

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX
BRANCH OF SERVICE: ARMY

CASE: PD-2024-00024
SEPARATION DATE: 20030304

SUMMARY OF CASE: Data extracted from the available evidence of record reflects this covered individual (CI) was an active duty E4 Information Systems Operator, medically separated for “chronic back pain” with a disability rating of 10%.

CI CONTENTION: Review requested of additional conditions not identified by the Medical Evaluation Board (MEB) and Physical Evaluation Board (PEB). 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 PEB to be unfitting for continued military service, and when specifically requested by the CI, those conditions identified by the 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 - 20021105 | | | VARD - 20060428 | | | |
|-----------------------------|-----------|--------|---|------|--------|------|
| Condition | Code | Rating | Condition | Code | Rating | Exam |
| Chronic Back Pain | 5099-5003 | 10% | Residuals of Back Injury | 5237 | NSC | STR |
| COMBINED RATING: 10% | | | COMBINED RATING OF ALL VA CONDITIONS: NA | | | |

ANALYSIS SUMMARY:

Chronic Back Pain. According to the service treatment record (STR) and MEB narrative summary (NARSUM), the CI’s back condition began in 1995 after repeatedly lifting 70-pound mail bags on and off trucks. At a physical therapy (PT) visit on 12 February 2002, the CI reported low back pain, and findings showed tenderness but normal spinal curvature and trunk (lumbosacral) range of motion (ROM). Lumbar and cervical spine X-rays in March 2002 were within normal limits as were thoracic X-rays in Oct 2002.

The 12 May 2002 MEB NARSUM examination, 10 months prior to separation, noted complaints of constant, sharp low back pain, rated at 9-10/10. The examiner recorded tenderness and active “forward bending,” which showed the CI was able to “reach his mid leg with pain” as well as “extension with pain in his L4-L5 region.” Lateral bending and rotation demonstrated mild to moderate pain, but “functional movement.”

During the 5 June 2002 MEB examination (recorded on DD Forms 2807-1 and 2808), 9 months before separation, the CI reported recurrent back pain, and the examiner noted a normal spine. The VA determined the back condition was not service connected (NSC).

The panel directed attention to its rating recommendation based on the above evidence. The PEB rated the back condition 10%, analogously coded 5099-5003 (degenerative arthritis), citing the US Army Physical Disability Agency pain policy. Panel members noted the PEB did not apply a VASRD spine code for rating consideration but assigned a 10% rating under code 5003 for painful motion. There was no evidence to support a higher rating under this code. The panel next considered whether a higher rating was warranted under a spine code.

In accordance with DoDI 6040.44, the panel is required to recommend a rating using the VASRD in effect at the time of separation, and thus correlate the above clinical data with the 2003 rating schedule in this case. Unlike the current §4.71 rating standards, at the time of the CI's separation, numerical ROM values were not a feature of the rating schedule. While an alternative rating under code 5295 (lumbosacral strain) warranted a 10% for "characteristic pain on motion," this provided no benefit to the CI. A higher 20% rating for "muscle spasm on extreme forward bending, loss of lateral spine motion, unilateral, in standing position" was not justified. The panel also considered code 5292 (spine, limitation of motion of, lumbar). The NARSUM examiner recorded flexion to mid-leg, which is most consistent with slight ROM decrease, and the PT and MEB examinations documented normal ROM and spine. Thus, panel members agreed a "moderate" limitation of lumbar spine motion was not supported for a 20% rating under code 5292. Additionally, there was no evidence of intervertebral disc syndrome, or incapacitating episodes requiring physician-prescribed bedrest, to support higher ratings under those formulas. Thus, the panel concluded there were no applicable codes to support a rating higher than that adjudicated by the PEB. 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 back condition.

BOARD FINDINGS: In the matter of the back condition 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 20240418, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans Affairs Record

AR20240010234,XXXXXXXXXX

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.