

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXX
BRANCH OF SERVICE: ARMY

CASE: PD-2022-00110
SEPARATION DATE: 20091014

SUMMARY OF CASE: Data extracted from the available evidence of record reflects this covered individual (CI) was an active duty E5, Infantryman, medically separated for “chronic upper back pain” with a disability rating of 10 %.

CI CONTENTION: The PTSD was not fully evaluated for a disability rating and the VA rated the condition. Review also requested of additional conditions not identified by the Medical Evaluation Board (MEB) and/or 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 - 20090707			VARD - 20100122			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Upper Back Pain	5299-5237	10%	Thoracolumbar Strain	5237	10%	20091222
PTSD	Not Unfitting		PTSD	9411	30%	20091230
COMBINED RATING: 10%			COMBINED RATING OF ALL VA CONDITIONS: 50%			

ANALYSIS SUMMARY:

Back Pain. According to the service treatment record and MEB narrative summary (NARSUM), the CI’s back condition began after wearing body armor during his second deployment to Iraq from January to December 2007. Medication and physical therapy (PT) failed to resolve the issue. In December 2009, X-rays revealed an unremarkable lumbar spine.

At the 19 May 2009 MEB PT range of motion (ROM) examination, 5 months prior to separation, the examiner recorded flexion to 90 degrees (normal) and a combined ROM of 215 degrees (normal 240). There was no mention of painful motion, spasm, or change in ROM after repetition. The 4 June 2009 MEB NARSUM examination, 4 months before separation, noted complaints of back pain, especially with prolong standing or sitting. Measured ROM revealed flexion to 80 degrees and a combined ROM of 215 degrees, with no increased pain on repetition. Straight leg raise tests were negative and there was no muscle spasm.

At the 22 December 2009 VA Compensation and Pension (C&P) examination, 2 months after separation, the CI reported moderate, constant mid-back pain and that he could walk a half mile

without ambulatory aids. Physical findings revealed normal gait and posture, and measured ROM showed flexion to 75 degrees and a combined ROM of 135 degrees, with painful motion.

The panel directed attention to its rating recommendation based on the above evidence. The PEB rated the back condition 10%, analogously coded 5237 (lumbosacral strain), citing limitation of motion. The VA also rated the back condition 10%, coded 5237, based on the C&P examination, citing thoracolumbar forward flexion greater than 60 degrees but not greater than 85 degrees; or, combined thoracolumbar ROM greater than 120 degrees but not greater than 235 degrees. The panel agreed that a 10% rating, but no higher, was justified for limitation of flexion and combined ROM, as reported on all examinations proximate to separation. 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 concluded there was insufficient cause to recommend a change in the PEB adjudication for the back condition.

Contended PEB Condition: PTSD. The panel's main charge is to assess the fairness of the PEB determination that the contended condition was not unfitting. At the 27 May 2009 psychiatric evaluation, conducted while CI was undergoing the MEB for his back condition, he reported counseling with a social worker for irritability and anger, problems falling sleep, and non-combat related nightmares. He also complained of stress associated with his back injury and from conflicts with his chain of command, but less irritability since beginning the MEB process. The CI stated his nightmares were "pretty normal," and that he was not interested in taking sleep medication. The examiner diagnosed "very mild" PTSD with no need for a mental health profile. The PTSD 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 back condition and IAW VASRD §4.71a, the panel recommends no change in the PEB adjudication. In the matter of the contended PTSD, the panel recommends no change from the PEB determination as not unfitting. 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 20221101, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans Affairs Record

AR20230008100, 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.