

RECORD OF PROCEEDINGS  
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXX  
BRANCH OF SERVICE: ARMY

CASE: PD-2015-00006-3  
SEPARATION DATE: 20051024

---

SUMMARY OF CASE: Data extracted from the available evidence of record reflects this covered individual (CI) was an active duty E5, Motor Transport Operator, medically separated for "chronic back pain and right leg weakness," with a disability rating of 10%. The case was previously evaluated by the PDBR on 15 November 2016 and the panel recommended re-characterization (by majority vote) of the Physical Evaluation Board (PEB) adjudication to modify the previously assigned disability rating to 20%. The CI disagreed with the determination and appealed to the United States District Court of the appropriate jurisdiction. The Court granted the parties' joint motion for remand and stay of proceedings. The case was remanded to the Army Review Boards Agency, which referred the case back to the PDBR for reconsideration of the disability rating. On 6 September 2019 a new PDBR panel unanimously recommended a disability rating of 20%. The CI once again, disagreed with the determination and appealed to the United States District Court of the appropriate jurisdiction for a second time. The Court granted the parties' joint motion for remand and stay of proceedings. The case was appealed second time to the Army Review Boards Agency, which referred the case back to the PDBR for reconsideration of the disability rating. The complete case file, to include additional documentation provided by counsel representing the CI, was evaluated by a PDBR panel comprised of different members. These proceedings reflect a de novo review and analysis confined to the unfitting PEB condition.

---

ANALYSIS SUMMARY:

Chronic Back Pain and Right Leg Weakness.

Chronic Back Pain. According to the service treatment record (STR) and MEB narrative summary (NARSUM), the CI underwent back surgery with discectomy in December 2003 for degenerative disc disease (DDD) with radicular symptoms.

During the 15 March 2005 MEB examination (recorded on DD Forms 2807-1 and 2808), 7 months prior to separation, the CI reported back pain at night. Physical examination revealed lumbar area tenderness with muscle spasm and decreased thoracolumbar spine range of motion (ROM).

The 31 March 2005 MEB NARSUM examination, noted CI complaints of pain located in the lower back and into the right leg. He stated his baseline pain, rated at 3/10, could reach 6/10 when he performed aggravating activities such as riding in a car and prolonged sitting or walking. Physical examination showed lumbar spine tenderness associated with paraspinal muscle spasms. Thoracolumbar ROM tests revealed flexion to 55 degrees (normal 90) and combined ROM of 190 degrees (normal 240) after repetition; pain was noted at extremes of forward flexion.

At the 16 May 2005 VA Compensation and Pension (C&P) examination, 5 months before separation, the CI reported low back pain and that he could easily walk 2 miles but was unable to run or perform other vigorous physical fitness activities. The examiner noted normal posture and gait. Thoracolumbar ROM measurements showed flexion to 50 degrees and combined

ROM of 155 degrees after repetition, with painful motion. There was no paraspinous muscle spasms or tenderness over the lumbar spine.

Right Leg Weakness. According to the STR and MEB NARSUM, the CI underwent back surgery with discectomy in December 2003 for DDD with radicular symptoms. A lumbar spine MRI in April 2004 revealed post-operative changes from the discectomy and posterior fusion of the L5-S1 with scar tissue in the operative bed surrounding the right L5-S1 nerve roots.

During the MEB examination, the CI reported numbness in the right foot. Physical findings revealed dense hyperesthesia over the lateral aspect of right foot plantar surface and decreased right hip flexion.

The MEB NARSUM examination noted CI complaints of pain with prolonged walking, bending, and twisting. The pain traveled from the lower back into the right leg. The examiner referenced the MEB examination findings as well as a previous neurosurgical evaluation that recorded weakness in the right hamstring and gastrocnemius muscles. Sensation to light touch and pin prick in the lateral aspect of the right foot was absent.

At the VA C&P examination, the CI stated he could walk 2 miles, but was unable to run and perform other vigorous physical fitness activities. He also noted a 20-30 weight gain since his surgery. Physical examination showed healed surgical scars over the low back/right groin, as well as normal posture and gait. There was decreased sensation on the lateral aspect of the right leg, running down to the foot and fourth and fifth digits. Motor strength was normal.

