

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXX
BRANCH OF SERVICE: AIR FORCE

CASE: PD-2022-00029
SEPARATION DATE: 20090827

SUMMARY OF CASE: Data extracted from the available evidence of record reflects this covered individual (CI) was a Reserve E6, Aerospace Maintenance Craftsman, medically separated from the Temporary Disability Retired List (TDRL) for “chronic low back pain [LBP]” with a disability rating of 20%.

CI CONTENTION: “XXXXXX should have been assigned at least a 40% disability rating for his unfitting lower back disability in accordance with Diagnostic Code 5241 of the VA Schedule for Rating Disabilities.” The complete submission is at Exhibit A.

SCOPE OF REVIEW: The panel’s scope of review is defined in DoDI 6040.44. It is limited to review of disability ratings assigned to those conditions determined by the Physical Evaluation Board (PEB) to be unfitting for continued military service, and when specifically requested by the CI, those conditions identified by the Medical Evaluation Board (MEB), but determined by the PEB to be not unfitting or non-compensable. Any conditions outside the panel’s defined scope of review, and any contention not requested in this application, may remain eligible for future consideration by the Board for Correction of Military Records. The panel’s authority is limited to assessing the fairness and accuracy of PEB rating determinations and recommending corrections when appropriate. The panel gives consideration to VA evidence, particularly within 12 months of separation, but only to the extent that it reasonably reflects the severity of disability at the time of separation.

RATING COMPARISON:

SERVICE PEB - 20090413			VARD - NA			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic LBP	5241	20%	No VA Examination Proximate to Separation in Evidence			
COMBINED RATING: 20%			COMBINED RATING OF ALL VA CONDITIONS: 50%			

ANALYSIS SUMMARY:

LBP. According to the service treatment record and MEB narrative summary (NARSUM), the CI’s low back condition began in June 2004 after a motor vehicle accident. He underwent an L4-S1 and L5-S1 spinal fusion, but treatment and medication did not allow a return to duty in his specialty. He was separated and placed on TDRL on 6 November 2007.

At the 14 January 2009 MEB range of motion (ROM) physical therapy (PT) examination, 7 months prior to TDRL removal, the CI reported pain rated at 2-3/10 when resting and at 9/10 when walking. He also complained of central LBP that radiated to the posterior right leg while walking. Goniometrically measured thoracolumbar ROM (placed at L5/S1 in accordance with VA plate 5) revealed flexion to 60 degrees (normal 90) and a combined ROM of 135 degrees (normal 240). The examiner documented pain and tenderness as well as an altered gait that was not due to muscle guarding or spasm.

The 21 January 2009 TDRL MEB NARSUM examination, a week later, noted CI complaints of continued right hip, buttock, and medial thigh radicular pain, but minimal overall back pain. He was able to perform low-impact aerobic exercises but had some difficulty with back pain during high-impact activities like running. He was not participating in any PT, pain management, or surgical evaluation. Physical findings showed a normal gait with no spasticity (increased rigidity of muscles due to brain or spinal cord injury).

During a civilian PT appointment on 4 June 2009, 2 months before separation, the examiner, using a dual inclinometer (but not a VASRD Plate V compliant goniometer) recorded active thoracolumbar spine flexion to 20 degrees, but made no mention of combined ROM, pain, gait or spasm. There was no VA examination proximate to separation in evidence.

The panel directed attention to its rating recommendation based on the above evidence. The CI was removed from TDRL with a permanent disability disposition of separation with severance pay at 20%. The PEB cited reduced average flexion to 56 degrees and combined ROM of 142 degrees, "with steady gait and no evidence of spasticity." Panel members agreed that although the PT examination on 6 June 2009 was closest to separation, the examiner did not provide complete measurements and used a non-compliant dual inclinometer. The thoracolumbar measurements at the January 2009 MEB PT ROM study were taken with a goniometer and met criteria for a 20% disability rating for forward flexion "greater than 30 degrees but not greater than 60 degrees." There was no documentation of intervertebral disc syndrome with incapacitating episodes which would provide for a higher rating under that formula. Additionally, while the CI may have experienced radiating pain to the right thigh from the back condition, this is subsumed under the general spine rating criteria, which specifically states "with or without symptoms such as pain (whether it radiates). After due deliberation, considering all the evidence and mindful of VASRD §4.3 (reasonable doubt), the panel concluded there was insufficient cause to recommend a change in the PEB adjudication for the LBP at the time of TDRL removal.

BOARD FINDINGS: In the matter of the low back condition and IAW VASRD §4.71a, the panel recommends no change in the PEB adjudication. There are no other conditions within the panel's scope of review for consideration. Therefore, the panel recommends no modification or re-characterization of the CI's disability and separation determination.

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20220212, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans Affairs Record

SAF/MRB
3351 CELMERS LANE
JBA NAF WASHINGTON, MD 20762-6435

Dear XXXXXX:

Reference your application submitted under the provisions of DoDI 6040.44 (Section 1554, 10 USC), PDBR Case Number PD-2022-00029.

After careful consideration of your application and treatment records, the Physical Disability Board of Review determined that the rating assigned at the time of final disposition of your disability evaluation system processing was appropriate. Accordingly, the Board recommended no rating modification or re-characterization of your separation.

I have carefully reviewed the evidence of record and the recommendation of the Board. I concur with that finding and their conclusion that modification of your disability rating or characterization of your separation is not warranted. Accordingly, I accept the recommendation that your application be denied.

Sincerely,

Attachment:
Record of Proceedings