chronic right knee pain conditions and IAW VASRD §4.71a, the Board unanimously recommends no change from the PEB determinations as not unfitting. There were no other conditions within the Board's scope of review for consideration.

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**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>
DDD L-Spine S/P L5-S1 Decompression, L2-L5 Laminectomy & L3, L4, L5 Microdiscectomy	5299-5242	20%
	<b>COMBINED</b>	<b>20%</b>

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The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120628, 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 / xxxxxxxxxx), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation  
for xxxxxxxxxxxxxxxxxxxxxx, AR20130003076 (PD201201312)

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

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Deputy Assistant Secretary  
(Army Review Boards)