

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 February 2024

DOCKET NUMBER: AR20220011533

APPLICANT REQUESTS: reconsideration of his previous request for:

- disability rating increased from 20 percent to 30 percent
- a physical disability retirement

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- Request for Reconsideration
- DA Form 3349 (Physical Profile)
- DA Form 199 (Physical Evaluation Board (PEB) Proceedings), dated 30 July 2010
- DA Form 199, dated 20 September 2010
- Physical Disability Information Report
- Warrior in Transition Treatment Plan
- Patient Movement Request
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the periods ending 24 May 1985, 20 March 1992, 20 April 1996, 19 October 2004, 15 November 2006, 10 February 2009, and 29 December 2010
- NGB Forms 22 (Department of the Army and the Air Force National Guard Bureau Report of Separation and Record of Service), for the period ending 10 July 1998, 31 March 2001, and 30 December 2010
- NGB Form 22A, (Correction to NGB Form 22), for the period ending 3 November 1998
- Orders A10-929567
- Orders 294-0212
- Orders 005-1051
- Medical Record (627 pages)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20120002724 on 19 April 2012.

2. The applicant states he was released from duty with 20 percent disability rating from the Army. He would like a review of his case and ratings. He would like to know if it is possible to get a higher rating to see if he can qualify for retirement. He was released for a medical condition, but he does not know if they knew his condition was heart problems. He had two heart surgeries and had stints put in his heart both times; one was in 2003 at El Paso, TX. The first surgery occurred at William Beaumont Medical Center when he was attached to the 211th Transportation Company, Marina, CA in May 2003; the same unit he deployed to Kuwait. In 2008 while attached to the 436th Chemical Company in Kabul Afghanistan, he required a second surgery to put in another stent; his procedure was done at Landstuhl, Germany. One year after that, he had chest pains again while deployed in Talil, Iraq with the 36th Sustainment Brigade. He was sent to Landstuhl, Germany again, was sent home, and discharged from the Army. He had an additional procedure by a civilian provider in Killeen, TX and yet another with the VA at Temple Veterans Hospital.

3. The applicant underwent a medical examination on 9 August 1983 for the purpose of enlistment on 9 August 1983. His Standard Form (SF) 88 (Report of Medical Examination) shows he was found qualified for enlistment and assigned a physical profile of 111111.

A physical profile, as reflected on a DA Form 3349 (Physical Profile) or DD Form 2808, is derived using six body systems: "P" = physical capacity or stamina; "U" = upper extremities; "L" = lower extremities; "H" = hearing; "E" = eyes; and "S" = psychiatric (abbreviated as PULHES). Each body system has a numerical designation: 1 meaning a high level of fitness; 2 indicates some activity limitations are warranted, 3 reflects significant limitations, and 4 reflects one or more medical conditions of such a severity that performance of military duties must be drastically limited. Physical profile ratings can be either permanent or temporary.

4. The applicant enlisted in the Texas Army National Guard (TXARNG) on 9 August 1983.

5. The applicant enlisted in the U.S. Army Reserve (USAR) on 20 October 1984. He attended and completed initial active duty for training (IADT) on 24 May 1985. He was awarded the military occupational specialty (MOS) 34K (Combat Signaler). On 15 December 1985, he reenlisted in the USAR.

6. The applicant served in the Regular Army (RA) from 23 March 1988 to 20 March 1992. He was honorably discharged for expiration of term of service.

7. The applicant served again in the RA from 21 April 1993 to 20 April 1996, a period of 3 years. He was honorably discharged for completion of required active service.

