

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX
BRANCH OF SERVICE: ARMY

CASE: PD-2022-00082
SEPARATION DATE: 20060614

SUMMARY OF CASE: Data extracted from the available evidence of record reflects this covered individual (CI) was a National Guard E4, with military occupational specialty (MOS) training and experience in Aircraft Armament Systems Repairer, Military Police, and Fire Direction, medically separated for "low back pain" with a disability rating of 10%.

CI CONTENTION: "Review all conditions. Please note that the conditions in which the Army discharged me for, the VA still sees as disabling conditions in which they compensate me for. Therefore, I am requesting an entire review for all conditions, in which a fair and reasonable decision be rendered regarding the overall discharge rating I initially received." 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 - 29969223			VARD - 2000912			
Condition	Code	Rating	Condition	Code	Rating	Exam
Back Pain	5299-5237	10%	Degenerative Joint Disease Lumbo-Sacral Spine	5243	20%	20060424
Hearing Loss	Not Unfitting		Hearing Loss	6100	0%	20070816
COMBINED RATING: 10%			COMBINED RATING OF ALL VA CONDITIONS: 60%			

ANALYSIS SUMMARY:

Low Back Pain (LBP). According to the service treatment record (STR) and MEB narrative summary (NARSUM), the CI's LBP began in March 2005 after being involved in a tactical vehicle accident while deployed to Iraq; he suffered pelvic and mid thoracic rib fractures. Lumbosacral spine X-rays at the time were normal. An MRI on 16 July 2005 noted no evidence of lumbar spine central canal stenosis or nerve root impingement, and minimal herniation at T7-T8. At a physical medicine and rehabilitation evaluation and spinal consultation on 8 August 2005, the CI reported back pain with numbness and tingling in both arms and legs. He denied progressive weakness or bowel/bladder changes. Physical findings noted no acute distress and stable standing balance and gait. There was moderate tenderness throughout the scapula-thoracic

spine bilaterally, but not in the lumbar area. Straight leg raise and Babinski's sign test results were negative bilaterally, and motor strength was normal in all extremities. Range of motion (ROM) measurements for the MEB on 22 September 2005 showed flexion to 55 degrees (normal 90), and a combined ROM of 155 degrees, without painful motion.

During the 27 October 2005 MEB NARSUM examination, 8 months prior to separation, the CI reported upper and lower back pain, but no muscular or joint complaints or sensory deficits. The examiner noted a normal EMG (not in evidence), no acute distress, and normal gait and extremities without visible leg atrophy or spasms. Flexion and extension were within normal limits, and the examiner opined that the CI's lengthy physical therapy (PT), clinical workup, and diagnostic imaging failed to explain his limitations.

At the 24 August 2006 VA Compensation and Pension (C&P) examination, 2 months after separation, the CI reported central back pain, rated at 5-6/10, with radiation and tingling in both arms. He experienced associated flare-ups at higher pain levels 4-6 days a week that lasted the entire day. He also had LBP rated at 4-5/10. Physical findings showed the CI had a mild antalgic gait to the right without use of an assistive device. The examiner found an accentuated lordosis at the lower lumbar thoracic junction and L5-S1 tenderness, and measured ROM revealed flexion to 40 degrees and a combined ROM of 165 degrees, with painful motion. Extension was reduced to 20 degrees due to pain, fatigability, and lack of endurance in incoordination.

The panel directed attention to its rating recommendation based on the above evidence. The PEB rated the low back condition 0%, coded analogously 5299-5237 (lumbar spine strain), citing a normal EMG study, minimal herniated nucleus pulposus at T7-8, and a ROM study that noted 3/5 Waddell's signs. The VA rated the low back condition 20%, coded 5243 (intervertebral disc syndrome (IVDS)), based on the C&P examination, citing VASRD criteria for a 20% rating for thoracolumbar forward flexion greater than 30 degrees but not greater than 60 degrees. Panel members agreed that a 20% rating, but no higher, was justified for forward flexion measurements recorded at both the MEB PT and C&P examinations. There was no documentation of IVDS with incapacitating episodes which would provide for a higher rating under that formula. Additionally, although the CI reported radiating back pain into his lower extremities, this pain is subsumed under the general spine rating criteria, which specifically states "with or without symptoms such as pain (whether or not it radiates)." The CI had a normal EMG study and there was no objective evidence of a radiculopathy with functional impairment (such as weakness) that directly impacted fitness for duty. Thus, the panel concluded an additional disability 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 20% for the low back condition, coded 5237.

Contended PEB Condition: Hearing Loss. The panel's main charge is to assess the fairness of the PEB determination that the contended condition was not unfitting. The contended condition was 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 the condition 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 condition, so no additional disability rating is recommended.

BOARD FINDINGS: In the matter of the low back condition, the panel recommends a disability rating of 20%, coded 5237 IAW VASRD §4.71a. In the matter of the contended hearing loss, the

panel agrees it cannot recommend it for additional disability rating. 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, effective the date of medical separation:

CONDITION	VASRD CODE	PERMANENT RATING
Low Back Pain	5299-5237	20%

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20220720, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs Record

AR20230004910, XXXXXXXX

XXXXXXXXXX

Dear XXXXXXXXXX:

The Department of Defense Physical Disability Board of Review (DoD PDBR) 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.

Sincerely,