

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXX
BRANCH OF SERVICE: ARMY

CASE: PD-2022-00040
SEPARATION DATE: 20030502

SUMMARY OF CASE: Data extracted from the available evidence of record reflects this covered individual (CI) was a Reserve E6, Motor Transport Operator, medically separated for "low back pain" with a disability rating of 10%.

CI CONTENTION: No specific contention was made.

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 - 20030410			VARD - NA			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Low Back Pain	5295	10%	No VA Examination Proximate to Separation in Evidence			
COMBINED RATING: 10%			COMBINED RATING OF ALL VA CONDITIONS: NA			

ANALYSIS SUMMARY:

Low Back Pain (LBP). According to the service treatment record (STR) and MEB narrative summary (NARSUM), the CI's low back condition began in 1994 of unknown etiology. An MRI on 17 March 2003 showed multilevel disc bulging and severe facet disease at L5-S1. Lumbar spine X-rays showed moderate scoliosis of about 10 degrees on the right. The LBP was treated conservatively but did not improve enough for continued service.

During the 27 February 2003 MEB examination (recorded on DD Forms 2807-1 and 2808), 3 months before separation, the CI reported LBP and numbness down both legs. Physical findings showed diffuse tenderness to pressure without spasm. Range of motion (ROM) testing showed forward flexion to 30 degrees, extension to 10 degrees, lateral flexion to 15 degrees bilaterally, and lateral rotation to 20 degrees bilaterally; painful motion was present. The examiner noted the CI was able to forward flex to at least 45 degrees without apparent difficulty, such as during the rectal examination and when he was seen bending over to pick up his briefcase.

The 24 March 2003 MEB NARSUM examination noted complaints of constant LBP that was aggravated by sitting longer than an hour, standing more than 2 minutes, walking more than half a block, heavy lifting, and repeated bending. The examiner referenced the physical findings from the MEB examination. There was no VA examination proximate to separation in evidence.

The panel directed attention to its rating recommendation based on the above evidence. The PEB rated the low back condition 10%, coded 5295 (lumbosacral strain), citing the condition existed prior to service, but was compensable under 10 USC 1207a (8-year rule). In accordance with DoDI 6040.44, the panel is required to recommend a rating in accordance with the VASRD in effect at the time of separation. Unlike the current VA §4.71a rating standards, at the time of the CI's separation, numerical values of range of motion were not a feature of the rating schedule. Diagnostic code 5295 (lumbosacral strain) was applicable in this case and warrants a 10% rating for a lumbar condition "with characteristic pain on motion." The higher 20% rating criteria under this code requires "muscle spasm on extreme forward bending, loss of lateral spine motion, unilateral, in standing position." However, the MEB NARSUM examiner noted the absence of muscle spasm and showed the CI had bilateral lateral spine motion. Panel members considered code 5292 (limitation of motion of the lumbar spine) and noted that while the NARSUM examination showed 30 degrees of flexion, the CI demonstrated by action that he was able to flex to at least 45 degrees without difficulty. Also, his lateral flexion and rotation values were consistent with a slight, but not moderate, decrease in motion. The panel also considered code 5293 (intervertebral disc syndrome), but there was no evidence in the STR of incapacitating episodes requiring bedrest prescribed by a physician to justify this code. Thus, panel members agreed that a 10%, but no higher, was supported for characteristic pain on motion under code 5295. 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 low back condition.

BOARD FINDINGS: In the matter of the low back pain 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 20220401, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans Affairs

AR20230004246, XXXXXXXXXXX

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Dear XXXXXXXXXXX:

The Department of Defense Physical Disability Board of Review (DoD PDBR) reviewed your application and found your separation disability rating and your separation from the Army for disability with severance pay to be accurate. I have reviewed the Board's recommendation and record of proceedings (copy enclosed), and I accept its recommendation. I regret to inform you that your application to the DoD PDBR is denied.

This decision is final. Recourse within the Department of Defense or the Department of the Army is exhausted; however, you have the option to seek relief by filing suit in a court of appropriate jurisdiction.