8. The applicant's NGB Form 22, effective 10 July 1998, shows the applicant was discharged from the Air National Guard of Texas and as a Reserve of the Air Force.
9. On 16 October 1998, the applicant enlisted in the TXARNG.
10. On 31 March 2001, the applicant was discharged from the ARNG for unsatisfactory participation. He completed 2 years, 5 months, and 16 days net service this period.
11. A DA Form 2173 (Statement of Medical Examination and Duty Status) shows at approximately 0830, 15 May 2002, the applicant was performing an Army Physical Fitness Test (APFT). While running around the 2-mile track he experienced a pop in his left knee, as he continued the run he experienced pain, which increased as he continued to run. The injury was considered to have been incurred in the line of duty.
12. The applicant served on active duty from 3 February 2003 to 19 October 2004, in support of Operation Enduring Freedom. He served in Kuwait from 3 February 2003 to 4 September 2004. He served another period of active duty from 5 October 2005 to 15 November 2006, in support of Operation Enduring Freedom. His DD Form 214 shows he was ordered to active duty in support of Operation Enduring Freedom (Afghanistan). He served in Afghanistan from 19 October 2005 to 20 October 2006.
13. Orders 07-082-00036, issued by Headquarters, U.S. Army Reserve Command, Fort McPherson, GA, shows the applicant was discharged from the USAR on 31 March 2007.
14. A DD Form 2807-2 (Medical Prescreen of Medical History Report), dated 6 July 2007, shows the applicant reported no to all questions concerning his past and present medical conditions.
15. On 7 July 2007, the applicant enlisted in the TXARNG for a period of 1 year.
16. Orders 311-094 show the applicant was ordered to active duty in support of Operation Enduring Freedom effective 26 November 2007. He extended his enlistment for a period of 1 year on 6 May 2008. He was released from active duty on 10 February 2009. His DD Form 214 shows he was served in Afghanistan from 14 February 2008 to 26 November 2008.
17. Orders 152-181 show the applicant was ordered to active duty in support of Operation Iraqi Freedom effective 3 July 2009. He extended his enlistment for a period of 2 years on 6 June 2009.

18. Orders A-10-929567 show the applicant transferred to Darnell Army Medical Center, Fort Hood, TX from Landstuhl Regional Medical Center for medical evacuation for continued medical care effective 30 October 2009.

19. Orders A-11-930341 shows the applicant was retained on active duty to participate in Reserve Component warrior in transition medical retention processing program for completion of medical evaluation effective 8 November 2009. Orders A-12-934871 also retain him on active duty to participate in Reserve Component warrior in transition medical retention processing program for completion of medical care effective 24 December 2009 for 310 days.

20. The applicant provides a DA Form 3349, dated 15 July 2010, which shows the applicant was assigned physical profile of 312111 for diabetes mellitus type 2, chronic atypical chest pain (not ischemic) (P3), nonobstructive coronary artery disease (P2), degenerative joint disease knees (L2), and obstructive sleep apnea (OSA) and required referral to the Medical Evaluation Board (MEB) or Physical Evaluation Board (PEB).

21. The applicant provided a DA Form 199 showing a PEB convened on 30 July 2010, and found the applicant fit for duty. The form in its entirety is not available.

22. A DA Form 199 shows a PEB convened on 20 September 2010 to reconsider the applicant's conditions wherein the applicant was found physically unfit with a recommended rating of 20 percent and that his disposition be separation with severance pay.

a. The applicant was found unfit for nonischemic atypical chest pain since 2003. Condition is unfitting due to his inability to do even moderate physical exertion or any aerobic APFT event which is incompatible with the demands of his fueler (92F) MOS. (MEB DX 2, NARSUM, SF 600 Cardiology 23 March 2010, C&P Exam, DA Form 3349, DA Form 7652, VA rating decision 13 September 2010).

b. MEB DX 1 (Type 2 Diabetes Mellitus) is not found to be separately unfitting by the PEB. His diabetes mellitus was diagnosed in January 2010 during his latest cardiology work-up, and is under treatment with oral medication, diet modification and exercise with reasonable glycemic control (fasting blood glucose = 72, HgbA1c = 7.5 in March 2010). He has no evidence of end-organ damage or functional limitations from this condition. There is no evidence in the case file that this condition has adversely affected his duty performance. (MEB DX 1, NARSUM, C&P Exam, DA Form 3349, DA Form 7652).

