

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXX
BRANCH OF SERVICE: ARMY

CASE: PD-2023-00038
SEPARATION DATE: 20060620

SUMMARY OF CASE: Data extracted from the available evidence of record reflects this covered individual (CI) was an active duty E5, Corrections Specialist, medically separated from the Temporary Disability Retired List (TDRL) for “chronic low back pain” with a disability rating of 0%.

CI CONTENTION: “I was contacted by the Department of the USAF that my characterization may be upgraded to a retired status. I was separated between 09/11/2001 and 12/31/2009. I was rated by the military at 20% when discharged but my VA rating at the time of discharge was 50%.” [S/c] 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 - 20060531			VARD - 20050623			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Low Back Pain	5241	0%	Degenerative Disc Disease with Herniations at L4/5 and L5/S1, Status Post Hemilaminectomy, Discectomy, Facetectomy and Fusions x 2, Lumbar Spine	5241	40%	20050324
COMBINED RATING: 0%			COMBINED RATING OF ALL VA CONDITIONS: 50%			

ANALYSIS SUMMARY:

Chronic Low Back Pain. According to the service treatment record and MEB narrative summary (NARSUM), the CI’s low back pain began in April 2003 while lifting a military working dog. He underwent a micro-laminotomy and discectomy in June 2003, followed by an L4-S1 spinal fusion in November 2004. The CI was separated and placed on TDRL on 2 June 2005.

At the 24 March 2005 VA Compensation and Pension (C&P) examination, 14 months before TDRL removal, the CI reported constant low back pain, rated at 4-5/10 with flare ups to 8/10, which was precipitated by prolonged sitting, standing, or laying on his back. He also complained of stiffness, weakness, spasms, lack of endurance, and fatigability during his current physical therapy regimen. Symptoms were usually alleviated by reclining his feet or laying on his side with

support from a towel and pillow. The examiner recorded lumbar flexion to 30 degrees (normal 60 for lumbar, and 90 for thoracolumbar) with lower extremity tremors and pain; extension to 15 degrees (normal 30), with pain; right and left lateral flexion was to 15 degrees (normal 30), with pain; and bilateral rotation was to 15 degrees (normal 30), with pain radiating into the right buttock. The examiner stated that “all lumbar spine range of motion was with stated pain throughout motion, with increase at the end of motion.” There was also bilateral paravertebral tenderness with guarding, and the examiner noted the CI had a straight spine.

During the 15 February 2006 TDRL examination, 3 months prior to TDRL removal, the CI stated he felt the same since his previous evaluation. He continued to report pain in the left lower back area (L5) and along the right posterior hamstring behind the knee. The examiner noted that “swimming seems to help.” Physical findings showed the CI in mild acute distress, but he had minimal difficulty laying down and getting up. He demonstrated a normal gait and heel-to-toe walk with no paravertebral spasms, and had normal motor strength, sensation, and reflexes. The examiner used both a goniometer and inclinometer to measure range of motion (ROM) and recorded “37 degrees hip and 28 degrees lumbar flexion totaling 55 degrees. There is 2 hip and 1 lumbar extension, totaling 3...lumbar lateral bending is 27 left and 28 right...thoracolumbar rotation is 38 left and right.” The examiner also noted “flexion is to his knees.” No new radiographic studies were performed.

The panel directed attention to its rating recommendation based on the above evidence. The CI was removed from the TDRL with a permanent disability disposition of separation with severance pay at 0% for the low back condition, with the PEB citing “pain-limited motion.” The VA rated the low back condition 40%, also coded 5241, based on the C&P examination, citing reduced lumbar ROM, painful motion, and tenderness to palpation with guarding. Panel members first agreed that neither the C&P nor TDRL examination documented goniometric thoracolumbar ROM measurements compliant with the VA Schedule for Rating Disabilities (VASRD) (§4.71a, Plate V). Both cited “lumbar” rather than thoracolumbar ROM, and the TDRL examiner also used additional inclinometer measurements for the hip to calculate a total ROM. Of note, the PEB initially granted a 20% rating, but when the case was returned to the TDRL examiner for clarification, he stated that the rating should be based on pain because the CI experienced distress and trouble moving during the examination and demonstrated other signs of “real back pain.” Based on this, the PEB lowered the rating to a non-compensable 0% based on pain limiting motion under the American Medical Association pain rating guidelines, which are also not VASRD compliant. Panel members agreed that although the C&P and TDRL ROM measurements lacked probative value for rating, there was evidence of painful motion and functional loss recorded at both examinations which warranted a 10% rating IAW VASRD §§4.59 and 4.40. 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 5241, at the time of TDRL removal.

BOARD FINDINGS: In the matter of the low back condition, the panel recommends a disability rating of 20%, coded 5241 IAW VASRD §4.71a. 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
Chronic Low Back Pain	5241	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20230420, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans Affairs Record

AR20240005417

Dear XXXXXXXXXX:

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 and to the counsel you listed on your application.

Sincerely,