

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX
BRANCH OF SERVICE: ARMY

CASE: PD-2023-00023
SEPARATION DATE: 20041115

SUMMARY OF CASE: Data extracted from the available evidence of record reflects this covered individual (CI) was an active duty E4, Construction Equipment Repairer, medically separated for "chronic low back pain," with a disability rating of 20%.

CI CONTENTION: "VA gave 40% rating for same coded injury in which the Army only gave 20%." 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 - 20040915			VARD - 20050411			
Condition	Code	Rating	Condition	Code	Rating	Exam
Low Back Pain	5241	20%	L4-S1 Spinal Fusion	5241	40%	20050228
COMBINED RATING: 20%			COMBINED RATING OF ALL VA CONDITIONS: 50%			

ANALYSIS SUMMARY:

Low Back Pain (LBP). According to the service treatment record (STR) and the MEB narrative summary (NARSUM), the CI underwent spinal fusion in January 2004. The 3 August 2004 orthopedic MEB consult, 3 months prior to separation, noted complaints of a tight back and decreased motion. Physical examination showed a stiff gait, but the CI was able to toe/heel walk. Tenderness was noted and forward flexion was described as hands to knee level. The examiner reported approximately 45 degrees of lateral bending and 30 degrees of extension.

During the 4 August 2004 MEB NARSUM and MEB examination (recorded on DD Forms 2807-1 and 2808), 3 months prior to separation, the CI reported back problems and pain from surgery. Physical examination showed tenderness and spasm. Range of motion (ROM) of the lumbar spine showed flexion of 35 degrees, with pain, and combined ROM of 120 degrees. The examiner specifically annotated all measurements were taken with a goniometer, except lateral rotation, which was an estimate. Lumbar ROM measurements performed at the follow-up NARSUM examination on 26 August 2004, 3 months prior to separation, recorded flexion of 20

degrees and extension of 10 degrees, taken with an inclinometer. No other movements were measured.

At the 28 February 2005 VA Compensation and Pension (C&P) examination, 3 months after separation, the CI reported radiating back pain. Physical examination showed a "slow wide-based gait, occasionally antalgic pattern on the left side and occasionally on the right side." Lumbosacral spine ROM measurements showed flexion of 20 degrees, with painful motion, and combined ROM of 140 degrees, after repetition.

Panel members directed attention to their rating recommendation based on the above evidence. The PEB rated the LBP 20%, coded 5241 (spinal fusion), citing flexion, measured with a goniometer, of 35 degrees. The VA rated the LBP 40%, coded 5241, based on the C&P examination, citing severe limitation of motion.

The current VASRD rating guidelines for the spine which are based on limitation of thoracolumbar ROM expressed in degrees became effective 26 September 2003 before all the examinations in evidence. Nevertheless, the panel noted none of the examinations in evidence were of the thoracolumbar spine. Since the examinations presented to the PEB were non-standard for rating purposes, the panel attempted to standardize them, when applicable, to the degree possible.

Panel members noted the orthopedic consult did not report ROM in degrees. The panel noted while the examinations were not goniometric, the descriptions of the motion as fingers reaching the knees approximates 45-60 degrees of thoracolumbar flexion and were sufficiently specific and detailed to conclude the limitation of motion did not approach the 30 degrees of limitation to support a 40% rating.

The panel noted the MEB NARSUM provided ROM values for the lumbar spine, not the thoracolumbar spine, as is the current practice under the updated VASRD guidelines. The examiner reported a lumbar flexion of 35 degrees. The panel additionally noted the NARSUM specifically annotated flexion, although lumbar, was taken with a goniometer. The normal flexion for the lumbar spine is approximately 60 degrees. When combined with a normal thoracic ROM, this would represent approximately 40 degrees loss of thoracolumbar flexion correlating with a 20% rating using the current VASRD general rating formula for diseases and injuries of the spine. The MEB NARSUM addendum also measured the lumbar spine, not the thoracolumbar spine, with an inclinometer rather than the goniometric thoracolumbar ROM specified by the VASRD (§4.71a, Plate V) and IAW §4.46 (accurate measurement).

Panel members noted the post-separation VA C&P examination reported "lumbosacral spine" ROM, and further noted this examination occurred after the current VASRD guidelines that utilize combined thoracolumbar ROM. The panel therefore concluded the C&P examiner was reporting lumbosacral ROM without the inclusion of thoracic motion.

The panel agreed that a 20% rating, but no higher, was justified for limitation of flexion (greater than 30 degrees but not greater than 60 degrees), as reported on the orthopedic MEB consult, MEB and MEB NARSUM examinations. 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 LBP.

BOARD FINDINGS: In the matter of the LBP 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 20230303, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans Affairs Record

AR20230009443, XXXXXXXXXXXX

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Dear XXXXXXXXXXXX:

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.

A copy of this decision has been provided to the counsel you listed on your application;