c. He has also been diagnosed with non-obstructive coronary artery disease, exertional dyspnea, hypertension, hypertension heart disease, hyperlipidemia, bilateral patellofemoral syndrome, GERD, hiatal hernia, severe obstructive sleep apnea, erectile

dysfunction, lumbago, degenerative lumbar disease, diastolic dysfunction, and right shoulder sprain. These conditions were found to be medically acceptable by the MEB, and there is no evidence in the case file that these conditions have adversely affected his duty performance, either independently or in combination. (MEB DX 3-16, NARSUM, C&P Exam, DA Form 3349, DA Form 7652).

d. IAW DODI 1332.38, Enclosure 5, MEB DX 17 (obesity) is a condition not constituting a physical disability.

e. The informal findings were reconsidered based on additional review of the medical evidence of record. The PEB finds the applicant's current impairment is best described as above. The DA Form 199 dated 30 July 2010 is hereby superseded.

f. The PEB made the following administrative determinations:

(1) The disability disposition is not based on disease or injury incurred in the line of duty in combat with an enemy of the United States and as a direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a period of war as defined by law.

(2) Evidence of record reflects the individual was a member or obligated to become a member of an Armed Force or Reserve thereof, or the NOAA or the USPHS on 24 September 1975.

(3) The disability did not result from a combat-related injury under in 26 USC 104.

g. The proceedings were finalized on 20 September 2010.

23. The applicant was honorably discharged from active duty on 29 December 2010 for disability, severance pay, non-combat (enhanced). His DD Form 214 shows he completed 1 year, 5 months, and 27 days net active service this period. It also shows He was honorably discharged from the ARNG and as a Reserve of the Army on 30 December 2010.

24. On 30 November 2011, the applicant submitted a request to add posttraumatic stress disorder (PTSD) and phobia to his PEB, his rating increased to at least 30 percent, and a disability retirement. He provided a VA proposed rating decision, dated 13 September 2010, which indicates the proposed Disability Evaluation System service connected disabilities were: Nonischemic atypical chest pain – 20 percent, Obstructive sleep apnea - 50 percent, Diabetes mellitus, type 2 - 20 percent, Degenerative arthritis lumbar spine with strain -10 percent, Degenerative joint disease right knee - 10 percent, Degenerative joint disease left knee - 10 percent, Hypertensive

heart disease - 10 percent, Hypertension - 0 percent, Gastroesophageal reflux disease (GERD) and hiatal hernia - 0 percent, and Erectile dysfunction - 0 percent.

25. In his previous request (AR20120002724) on 19 April 2012, after reviewing the application and all supporting documents, the Board determined relief was not warranted.

26. On 23 March 2023, the ABCMR requested an advisory opinion from the Physical Disability Agency (PDA). A response was received on 31 March 2023, in which the PDA found the applicant's request to be legally insufficient, stating on 30 December 2010, the applicant was found to be unfit, presumably for his heart condition. According to the applicant, he was rated 20 percent for his heart condition and was separated with severance pay. The applicant now appeals claiming his heart condition has deteriorated and as a result his rating should be upgraded. While the VA's ratings can ebb and flow over the course of a Veteran's lifetime, the DES ratings are a snapshot in time taken at the point of separation. Here, the applicant has not demonstrated that the rating he received at the time of his separation was incorrect. The applicant has also failed to show that the PEB somehow erred in its application of the applicable laws and regulations or that there was a mistake of fact. Since the applicant's rating for his unfitting condition was properly rated at the time of his separation and there has been nothing presented to indicate otherwise, the USAPDA found his request legally insufficient.

27. The applicant was provided a copy of the advisory opinion on 7 April 2023 for an opportunity to respond. He did not respond.

28. A second advisory opinion was received on 15 August 2023, which states:

a. Background: On 20 September 2010 the Physical Evaluation Board (PEB), upon reconsideration, found the applicant unfit for nonischemic atypical chest pain rated at twenty percent. The PEB recommended a separate with severance pay disposition. The applicant was separated on 30 December 2010. The applicant now requests a reassessment of whether an increase in disability percentage is appropriate and possibly warrants a change in disposition to permanent disability retirement.

b. Analysis: In support of his request the applicant provides over 600 pages of medical records, largely covering the time period after his military separation. He does not present any argument that the percentage of his unfitting condition was incorrect at the time of the disability evaluation system (DES) or that any additional conditions should have been found unfitting at that time. A review of all medical documentation and the entire previous DES record indicates the applicant's case was properly adjudicated by the PEB and the percentage of disability was appropriate. There is no medical evidence to support a finding that the initial rating for his unfitting condition was

erroneous at the time of the DES. Further, disability ratings for purposes of the DES are static and not subject to increase or decrease after separation. Therefore, the disability rating was correctly applied at twenty percent and an increase or change in disability disposition is not warranted.

c. Conclusion: USAPDA found the applicant's request to be legally insufficient and recommend no change to his disability percentage.

