

RECORD OF PROCEEDINGS  
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX  
BRANCH OF SERVICE: ARMY

CASE: PD-2023-00088  
SEPARATION DATE: 20070608

**SUMMARY OF CASE:** Data extracted from the available evidence of record reflects this covered individual (CI) was a National Guard E6, Interrogator, medically separated for “chronic cervical spine pain” and “chronic upper back pain,” with a combined disability rating of 10%.

**CI CONTENTION:** “Values for discharge were lower and not aligned with VA disability ratings. Did not receive full evaluation for disabilities.” 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 - 20070423			VARD – 20071031			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Cervical Spine Pain	5237	10%	Chronic Cervical Strain	5237	10%	20070920
Chronic Upper Back Pain	5237	0%	Chronic Thoracolumbar Sprain	5237	10%	20070920
Intermittent Right Knee Pain	Not Unfitting		Right Iliotibial Band Syndrome	5260-5019	10%	20070920
Intermittent Right Ankle Pain			Status Post Right Ankle Sprain	5299-5271	0%	20070920
<b>COMBINED RATING: 10%</b>			<b>COMBINED RATING OF ALL VA CONDITIONS: 30%</b>			

**ANALYSIS SUMMARY:**

**Cervical Spine.** According to the service treatment record (STR) and MEB narrative summary (NARSUM), the CI’s neck condition began in August 2005 when he was involved in a motor vehicle accident (MVA). An MRI in January 2007 showed straightening of the cervical spine curvature with minimal/early degenerative spondylosis, and without any significant central canal, foraminal or exiting nerve root compromise.

During the 27 March 2007 MEB NARSUM examination, 2 months prior to separation, the CI complained of aching, posterior neck pain rated at 3-4/10. He stated he was in pain ‘80% to 90% of the time’ while awake. Physical examination showed mild tenderness over the posterior lower cervical spine, but no gait abnormalities, spasm or deformity. Range of motion (ROM) testing revealed active flexion to 45 degrees (normal), extension to 45 degrees (normal), right lateral flexion to 45 degrees (normal), left lateral flexion to 45 degrees (normal), right rotation

to 70 degrees (normal 80), left rotation to 75 degrees (normal 80) with painful motion, and no additional limitation after repetitive movement.

At the 20 September 2007 VA Compensation and Pension (C&P) examination, 3 months after separation, the CI reported constant neck stiffness and pain described as aching, burning, or sharp. The examiner noted tenderness, but no muscle spasm, pain radiation on movement, or posture/gait abnormalities. Cervical spine measurements, in degrees, showed flexion to 45, extension to 45, right lateral flexion to 40, left lateral flexion to 35, right rotation to 55, left rotation to 70 limited by pain, and no additional limitation after repetition.

The panel directed attention to its rating recommendation based on the above evidence. The PEB rated the cervical spine condition 10%, coded 5237 (cervical spine strain), citing cervical strain with tenderness. The VA also rated the cervical spine condition 10%, coded 5237, based on the C&P examination, citing evidence of painful cervical spine ROM. Panel members agreed that while there was no compensable limitation of motion, a 10% rating was justified for the presence of painful motion and tenderness. 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. 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 cervical spine condition.

Upper Back. According to the STR and MEB NARSUM, the CI's upper back condition also began with the MVA in August 2005. A thoracic spine MRI in January 2007 was assessed as "normal" with an "incidental tiny hemangioma of the T4 vertebral body."

During the MEB NARSUM examination, the CI's description of aching neck pain, rated at 3-4/10, also applied to his upper back symptoms. Physical examination revealed no gait abnormalities, tenderness, spasm or deformity. Thoracolumbar ROM measurements showed flexion to 80 degrees (normal 90) and a combined ROM of 230 degrees (normal 240) after repetition, with all motions limited by pain.

At the VA C&P examination, the CI reported constant upper back pain rated at 3/10. The examiner documented tenderness and forward flexion to 90 degrees, with a combined ROM of 240 degrees after repetition.

The panel directed attention to its rating recommendation based on the above evidence. The PEB rated the upper back condition 0%, coded 5237, citing no significant loss of spinal motion, radiculopathy, deformity or muscle spasm. The VA rated the thoracolumbar sprain 10%, coded 5237, based on the C&P examination, citing evidence of thoracolumbar spine tenderness that did not cause an abnormal gait or spinal contour. 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) as reported on the NARSUM examination. 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 evidence of intervertebral disc syndrome which resulted in incapacitating episodes requiring physician-prescribed bed rest to warrant consideration of rating under the alternate VASRD formula for that condition. 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 upper back condition, coded 5237.

Contended PEB Conditions: Intermittent Right Knee Pain; Intermittent Right Ankle Pain. The panel's main charge is to assess the fairness of the PEB determination that the contended conditions were not unfitting. None of the conditions were profiled or implicated in the commander's statement, and did not fail retention standards. There was no performance-based evidence from the record that any of the conditions 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 any of the contended conditions, so no additional disability ratings are recommended.

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**BOARD FINDINGS:** In the matter of the cervical spine condition and IAW VASRD §4.71a, the panel recommends no change in the PEB adjudication. In the matter of the upper back condition, the panel recommends a disability rating of 10%, coded 5237 IAW VASRD §4.71a. In the matter of the contended intermittent right knee and right ankle conditions, 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, effective the date of medical separation:

<b>CONDITION</b>	<b>VASRD CODE</b>	<b>PERMANENT RATING</b>
Chronic Cervical Spine Pain	5237	10%
Chronic Upper Back Pain	5237	10%
	<b>COMBINED</b>	<b>20%</b>

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The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20231026, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans Affairs Record

AR20240006604, XXXXXXXXXXX

Dear XXXXXXXXXXX:

The Department of Defense Physical Disability Board of Review (DoD PDBR) 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.