

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME:
BRANCH OF SERVICE: ARMY

CASE: PD-2024-00046
SEPARATION DATE: 20061015

SUMMARY OF CASE: Data extracted from the available evidence of record reflects this covered individual (CI) was a National Guard E8, Cavalry Scout, medically separated for “chronic low back pain...” and “chronic right wrist pain...,” rated 10% each, with a combined disability rating of 20%.

CI CONTENTION: He received a higher rating from the VA. The CI also requested review of additional conditions not identified by the Medical Evaluation Board (MEB) and/or 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 - 20060801			VARD - 20070507			
Condition	Code	Rating	Condition	Code	Rating	Exam
Chronic Low Back Pain	5237	10%	Lumbar Strain	5243	20%	20070123
Chronic Right Wrist Pain	5099-5003	10%	Residuals Right Wrist Fracture	5215-5010	10%	20070123
Bilateral High-frequency Hearing Loss	Not Unfitting		Bilateral Hearing Loss	8100	0%	20070116
COMBINED RATING: 20%			COMBINED RATING OF ALL VA CONDITIONS: 40%			

ANALYSIS SUMMARY:

Chronic Low Back Pain (LBP). According to the service treatment record (STR) and MEB narrative summary (NARSUM), the CI’s LBP began in May 2004 after wearing full combat gear while on patrols over rough terrain. Spine X-rays showed L5-S1 disc space narrowing with mild anterolisthesis of L5 on S1, and an MRI revealed mild disc protrusion at L4-5 and L5-S1; surgery was not indicated.

The 13 December 2005 MEB physical therapy (PT) range of motion (ROM) examination, 10 months before separation, recorded (in degrees): active lumbar flexion to 62 (normal 90), extension to 15 (normal 30), right and left lateral flexion to 30 (normal), right rotation to 70 (normal 30), and left rotation to 50 (normal 30), after repetitive motion and with associated painful motion. The examiner noted goniometric measurements except for internal rotation.

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During the 4 January 2006 MEB examination (recorded on DD Forms 2807-1 and 2808), 9 months prior to separation, the examiner documented tenderness. The MEB NARSUM examination, conducted the same day, noted complaints of constant, aching LBP with severity independent of activity or time of day. Physical findings showed no obvious back deformity, but there was tenderness and paraspinal muscle spasm. Sensory, motor and deep tendon reflexes were intact, and the provider referred to the 13 December 2005 MEB PT ROM measurements

The CI was mobilized for 2 years and 6 months of active duty on 6 January 2007, 3 months after being medically separated from his temporary active-duty tour. At the 23 January 2007 VA Compensation and Pension (C&P) examination, he complained of constant LBP, rated at 8-9/10, as well as stiffness. He reported being incapacitated about 6 times a year, with each episode lasting 6-7 days. The examiner recorded a normal gait and spinal curvature, noting tenderness but no spasm. Thoracolumbar flexion was to 65 degrees (normal 90), and combined ROM was 210 degrees (normal 240). Repetition caused pain, fatigue, weakness and lack of endurance.

The panel directed attention to its rating recommendation based on the above evidence. The formal PEB rated the low back condition 10%, coded 5237 (lumbosacral strain), citing ROM to 62 degrees due to pain, but no neuropathy. The VA rated the low back condition 20%, coded 5243 (intervertebral disc syndrome (IVDS)), citing that although the criteria for a 20% rating based on limited ROM was not met, right sciatica and increased symptoms (not in the panel's scope) with repetition were considered and "more adequately" described that degree of disability.

Panel members noted that the MEB PT ROM examination documented "lumbar" ROM rather than thoracolumbar ROM specified by the VASRD (§4.71a, Plate V). The VA C&P examination, however, recorded VASRD-compliant measurements, was most proximate to separation, and thus, provided greater probative value for rating. The panel agreed a 10% rating, but no higher, was justified for limitation of flexion (greater than 60 degrees but not greater than 85 degrees) and combined ROM (greater than 120 degrees but not greater than 235 degrees), as reported on the VA examination. The panel noted a 10% rating could be equally justified for the presence of painful motion and tenderness but offered no benefit to the CI. 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. Also, there was no evidence of IVDS which resulted in incapacitating episodes requiring physician-prescribed bed rest to warrant consideration of rating under that alternate VASRD formula. 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.

Chronic Right Wrist Pain. According to the STR and MEB NARSUM, the CI's right (dominant) wrist condition began in November 2004 when he sustained a comminuted right distal radius and ulna fracture after falling from a ladder. The fracture was stabilized, and he underwent PT treatment.

At the MEB PT ROM examination, right wrist "flexion" was to 40 degrees (normal 80) and "extension" to 42 degrees (normal 70), after repetition and with painful motion. During the MEB examination, the CI reported right wrist pain, and the examiner noted tenderness. Dorsiflexion was limited to 50 degrees (normal 70), palmar flexion to 30 degrees (normal 80), radial deviation to 5 degrees (normal 20) and ulnar deviation to 20 degrees (normal 45). At the MEB NARSUM examination, the CI reported occasional right wrist pain and significant ROM loss. He was not able to do push-ups because of the inability to extend his wrist. Physical findings showed a healed right wrist surgical scar with reduced of flexion and extension. The examiner noted significant improvement, but persistent ROM limitation. At a 10 January 2006 PT examination, active right wrist ROM showed extension to 40 degrees and flexion of 50 degrees. Grip testing for the MEB on 2 March 2006, 7 months prior to separation, recorded hand dynamometer results for the right hand of: 100, 91, and 101 pounds.

At the VA C&P examination, the CI reported constant, sharp, and sticking right wrist pain, rated at 4-10/10, and that he was not able to put weight on the wrist. He also had decreased right hand grip strength and dropped things intermittently. On examination, there was tenderness. Measured ROM, in degrees, showed: dorsiflexion to 50, palmar flexion to 45, radial deviation to 8, and ulnar deviation to 30. Repetition caused pain, weakness, fatigue and lack of endurance.

The panel directed attention to its rating recommendation based on the above evidence. The PEB rated the right wrist condition 10%, analogously coded 5099-5003 (degenerative arthritis), citing some loss of wrist motion with right flexion to 40 degrees and extension to 42 degrees. The VA also rated the right wrist condition 10%, but dual-coded 5215-5010 (limitation of motion of wrist—arthritis, due to trauma, substantiated by X-ray findings), based on the C&P examination. Panel members agreed that evidence of painful motion causing functional loss supported a 10% rating (based on §4.59, §4.40 and §4.45). The panel considered alternative VASRD wrist and forearm analogous codes, but all were less applicable and/or not advantageous to rating. 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 right wrist condition.

Contended PEB Condition: Bilateral High-frequency Hearing Loss. The panel's main charge is to assess the fairness of the PEB determination that the contended condition was not unfitting. There was no commander's statement in evidence, but the CI was issued a permanent H3 profile advising an annual hearing examination and no exposure to greater than 85 decibels. The CI was assessed with mild high frequency hearing loss and normal middle ear function, bilaterally. The MEB forwarded the condition citing it 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. Panel members noted the CI was able to return to active duty 3 months after his disability 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 low back condition and IAW VASRD §4.71a, the panel recommends no change in the PEB adjudication. In the matter of the right wrist condition and IAW VASRD §4.71a, the panel recommends no change in the PEB adjudication. In the matter of the contended bilateral high-frequency hearing loss, the panel recommends no change from the PEB determination as not unfitting. 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 20240907, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans Affairs Record



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

AR20240013329,

Dear

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.

Sincerely,

Enclosure