29. The applicant was provided a copy of the advisory opinion on 17 August 2023 for review and comment. The applicant responded on 24 August 2023, stating in May of 2003 while he was in El Paso, TX getting ready to deploy overseas to Kuwait, he was feeling sick and at the time he did not know what it was, so he was ordered to go on sick call by his platoon sergeant (PSG). As he went to sick call the medics had checked him out. There he was flown to the hospital in El Paso, and it was determined that he was having heart problems. He stayed in the hospital for over 4 days where surgery was performed. Once he was released from the hospital, he felt that he was good enough to go overseas. He had deployed numerous times to Iraq, Kuwait, Pakistan and Afghanistan, and in 2008 while deployed to Afghanistan he was having chest pains and again, he was ordered to go on sick call again by his PSG and from there he was flown from Afghanistan to Landstuhl Germany. There he had his second heart surgery (another cardiac Catheterization) and after that surgery he was not 100% but finish his duties in Afghanistan. The final time he went to Iraq in 2009 he felt some discomfort in his chest and again his PSG insisted that he get checked out. There he was flown again to Landstuhl Germany, and from Germany he was flown to the Warrior Transition Unit in Fort Hood, Texas and from there was medically released from Active Duty.

30. Based on the applicant's contention the Army Review Boards Agency medical staff provided a medical review for the Board members. See "MEDICAL REVIEW" section.

31. The Army rates only conditions determined to be physically unfitting at the time of discharge, which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career. The VA does not have authority or responsibility for determining physical fitness for military service. The VA may compensate the individual for loss of civilian employability.

32. Title 38, U.S. Code, Sections 1110 and 1131, permit the VA to award compensation for disabilities which were incurred in or aggravated by active military service. However, an award of a VA rating does not establish an error or injustice on the part of the Army.

33. Title 38, CFR, Part IV is the VA's schedule for rating disabilities. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge. As a result, the VA, operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform

his duties. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant has again applied to the ABCMR requesting an increase in his military disability rating with a subsequent change in his disability separation disposition from separated with disability severance pay to permanent retirement for physical disability. He states:

"I was released from duty (From Ft Hood Texas) with 20% disability rating from the Army. I would like to have a review of my case and rating for a rating increase and I just want to know if it is possible that I can have my case reviewed and get a higher percentage to see if I can qualify for retirement. The reason why I was released was a medical condition, but I really don't know if they knew that the conditions was heart problems because I had 2 heart surgeries and had stints put in the heart both times and one in 2003 (El Paso, Tx). The first surgery I has was when I was assigned to the 211th Transportation Company, a unit out of Marina California in May of 2003 when I was attached to that unit to go over to Kuwait. That is when I had my first stint in my heart. That surgery was done at William Beaumont Medical Center. The first Sargent at that time was [REDACTED] And the second surgery was done in 2008 (Landstuhl, Germany) while I was in Kabul Afghanistan."

c. The Record of Proceedings and prior denial detail the applicant's service and the circumstances of the case. The DD 214 for the period of Service under consideration shows the former Guard Soldier entered active duty in support of Operation Iraqi Freedom on 3 July 2009 and was separated with \$81,891.60 of disability severance pay on 29 December 2010 under provisions provided in chapter 4 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (8 February 2006). It shows service in Iraq from 15 August 2009 thru 11 November 2009.



