



DEPARTMENT OF THE ARMY
SOLDIERS' IDES/MEB COUNSEL
SOLDIER SUPPORT CENTER
BLDG 4-2843, NORMANDY DRIVE
FORT BRAGG, NC 28310-7310

COPY

REPLY TO
ATTENTION OF:

MCXC-DODH-MEB

26 July 2012

MEMORANDUM FOR President, National Capitol Region Physical Evaluation Board, 2900 Crystal Drive, Suite 310, Arlington, VA 22202

MEMORANDUM TO and THRU President, Washington, National Capitol Region Physical Evaluation Board, 2900 Crystal Drive, Suite 310, Arlington, VA 22202

FOR Seattle DES Rating Activity Site (D-RAS), US Department of Veterans Affairs, 915 Second Avenue, Seattle, WA 98174

SUBJECT: Request for D-RAS Rating Reconsideration for **SPC Essex, Isaac A.**

1. The purpose of this memorandum is to notify that SPC Essex Non-concurs with the DES Rating Activity Site (D-RAS) Proposed VA Rating Action on June 8, 2012 and requests the D-RAS reconsider their rating for his low back pain a condition found unfitting by the Physical Evaluation Board.
2. This request is made under the DoD Directive-Type Memorandum (DTM) for the Disability Evaluation System (DES) Pilot Program, dated 21 November 2007, para 6.12.3. The basis for the request for reconsideration is due the D-RAS's error in applying case law and regulation.

Degenerative Disc Disease of the Lumbar Spine

3. SPC Essex's range of motion was not properly determined in this matter. According to the C&P exam, the examiner determined flexion at 60 degrees of forward flexion; however, PA-C Keisha Cohen went on to state that SPC Essex had flexion of 90 degrees stating the "SM was only about (sic) to flex to 60 while being measured but flexed to 90 for rectal exam".
4. According to the VASRD at Section 4.3 any resolution of doubt "...will be resolved in favor of the claimant." The issue is whether or not PA-C Cohen's personal opinion of a ROM from a "rectal exam" is more accurate than an actual "scientific" range of motion test she completed for SPC Essex's VA C&P exam. The VASRD code requirement of scientific ROM should be utilized in this case.
5. In this case it appears questionable if any required ROM testing was performed because the report states the following: "SM was only about (sic) to flex to 60 while being measured..." This implies that no actual measurement was done. Rather, it appears she made an "about 60" determination and then discounted the exam in favor of the rectal exam guesstimation.

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6. Certainly, a **guess** by the examiner is not his ability to perform a forward flexion ROM test. The failure of the VA Rater to abide the correct protocol to perform a scientific determination violated the VASRD code at Section 4.3. Based on the failure of the examiner to properly perform the required ROM measurement, the Soldier is entitled to the best medical evidence of the ROM on his back.

7. SPC Essex clearly has damage and the associated pain with his back. He has continued to have treatment since the initial problems began in 2008 after he injured his knee during PT sprints. By 2010 he was undergoing physical therapy, aquatic therapy, pain management, a TENS unit and drug therapies. A 2010 MRI of his L-Spine shows "posterior central disc protrusion." (See attached NARSUM page 4 Para #3.a) The physical MRI results and the treatment records support significant injures to SPC Essex's back.

8. More importantly, he had a ROM of 55 degrees as a result of Army for evaluation purposed in the beginning of his Medical Board Process. (See attached ALHTA notes by Dr. Huang, orthopedic specialist dated 3 Nov 2011) That range of motion is consistent with Ms. Cohen's true ROM at 60 degrees. Certainly, a real range of motion test performed by an actual orthopedic specialist for the benefit of the Army is a clear indication that SPC Essex actual ROM is 55 to 60 degrees.

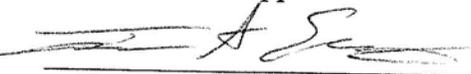
9. The failure of the VA examiner, who is not a doctor and unable to abide by the correct protocol to perform a scientific determination, violated the VASRD code at Section 4.3. SPC Essex's ROM testing was 60 degrees and that should be the ROM utilized to determine his rating. SPC Essex is entitled to a 20% rating under the VASRD code.

10. The POC for this Memorandum is the undersigned at 910-643-1819, Soldier Support Center, Bldg 4-2843, Normandy Drive, Fort Bragg, NC 28310.

Attachments
As Stated


MARCELLE QUIST
Soldiers' MEB Counsel

Reviewed and Approved:


ISAAC A. ESSEX
SPC, USA