

CUI//SP-PRVCY

**RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW**

NAME: XXXXXXXXXX
BRANCH OF SERVICE: ARMY

CASE: PD-2024-00008
SEPARATION DATE: 20041118

SUMMARY OF CASE: Data extracted from the available evidence of record reflects this covered individual (CI) was an active duty E3, Military Police, medically separated for “chronic mid and low back pain” and “chronic neck pain,” rated 10% each, with a combined disability rating of 20%.

CI CONTENTION: Review all conditions. 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 - 20040819			VARD - 20050609			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Mid and Low Back Pain	5237	10%	Degenerative Disc Disease of the Thoracolumbar Spine	5243	20%	20050129
Chronic Neck Pain	5237	10%	Degenerative Disc Disease of the Cervical Spine	5243	10%	20050129
Sensorineural Hearing Loss	Not Unfitting		Bilateral Hearing Loss	6100	NSC	STR
Mild Hypertension	Not Unfitting		Hypertension	7101	0%	20050129
COMBINED RATING: 20%			COMBINED RATING OF ALL VA CONDITIONS: 30%			

ANALYSIS SUMMARY:

Chronic Mid and Low Back Pain. According to the service treatment record (STR) and MEB narrative summary (NARSUM), the CI’s back condition began in April-May 2003 after tent frames fell and hit him on the head. There was no surgical indication, and X-rays in May 2004 revealed multilevel broad-based bulges without evidence of canal stenosis or neural foraminal narrowing. There were also mild degenerative changes in the posterior facets of L4 on L5.

The 3 May 2004 MEB physical therapy (PT) examination, 7 months prior to separation, documented lumbar range of motion (ROM), rather than VASRD-specified (§4.71a, Plate V) thoracolumbar ROM, with lumbar flexion to 65 degrees and a combined ROM of 135 degrees (normal 240) after repetition, and associated painful motion.

Controlled by: DAF
Controlled by: SAF/MRBD
CUI Categories: SP-MIL/SP-PRVCY
Limited Dissemination Control: N/A
POC: SAF.MRBD.Workflow@us.af.mil

During the 18 June 2004 MEB NARSUM examination, 5 months before separation, the CI complained of dull, constant back pain, rated at 7/10 at rest and 8-9/10 with activity. The examiner noted a normal gait, diffuse tenderness over the spinous processes, and full spine ROM.

At the 29 January 2005 VA Compensation and Pension (C&P) examination, 2 months after separation, the CI reported constant back pain worsened by lifting, twisting, going up and down stairs, and running. Physical examination revealed symmetrical spine muscles and no lumbar spine pain to palpation. Measured ROM showed forward flexion to 30 degrees (normal 90), extension to 20 degrees (normal 30), and lateral rotation to 20 degrees (normal 30) on both sides.

The panel directed attention to its rating recommendation based on the above evidence. The PEB rated the back condition 10%, coded 5237 (lumbosacral strain), citing tenderness. The VA rated the back condition 20%, coded 5243 (intervertebral disc syndrome (IVDS)), based on the C&P examination, citing complaints of pain with flexion to 30 degrees. Panel members first agreed that the VA C&P examination carried greater probative value for rating since it was closest to separation and documented thoracolumbar findings and measurements. The panel determined that a 20% rating, but no higher, was justified for limitation of flexion (greater than 30 degrees but not greater than 60 degrees). There was no documentation of IVDS 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 20% for the back condition, coded 5237.

Chronic Neck Pain. According to the STR and MEB NARSUM, the CI's neck condition also began after tent frames fell and hit him on the head, as noted above. In January 2004, X-rays revealed a large, left paracentral disc extrusion at C6-7 with moderate central canal stenosis. Also noted were two small intra-foraminal disc protrusions at C3-4 and C4-5. Surgery was not indicated.

During the MEB PT examination, cervical spine ROM tests showed flexion to 25 degrees (normal 45) and a combined ROM of 195 degrees (normal 340) after repetition, with painful motion. The MEB NARSUM examiner noted the same pain complaints the CI reported for his back, and documented neck tenderness and full ROM upon examination.