d. His Report of Separation and Record of Service (NGB 22) shows he was separated from the Texas Army National Guard effective 30 December 2010 provisions of paragraph 6-35I(8) of NGR 600-200, Enlisted Personnel Management (31 July 2009): Medically unfit for retention per AR 40-501 [Standards of Medical Fitness]. It shows he had 20 years, 11 months, and 09 days of total service for retired pay (page 22 of supporting documents).

e. A Soldier is referred to the Integrated Disability Evaluation System (IDES) when they have one or more conditions which appear to fail medical retention standards in chapter 3 of AR 40-501, Standards of Medical Fitness, as documented on a duty limiting permanent physical profile. At the start of their IDES processing, a physician lists the Soldier's referred medical condition(s) in Section I the VA/DOD Joint Disability Evaluation Board Claim (VA Form 21-0819). The Soldier, with the assistance of a VA military service coordinator, lists all conditions they believe to be service-connected disabilities in block 8 of section II on the VA Form 21-0819 or on a separate Statement in Support of Claim (VA form 21-256EZ).

f. Soldiers then receive one set of VA C&P examinations covering all their referred and claimed conditions. These examinations, which are the examinations of record for the IDES, serve as the basis for both their military and VA disability processing. The medical evaluation board (MEB) uses these exams along with AHLTA encounters and other information to evaluate all conditions which could potentially fail retention standards and/or be unfitting for continued military service. Their findings are then sent to the physical evaluation board for adjudication.

g. All conditions, both claimed and referred, are rated by the VA using the VA Schedule for Rating Disabilities (VASRD). The physical evaluation board (PEB), after adjudicating the case, applies the applicable ratings to the Soldier's unfitting condition(s), thereby determining his or her final combined rating and disposition. Upon discharge, the Veteran immediately begins receiving the full disability benefits to which they are entitled from both their Service and the VA.

h. On 11 February 2014, the then National Guard Soldier on a tour of active duty was referred to the IDES for "Diabetes Mellitus Type-2." He claimed eight additional conditions on a separate Statement in Support of Claim (VA form 21-4138), including "coronary artery disease." A medical evaluation board (MEB) determined his "Diabetes Mellitus Type-2" and "Non-ischemic atypical chest pain" failed the medical retention standards of AR 40-501, Standards of Medical Fitness. They determined fifteen other medical conditions met medical retention standards, including "Non-obstructive coronary artery disease."

i. From the applicant's MEB narrative summary:

**“PRESENT CONDITION:**

The SM [service member] has stabilized at a level that restricts his activities regarding Chest Pain. He has had numerous evaluations, treatments, and hospitalizations for this while activated and deployed, and should not be considered deployable. SM is on meds at present for new onset DM type 2 but without any symptoms. He has been seen by consultants and he has many tests and evaluations especially within the last 2 years. In the last several months he has had no distinct improvement or worsening. It is assumed this will be a stable condition for some time to come.

**PROGNOSIS**

This SM is compliant with medical care. His prognosis for continued military service is poor based on his inability to perform common warrior tasks and the requirements of his MOS [military occupational specialty] or to be deployed.

j. The applicant concurred with the MEB findings and recommendation and his case was forwarded to a physical evaluation board (PEB) for adjudication.

k. On 20 September 2010, the applicant's informal PEB found his “Nonischemic Atypical Chest Pain Since 2003” to be the sole unfitting medical condition for continued service. They determined his type 2 diabetes mellitus was not unfitting for continued service:

“MEB DX [diagnosis] 1 (type 2 diabetes mellitus) is not found to be separately unfitting by the PEB. Soldier's diabetes mellitus was diagnosed in January 2010 during his latest cardiology work-up, and soldier is under treatment with oral medication, diet modification and exercise with reasonable glycemic control (fasting blood glucose= 72 [normal 70 -100], HgbA1c = 7.5% in March 2010 [good control is a hemoglobin A1c of 7% to 8.0%]). Soldier has no evidence of end-organ damage or functional limitations from this condition. There is no evidence in the case file that this condition has adversely affected soldier's duty performance.

l. They determined the remaining fifteen medical conditions were also not unfitting for continued military service. The PEB applied the VBA derived rating of 20% to this condition. Because the applicant's combined military disability rating was less than 30%, the PEB recommended the applicant be separated with disability severance pay (SWSP). On 4 October 2010, after being counseled on the informal PEB's findings by her PEB Liaison Officer (PEBLO), the applicant concurred with the informal PEB's findings, waived his right to a formal hearing, and declined to request a VA reconsideration of his disability rating.

m. Review of his Physical Evaluation Board (PEB) Proceedings (DA form 199) shows that he was not offered as required the length of service non-regular retirement

he had earned by having more than 20 qualifying years of Service for retirement in lieu of SWSP.

