

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXX
BRANCH OF SERVICE: ARMY

CASE: PD-2024-00030
SEPARATION DATE: 20080303

SUMMARY OF CASE: Data extracted from the available evidence of record reflects this covered individual (CI) was an active duty E5, Signal Support Systems Specialist, medically separated for “chronic low back pain” with a disability rating of 20%.

CI CONTENTION: Review requested of an additional condition 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 - 20071105			VARD - 20081010			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Low Back Pain	5241	20%	Status Post Lumbar Bilateral L4-5 Herniated Nucleus Pulposus, L4-5 Hemi Laminectomy, Discectomy with Degenerative Disc Disease	5242	10%	20080814
COMBINED RATING: 20%			COMBINED RATING OF ALL VA CONDITIONS: 10%			

ANALYSIS SUMMARY:

Low Back Pain. According to the service treatment record and MEB narrative summary (NARSUM), the CI injured his back in December 2005 after he slipped on ice and fell. He underwent a left L4 and right L5 hemi-laminotomy and discectomy on 17 May 2006.

During the 28 August 2007 MEB NARSUM examination, 6 months prior to separation, the CI described intermittent pain that caused his back to “lock up” when making sudden movements. He reported pain “35% of the time,” which sometimes disturbed sleep and limited functional activities, but he denied any radiation of symptoms. Physical examination showed a normal gait, lower extremity strength at 5/5, and intact sensation. The examiner recorded lumbosacral flexion “until hands are just below knee level,” and extension, lateral flexion, and rotation as “all functional.”

At the 5 September 2007 MEB physical therapy examination, 5 months before separation, thoracolumbar range of motion (ROM) measurements showed flexion to 60 degrees (normal

90) and a combined ROM of 160 degrees (normal 240) after repetition. The examiner used an inclinometer for flexion and a goniometer for all other measurements, and noted mechanical limitation as the reason for the abnormal limitation of motion. Tenderness and muscle spasm were present, but there was no abnormal spinal contour.

At the 14 August 2008 VA Compensation and Pension (C&P) examination, 5 months after separation, the CI reported stiffness, weakness, numbness, and dizziness as symptoms of his back condition. He reported a sharp, sticking and cramping low back pain, rated at 5/10, which occurred 3 times a day and lasted for 4 hours. Physical examination showed a normal gait, no tenderness or muscle spasms, and no evidence of radiating pain on movement. Thoracolumbar flexion was to 70 degrees with pain, and combined ROM was 200 degrees. The joint function was additionally limited by pain after repetitive use, with pain as the major impairment.

The panel directed attention to its rating recommendation based on the above evidence. The PEB rated the low back condition 20%, coded 5241 (spinal fusion), citing thoracolumbar spine flexion to 60 degrees. The VA rated the low back condition 10%, coded 5242 (degenerative arthritis of the spine), based on the C&P examination, citing thoracolumbar forward flexion greater than 60 degrees but not greater than 85 degrees; or, combined ROM of the thoracolumbar spine greater than 120 degrees but not greater than 235 degrees. Panel members

first noted that the MEB examinations did not record ROM measurements specified by the VASRD (§4.71a, Plate V), which require thoracolumbar measurements and goniometer use. While the PEB cited thoracolumbar flexion to 60 degrees to assign a 20% rating, this was measured by an inclinometer at the MEB PT examination. Thus, the panel agreed the C&P examination carried the greatest probative value for rating because it met VASRD requirements. However, in accordance with DoD guidance, the panel cannot lower a rating previously assigned 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 low back condition.

BOARD FINDINGS: In the matter of the low 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 20240621, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans Affairs Record

AR20240010244,XXXXXXXXXX

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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.