The panel directed attention to its rating recommendation based on the above evidence. The PEB rated the chronic back pain and right leg weakness 10%, coded 5241 (spinal fusion), citing forward flexion of 55 degrees with pain and 5/5 motor strength in the right leg. The VA rated the back condition 20%, coded 5242 (degenerative arthritis of the spine), based on the C&P examination, citing the level of decreased limitation of motion. The VA also separately rated the right leg weakness 10%, analogously coded 8520 (sciatic nerve paralysis, incomplete, mild), citing mild symptoms of right leg weakness and right lower extremity hypesthesia.

The panel first considered whether the back and right leg conditions, having been de-coupled from the combined PEB adjudication, remained separately unfitting. In this case, the MEB individually listed the back and right leg conditions and considered each condition to separately fail retention standards. The profile only listed the back condition, and the commander's statement did not specifically identify the back or right leg conditions. Panel members agreed there was not a preponderance of evidence to support that the conditions were not separately unfitting, and the evidence reasonably justified that the functional limitations of each condition contributed to the CI's inability to perform his military duties. Accordingly, separate disability ratings are recommended.

For the back condition, the panel agreed that a 20% rating, but no higher, was justified for limitation of flexion (greater than 30 degrees but not greater than 60 degrees) as reported on the MEB NARSUM and VA C&P examinations proximate to separation. There was no documentation of intervertebral disc syndrome with incapacitating episodes which would provide for a higher rating under that formula. After due deliberation, considering all the evidence and mindful of VASRD §4.3 (reasonable doubt), the panel recommends a disability rating of 20% for the back condition, coded 5241.

The panel considered its rating recommendation for the right leg condition based on the evidence above, and agreed that a 10% rating, but no higher, was justified for mild symptoms of right leg weakness recorded at the NARSUM examination, and decreased sensation to the lateral aspect of the right foot noted at both the NARSUM and C&P examinations. There was no

limitation of motion which would provide for a higher rating under that formula. After due deliberation, considering all the evidence and mindful of VASRD §4.3 (reasonable doubt), the panel recommends a disability rating of 10% for the right leg condition, analogously coded 8599-8520.

---

**BOARD FINDINGS:** In the matter of the back condition, the panel recommends a disability rating of 20%, coded 5241 IAW VASRD §4.71a. In the matter of the right leg condition, the panel recommends a disability rating of 10%, coded 8599-8520 IAW VASRD §4.124a. There are no other conditions within the panel's scope of review for consideration.

The panel recommends the CI's prior determination be modified as follows; and, that the discharge with severance pay be re-characterized to reflect permanent disability retirement, effective the date of medical separation:

<b>CONDITION</b>	<b>VASRD CODE</b>	<b>PERMANENT RATING</b>
Chronic Back Pain	5241	20%
Right Leg Weakness	8599-8520	10%
	<b>COMBINED</b>	<b>30%</b>

---

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 1 December 2014, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans Affairs Record
- Exhibit D. Remand Order, dated 4 October 2023
- Exhibit E. U.S. District Court Judgement of Appeal, dated 28 July 2023
- Exhibit F. U.S. District Court of Appeals Opinion, dated 28 July 2023
- Exhibit G. Brief in support of application, dated 31 December 2014

AR20240004189, XXXXXXXXXXX

XXXXXXXXXXXX

Dear XXXXXXXXXXX:

On remand from the United States District Court for the District of Columbia, the Department of Defense Physical Disability Board of Review (DoD PDBR) reviewed your application and recommended to re-characterize your separation as a permanent disability retirement with the combined disability rating of 30% effective the date of your medical separation for disability with severance pay. Enclosed is a copy of the Board's recommendation, record of proceedings for your information.

The re-characterization of your separation as a permanent disability retirement will result in an adjustment to your pay providing retirement pay from the date of your original medical separation minus the amount of severance pay you were previously paid at separation.

The accepted DoD PDBR recommendation has been forwarded to the Army Physical Disability Agency for required correction of records and then to the U.S. Defense Finance and Accounting Service to make the necessary adjustment to your pay and allowances. These agencies will provide you with official notification by mail as soon as the directed corrections have been made and will provide information on your retirement benefits. Due to the large number of cases in process, please be advised that it may be several months before you receive notification that the corrections are completed and pay adjusted. Inquiry concerning your correction of records should be addressed to the U.S. Army Physical Disability Agency, (AHRC-DO) 1835 Army Boulevard, Building 2000, JBSA, Fort Sam Houston, TX 778234.

A copy of this decision has also been provided to the Department of Veterans Affairs and to the counsel you listed on your court order, XXXXXXXX.