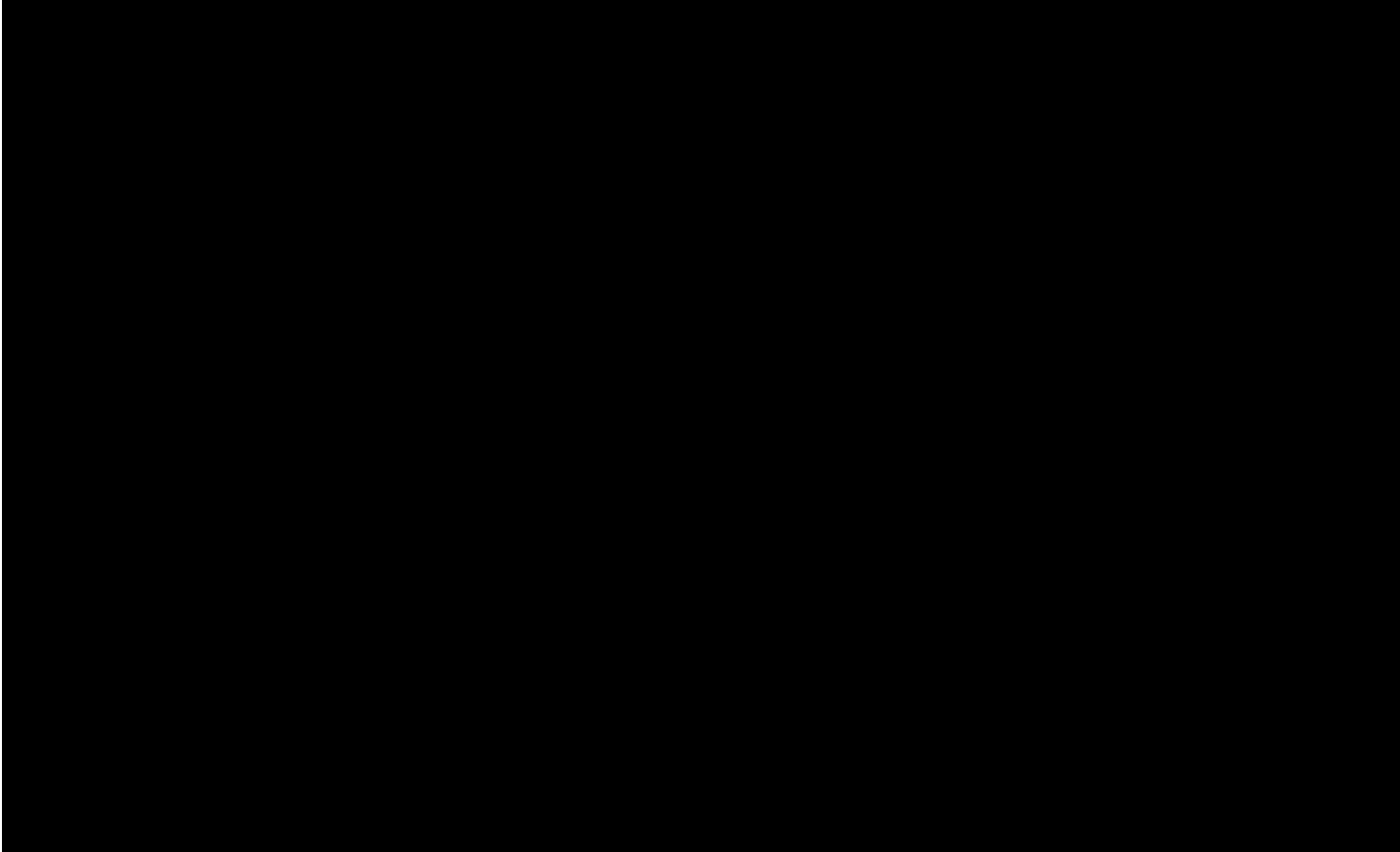
n. Paragraph E3.P7.5.3 of part 3 to enclosure 7 of Department of Defense Instruction of Department of Defense Instruction 1332.38 Subject: Physical Disability Evaluation (14 November 1996) lists the criteria for SWSP eligibility:

