

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX
BRANCH OF SERVICE: ARMY

CASE: PD-2023-00059
SEPARATION DATE: 20020105

SUMMARY OF CASE: Data extracted from the available evidence of record reflects this covered individual (CI) was an active duty E4, Personnel Specialist, medically separated for “chronic mechanical low back pain” with a disability rating of 0%.

CI CONTENTION: No specific contention was made. 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 - 20011003			VARD - 20030512			
Condition	Code	Rating	Condition	Code	Rating	Exam
Low Back Pain	5299-5295	0%	Lower Back Strain	5292	40%	20030122
COMBINED RATING: 0%			COMBINED RATING OF ALL VA CONDITIONS: 50%			

ANALYSIS SUMMARY:

Low Back Pain (LBP). According to the service treatment record (STR) and MEB narrative summary (NARSUM), the CI’s low back condition began in September 2000 after heavy lifting. At an orthopedic visit on 24 April 2001, he reported an 8-month history of LBP and radiation with no bladder or bowel dysfunction. He could not perform sit-ups, run, road march, or lift heavy objects without pain. The provider noted paraspinal tenderness but no spinal deformity and normal heel and toe walk. Range of motion (ROM) tests showed the CI was able to flex forward until his hands reached the floor and side bend to 45 degrees; X-rays were normal.

During the 6 June 2001 MEB examination (recorded on DD Forms 2807-1 and 2808), 7 months before separation, the CI reported continued LBP and no benefit from non-steroidal anti-inflammatory medications and physical therapy. The examiner noted the CI could bend forward and reach the floor with his hands and had mild discomfort with extension and mild pain with side-bending. The CI had a “symmetrical gait” and normal lower extremity motor strength.

At the 9 July 2001 MEB NARSUM examination, 6 months prior to separation, the CI complained of continued LBP. Physical findings showed mild lumbar paraspinal tenderness but no lumbar spine deformity and “full ROM in forward flexion, rotation and side bending.” Distal sensation, strength, reflexes, gait and heel-to-toe walking were all normal. Lumbosacral X-rays were normal, and surgery was not recommended.

At the 22 January 2003 VA Compensation and Pension (C&P) examination, 12 months after separation, the CI reported daily, non-radiating LBP in the morning rated at 7/10. He was able to heel-to-toe walk with difficulty, primarily due to balance issues. Lumbosacral spine ROM measurements revealed flexion to 30 degrees (stopped due to pain), extension to 20 degrees (stopped due to pain and spasm), and lateral flexion and rotation to 20 degrees bilaterally (stopped due to pain).

The panel directed attention to its rating recommendation based on the above evidence. The PEB rated the low back condition 0%, analogously coded 5299-5295 (lumbosacral strain), citing normal ROM and X-rays with no neurological deficit. The VA rated the low back condition 40%, coded 5292 (spine, limitation of motion, of lumbar), based on the C&P examination, citing the back condition was “closer to severe limitation of motion than moderate.” In accordance with DoDI 6040.44, the panel is required to recommend a rating based on the Veteran Administration Schedule for Rating Disabilities (VASRD) in effect at the time of separation. In this case, panel members must correlate the above clinical data with the 2002 VASRD spine standards, which were in effect at the CI’s date of separation.

Criteria under code 5295 criteria warrants a 10% rating for a lumbar condition with characteristic pain on motion. The next higher 20% requires the presence of “muscle spasm on extreme forward bending, loss of lateral spine motion (unilateral) in standing position.” The panel agreed that a 10% rating, but no higher, was justified for characteristic pain on motion as demonstrated at the MEB and orthopedic examinations, which recorded tenderness or mild pain. The panel next considered whether rating under code 5292 (limitation of motion, lumbar spine) provided for a higher rating (§4.7). The orthopedic and MEB examinations (8 and 7 months before separation) showed forward flexion with hands reaching to the floor, which indicates at least 60 degrees of ROM (normal between 50-60 degrees); the MEB NARSUM examiner documented full ROM in all planes. Panel members agreed the C&P examination ROM measurements were less probative in value since they were remote from separation and not consistent with the STR evidence. At the time of separation, the CI’s physical profile allowed unlimited walking and bicycling, and the only physical examination findings were tenderness or mild back pain; lumbar spine X-rays were normal. Additionally, 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 recommends a disability rating of 10% for the low back condition, coded 5299-5295.

BOARD FINDINGS: In the matter of the low back condition, the panel recommends a disability rating of 10%, coded 5299-5295 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 Mechanical Low Back Pain	5299-5295	10%

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20230714, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans Affairs Record

AR20230013715, XXXXXXXXX

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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 to 10% 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.