At the VA C&P examination, the CI reported constant neck pain exacerbated by carrying or lifting heavy objects. Physical findings revealed slight pain with palpation. Cervical spine ROM, in degrees, showed: flexion to 30, extension to 20 (normal 45) with painful motion, left rotation to 20 (normal 45), and right rotation to 30. There was no change in ROM or pain after repetition.

The panel directed attention to its rating recommendation based on the above evidence. The PEB rated the neck condition 10%, coded 5237, citing tenderness. The VA rated the neck condition 10%, coded 5243, based on the C&P examination, citing painful motion. Panel members agreed that a 20% rating, but no higher, was justified for limitation of flexion (greater than 15 degrees but not greater than 30 degrees) as reported on the MEB PT and VA examinations. There was no evidence of IVDS with incapacitating episodes for a higher rating. After due deliberation, considering all the evidence and mindful of VASRD §4.3 (reasonable doubt), the panel recommends a disability rating of 20% for the neck condition, coded 5237.

Contended PEB Conditions: Sensorineural Hearing Loss and Mild Hypertension. The panel's main charge is to assess the fairness of the PEB determination that the contended conditions were not unfitting.

The panel noted the 13 April 2004 commander's performance statement did not implicate the CI's hearing loss when he entered the disability evaluation system (DES). The NARSUM examiner noted that during the boarding process for his back and neck pain, the CI was "found to have sensorineural hearing loss on his physical exam," and reported "a history of hearing loss for which

he was evaluated during his initial physical into the military and signed a waiver.” It was only after entering the DES that this condition became permanently profiled on 28 July 2004. Panel members noted that while the CI’s hearing loss failed retention standards during the 9 August 2004 MEB proceedings, the condition was determined to have existed prior to service (EPTS) and marked “no” for permanent service aggravation. 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.

The contended mild hypertension 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, the panel recommends a disability rating of 20%, coded 5237 IAW VASRD §4.71a. In the matter of the neck condition, the panel recommends a disability rating of 20%, coded 5237 IAW VASRD §4.71a. In the matter of the contended sensorineural hearing loss and mild hypertension, the panel recommends no change from the PEB determinations as not unfitting. 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; and, that the discharge with severance pay be re-characterized to reflect permanent disability retirement, effective the date of medical separation:

CONDITION	VASRD CODE	PERMANENT RATING
Chronic Mid and Low Back Pain	5237	20%
Chronic Neck Pain	5237	20%
	COMBINED	40%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20240108, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans Affairs Record

X



DEPARTMENT OF THE ARMY
ARMY REVIEW BOARDS AGENCY
251 18TH STREET SOUTH, SUITE 385
ARLINGTON, VA 22202-3531

AR20240006608

Dear XXXXXXXX:

I accept the recommendation of the Department of Defense Physical Disability Board of Review (DoD PDBR) to re-characterize your separation as a disability retirement with the combined disability rating of 40% effective the date of your medical separation for disability with severance pay. Enclosed is a copy of the Board's recommendation and record of proceedings for your information.

The re-characterization of your separation as a disability retirement will result in an adjustment to your pay providing retirement pay from the date of your original medical separation minus the amount of severance pay you were previously paid at separation.

The accepted DoD PDBR recommendation has been forwarded to the Army Physical Disability Agency for required correction of records and then to the U.S. Defense Finance and Accounting Service to make the necessary adjustment to your pay and allowances. These agencies will provide you with official notification by mail as soon as the directed corrections have been made and will provide information on your retirement benefits. Due to the large number of cases in process, please be advised that it may be several months before you receive notification that the corrections are completed and pay adjusted. Inquiry concerning your correction of records should be addressed to the U.S. Army Physical Disability Agency, (TAPD-ZB), 1835 Army Boulevard, Building 2000, JBSA, Fort Sam Houston, TX 78234.

A copy of this decision has also been provided to the Department of Veterans Affairs.

Sincerely,

X

Enclosure