

RECORD OF PROCEEDINGS  
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX  
CASE NUMBER: PD1201330  
BOARD DATE: 20130124

BRANCH OF SERVICE: ARMY  
SEPARATION DATE: 20040204

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**SUMMARY OF CASE:** Data extracted from the available evidence of record reflects that this covered individual (CI) was an activated National Guard CPL/E-4 (88M10/Truck Driver), medically separated for chronic low back pain (LBP). The CI sustained a back injury while deployed to Iraq in February 2003. The chronic LBP condition could not be adequately rehabilitated and did not improve adequately after surgery 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 back pain condition as unfitting, rated 10%, with application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD). The CI made no appeals, and was medically separated with a 10% disability rating.

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**CI CONTENTION:** "VA rated my back at 40 percent, when I separated (sic) I was given 10%. I have 10% for hearing loss. I was also service connected for ED. I was also told I have PTSD."

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**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 other requested conditions, hearing loss, erectile dysfunction (ED) and posttraumatic stress disorder (PTSD) 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.

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**RATING COMPARISON:**

Service PEB – Dated 20031211			VA (18 Mos. Post-Separation) – All Effective Date 20050207			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Back Pain	5243	10%	S/P L3 S1 Discectomy for Herniated Nucleus Pulposus	5299-5243	40%	20050826
Combined: 10%			Combined: 40%			

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**ANALYSIS SUMMARY:**

Chronic Back Pain, Status Post L5-S1 Discectomy, without Neurologic Abnormality. 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 (degrees)	MEB ~3.5 Mo. Pre-Sep*	VA C&P ~18 Mo. Post-Sep*
Flexion (90 Normal)	55	30
Ext (0-30)	15	30
R Lat Flex (0-30)	(30) 60	30
L Lat Flex (0-30)	(30) 60	30
R Rotation (0-30)	(30) 50	30
L Rotation (0-30)	(30) 50	30
Combined (240)	190	180
Comment: Surgery ~7 Mo. Pre-Sep	Pain with flexion; radiation of pain	Normal gait (see text)
§4.71a Rating	20% (PEB 10%)	40%

\* VASRD Spine note 2 applied. VA exam extracted from detailed VARD.

The CI underwent a discectomy in July 2003, approximately 7 months prior to separation. The MEB physical exam in October 2003, 3 months prior to separation, described “pain with flexion at around 40-45 degrees,” and “pain with...bending and twisting....” In the narrative summary (NARSUM) in October 2003, the CI reported moderate pain with sitting, bending over, and straightening his back. He reported numbness and tingling down to his lower left leg. He said that his symptoms were unchanged by his surgery and worse after physical therapy (PT). He had no loss of bladder or bowel control. The NARSUM physical exam noted tenderness over the spine at L4-5. Lower extremity strength, reflexes, and light touch sensation were normal. He had a positive straight leg test. He was able to walk toe to heel. There was no documentation of imaging or electrodiagnostic studies. The ROM is summarized in the chart, above. The PEB assigned a rating of 10% based on the “combined thoracolumbar rotation” (sic) of 290 degrees and localized tenderness. The report of the VA Compensation and Pension (C&P) exam, in August 2005, 18 months after separation, was not available for review. The VA Rating Decision in September 2005 cited the VA exam as (summarized) “normal posture and gait; normal curvature, symmetry, and head positioning; no muscle spasms, weakness, or guarding; neurological examination revealed normal sensation and no motor deficits with no atrophy and normal muscle tone; reflexes were 2 plus and equal; Lasegue’s sign (straight leg raise) was positive bilaterally; lumbar spine forward flexion was measured as being 30 degrees....” There was insufficient evidence of any additional functional loss due to DeLuca criteria to warrant consideration of a higher evaluation. The remainder of the ROMs are charted above. Further remote C&P exams in evidence indicated improved forward flexion to 65 degrees on multiple exams.

The Board directs attention to its rating recommendation based on the above evidence. The PEB rating of 5243 at 10% cited “combined thoracolumbar rotation 290 degrees. With localized tenderness.” The VA 40% rating was based on forward flexion to 30 degrees. The Board adjudged that the MEB evidence had the higher probative value in the Board’s deliberation due to its proximity to separation. The remote VA exam was considered post-separation worsening. The CI’s limitation of forward flexion to 55 degrees, as documented in the NARSUM, supported a rating of 20% for rating code 5243 for forward flexion of the thoracolumbar spine greater than 30 degrees but not greater than 60 degrees. There was insufficient evidence of any additional functional loss due to DeLuca criteria to warrant consideration of a higher evaluation. The General Rating Formula for Diseases and Injuries of the Spine ratings are 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. There was no evidence of incapacitating episodes, or associated objective non-pain neurologic abnormalities which would warrant other rating considerations. 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 back pain, status post L5-S1 discectomy, without neurologic abnormality condition.

**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 back pain, status post L5-S1 discectomy, without neurologic abnormality condition, the Board unanimously recommends a disability rating of 20%, coded 5243 IAW VASRD §4.71a. 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>
Chronic Back Pain, Status Post L5-S1 Discectomy, without Neurologic Abnormality	5243	20%
	<b>COMBINED</b>	<b>20%</b>

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The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120719, 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 / XXXXXXXXXXXXX), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation for XXXXXXXXXXXXXXXXXXXX, AR20130003091 (PD201201330)

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)