

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX
BRANCH OF SERVICE: ARMY

CASE: PD-2023-00019
SEPARATION DATE: 20070913

SUMMARY OF CASE: Data extracted from the available evidence of record reflects this covered individual (CI) was an active duty E5, Cryptologic Linguist, medically separated for “degenerative disc disease (L5-S1)” with a disability rating of 10%.

CI CONTENTION: “The rating vastly underrepresents the extent of the damage done to my back...” He also requested review of additional conditions 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 - 20070712			VARD - 20080221			
Condition	Code	Rating	Condition	Code	Rating	Exam
Lumbar Degenerative Disc Disease (DDD) L5-S1	5299-5242	10%	DDD, Lumbar Spine with Insomnia	5010-5237	20%	20071218
COMBINED RATING: 10%			COMBINED RATING OF ALL VA CONDITIONS: 30%			

ANALYSIS SUMMARY:

Lumbar DDD (L5-S1). According to the service treatment record and MEB narrative summary (NARSUM), the CI’s back condition began in advanced individual training and worsened OVER several years before the MEB. An MRI on 10 August 2006 revealed some early DDD at L5-S1 with a central disc bulge. Pain management (including epidural steroid injections), physical therapy (PT) and chiropractic care failed to allow him to return to duty in his specialty.

At the 2 October 2006 MEB PT range of motion (ROM) examination, 11 months prior to separation, the CI complained of back pain rated at 6/10. Measured ROM showed flexion to 70 degrees (normal 90) and a combined ROM of 220 degrees (normal 240), with pain during flexion and extension.

The 13 June 2007 MEB NARSUM examination, 3 months before separation, noted CI complaints of back pain that had progressively worsened over 3-1/2 years to the point that he could not sit for any period in front of a computer or stand for longer than 20 minutes. Additionally, he had

difficulty with activities of daily living (ADLs) and could not participate in recreational interests. The examiner noted some paraspinal muscle spasm and tenderness and that the CI rose stiffly from his chair. There was no mention of an abnormal gait, and the remaining test results for back pain were negative with normal neurological findings.

During the 11 July 2007 MEB PT ROM examination, 2 months prior to separation, the CI complained of low back pain, rated at 7/10, with referral through the lower extremities to the feet, left greater than right. The examiner used an inclinometer for flexion and extension and a goniometer for side bending and rotation measurements, which revealed flexion to 30 degrees and a combined ROM of 100 degrees, with pain on all planes. The examiner noted diffuse lumbar area tenderness and guarding with movement, but no abnormal gait.

At the 18 December 2007 VA Compensation and Pension (C&P) examination, 3 months after separation, the CI reported lower back spasms with constant stabbing pain traveling into his legs. He rated the pain at 6/10 and up to 8/10 with exacerbations when sitting the wrong way or sneezing. He stated he could not sit in front of a computer but was able to perform ADLs and drive. Physical examination showed normal posture and gait. Flexion was to 90 degrees with pain, and combined ROM was 225 degrees.

The panel directed attention to its rating recommendation based on the above evidence. The PEB rated the low back condition 10%, analogously coded 5299-5242 (degenerative arthritis of the spine), citing ROM limited by pain, positive tenderness and spasm. The VA rated the low back condition 20%, dual-coded 5010-5237 (arthritis, due to trauma-lumbosacral strain), based on the C&P examination, citing that the CI's painful motion after repetition warranted a 20% under 38 CFR §4.40 and §4.45 (functional loss due to painful motion with repeated motion). Panel members discussed the VA rating decision based on functional loss that included insomnia. The CI reported significant sleep impairment due to his back pain, and the commander's statement noted he had attempted to take measures several times a day to alleviate this pain, to include using a heating pad after PT, lying down during work hours, and resting his back during lunchtime. Although the commander noted these requirements had a negative impact on the CI's performance, there was no evidence that impaired sleep impacted his ability to perform his duties. Considering §4.40, §4.45, and §4.59, the panel agreed that while there was some functional loss due to painful motion, the evidence did not show additional functional limitations which met the criteria for a 20% rating. The panel noted there was no documentation of pain flare-ups that additionally limited ROM, and neither the 11 July 2007 PT examination nor the C&P examination demonstrated further limitation of motion or function loss with repetition. The C&P examiner stated, "There was no change of motion upon repeated and resisted testing of lumbar spine x5, and no additional limitation of motion is noted." Thus, panel members agreed that a 10% rating, but no higher, was justified for limitation of flexion (greater than 60 degrees but not greater than 85 degrees) and/or combined ROM (greater than 120 degrees but not greater than 235 degrees), as reported at the VA C&P examination, which was the most probative and comprehensive examination with VA compliant ROM measurements. 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. There was no documentation of intervertebral disc syndrome with incapacitating episodes which would provide for a higher rating under that formula. 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.

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 20230119, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs Record

AR20230009435, 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.