

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX
BRANCH OF SERVICE: ARMY

CASE: PD-2022-00041
SEPARATION DATE: 20070725

SUMMARY OF CASE: Data extracted from the available evidence of record reflects this covered individual (CI) was an active duty E4, Firefighter, medically separated for “low back pain” with disability rating of 0%.

CI CONTENTION: “Even though rated at 0% percent at time of separation, I am now rated at 100% by the VA.” The CI’s contention implies a request to review additional conditions (PTSD) not identified by the Medical Evaluation Board (MEB) and Physical Evaluation Board (PEB). 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 PEB to be unfitting for continued military service, and when specifically requested by the CI, those conditions identified by the 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 - 20070615 | | | VARD - 20080123 | | | |
|---|---------------|--------|--|-----------|-----------------------|------|
| Condition | Code | Rating | Condition | Code | Rating | Exam |
| Low Back Pain | 5237 | 0% | Degenerative Changes of the Lumbo-sacral Spine with Mild Disc Protrusion | 5242 | 10% | STR |
| Recurrent Herpes Zoster, Cranial Nerves X, Division 1, Left Eye | Not Unfitting | | Herpes Zoster, Left Eye | 7899-7813 | 0% | STR |
| Left Shoulder, Acromioclavicular Separation | Not Unfitting | | Residuals, Left Shoulder Injury | 5203 | Not Service Connected | |
| Fracture, Left 5 th Metatarsal | Not Unfitting | | Residuals, Fracture, Left Fifth Metatarsal | 5284 | | |
| COMBINED RATING: 0% | | | COMBINED RATING OF ALL VA CONDITIONS: 10% | | | |

ANALYSIS SUMMARY:

Low Back Pain (LBP). According to the service treatment record (STR) and MEB narrative summary (NARSUM), the CI’s LBP began in October 2005 after dead lifting during physical training. He experienced some improvement with conservative treatment and physical therapy (PT). In early January 2006, he re-injured his back after slipping on ice and landing on the air tank strapped to his back; he was treated with medications and PT. Lumbar spine X-rays showed prominent degenerative changes in the left sacroiliac joint, and an MRI on 10 July 2006 revealed degenerative disc disease and arthritis. The CI received a permanent L2 profile in July

2006, but after no significant improvement, he was placed on a permanent L3 profile in April 2007.

At the 3 May 2007 MEB PT examination, 3 months prior to separation, thoracolumbar range of motion (ROM) tests showed flexion to 70 degrees (normal 90), extension to 20 degrees (normal 30), right and left lateral flexion to 20 degrees (normal 30), and right and left rotation to 30 (normal). There was pain at end of all ROM measurements except right lateral flexion, which noted "end range limited by mechanical end feel."

During the 14 May 2007 MEB examination (recorded on DD Forms 2807-1 and 2808), 2 months prior to separation, the CI reported arthritis in his lower back accompanied by constant LBP that caused problems sleeping. The examiner noted upper lumbar area tenderness and full ROM, and recommended continued PT exercises. The 21 May 2007 MEB NARSUM examination documented complaints of daily LBP rated at 3-7/10. The CI remained on daily anti-inflammatory and pain medications and was unable to participate in his primary military specialty duties. He did report some recent improvement from facet joint steroid injections. The examiner cited physical findings from the MEB PT and MEB examinations and noted that the CI did not meet retention standards due to chronic low back pain.

There was no VA Compensation and Pension (C&P) examination in the record proximate to separation. However, the 23 January 2008 VA Rating Decision (VARD) cited the spine ROM measurements from the 3 May 2007 MEB PT examination.

The panel directed attention to its rating recommendation based on the above evidence. The PEB rated the low back condition 0%, coded 5237 (lumbosacral strain), citing pain with "no mechanical loss of motion." The VA rated the low back condition 10%, coded 5242 (degenerative arthritis of the spine), based on the MEB PT examination, citing thoracolumbar flexion "greater than 60 degrees but not greater than 85 degrees, or combined ROM greater than 120 degrees but not greater than 235 degrees" and "X-ray findings of arthritis." Panel members agreed that a 10% rating, but no higher, was justified for limitation of flexion and combined ROM as reported on the MEB PT examination. There was no muscle spasm or guarding severe enough to result in an abnormal gait or spinal contour, thus the next higher 20% rating was not justified on this basis. 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 low back condition, coded 5237.

Contended PEB Conditions: Recurrent Herpes Zoster, Left Shoulder Acromioclavicular Separation, and Left Fifth Metacarpal Fracture. The panel's main charge is to assess the fairness of the PEB's determination that none of these conditions were unfitting. The herpes zoster, left shoulder, and left fifth metacarpal conditions were not profiled or implicated in the commander's statement, and did not fail retention standards. There was no performance-based evidence from the record that any of these conditions significantly interfered with satisfactory duty performance at separation. After due deliberation, the panel concluded there was insufficient cause to recommend a change in the PEB fitness determination for the contended conditions, so no additional disability ratings are recommended.

BOARD FINDINGS: In the matter of the low back condition, the panel recommends a disability rating of 10%, coded 5237 IAW VASRD §4.71a. There are no other conditions within the panel's scope of review for consideration. In the matter of the contended recurrent herpes zoster, left shoulder acromioclavicular separation, and left fifth metacarpal fracture, the panel recommends no change from the PEB determinations as not unfitting.

The panel recommends the CI's prior determination be modified as follows, effective the date of medical separation:

| CONDITION | VASRD CODE | PERMANENT RATING |
|------------------|-------------------|-------------------------|
| Low Back Pain | 5237 | 10% |

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20220405, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans Affairs Record

AR20230004247, XXXXXXXXXXXX

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Dear XXXXXXXXXXXX:

The Department of Defense Physical Disability Board of Review (DoD PDDBR) reviewed your application and found that your disability rating should be modified but not to the degree that would justify changing your separation for disability with severance pay to a permanent retirement with disability. I have reviewed the Board's recommendation and record of proceedings (copy enclosed) and I accept its recommendation. This will not result in any change to your separation document or the amount of severance pay. A copy of this decision will be filed with your Physical Evaluation Board records. I regret that the facts of the case did not provide you with the outcome you may have desired.

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.

A copy of this decision has also been provided to the Department of Veterans Affairs.