“E3.P7.5.3. Separation with disability severance pay.  
E3.P7.5.3.1. Criteria. Separation is directed under Section 1203 or 1206 of reference (b) when the member is unfit for a compensable physical disability determined under the standards of this Instruction, and the requirements listed in subparagraphs E3.P7.5.3.1.1. and E3.P7.5.3.1.2., below, are met. Stability is not a factor for this disposition.  
E3.P7.5.3.1.1. The member has less than 20 years of service computed under Section 1208 of reference (b); and  
E3.P7.5.3.1.2. The disability is rated at less than 30 percent, to include 0 percent.”

o. Paragraph E3.P7.5.3.3 of DODI 1332.38 (14 November 1996) addresses the situation this applicant was in:

“E3.P7.5.3.3. Transfer to Retired Reserve. Under Section 1209 of reference (b), Ready Reserve members who have completed at least 20 qualifying years of Reserve service and who would otherwise be qualified for retirement may forfeit disability severance pay and request transfer to an Inactive Status List for the purpose of receiving non-disability retired pay at age 60. When disability severance pay is accepted, the member forfeits all rights to receive retired pay under Chapter 1223 of reference (b) at age 60. There are no provisions under reference (b) to repay disability severance pay for the purpose of receiving retired pay.

In other words, the election to receive severance pay is irrevocable. However, in this case, the applicant could not have made this irrevocable election because it not offered, an apparent oversight in the PEB's processing of his case. His Physical Disability Information Report (PDIR) published by the United States Army Physical Disability Agency shows 25 years of Service:



p. Paragraph 4-24b(5) of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (8 February 2006) states this is an option for disposition:  
(5) Transfer of a Soldier who has completed at least 20 qualifying years of Reserve service, and otherwise qualifies for transfer as described in paragraph 8–9, to the Inactive Reserve on the Soldier’s request (section 1209, title 10, United States Code (10 USC 1209)).

This option is to be discussed with the Soldier and the Soldier must elect to either be transferred to the Retired Reserve after which they will receive their non-regular retirement when eligible or choose to separate with disability severance

His DD 199 does not show that he was provided this very valuable option. In fact, the applicant’s case as if he had less than 20 years of eligible service when they stated on the DA 199:

“It is noted that the Soldier, disability rating is less than 30 percent. Soldiers with a disability rating of less than 30%, and with less than 20 years of service as computed under 10 USC 1208 (active plus RC equivalent), requires separation from service with disability severance pay.”

q. There is no evidence the applicant was provided the valuable option to transfer into the Retired Reserves in lieu of SWSP. Even though he did receive SWSP, the PDIR shows this disability was not combat related and therefore the money he received has likely already been recouped by the VA.

**BOARD DISCUSSION:**

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The Board determined the applicant's discharge was not in error or unjust and therefore denied relief. The Board noted the applicant's request for an increase in disability percentage and discussed the applicant's options to appeal that decision to the Department of Veterans Affairs.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, USC, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in an MEB; when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an MOS Medical Retention Board; and/or they are command-referred for a fitness-for-duty medical examination.

b. The disability evaluation assessment process involves two distinct stages: the MEB and PEB. The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the severity of the disability and length of military service. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

c. The mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of his or her office, grade, rank, or rating. Reasonable performance of the preponderance of duties will invariably result in a finding of fitness for continued duty. A Soldier is physically unfit when a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

2. Title 38 USC, section 1110 (General - Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than

dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

3. Title 38 USC, section 1131 (Peacetime Disability Compensation - Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

4. AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation) establishes the Army Disability Evaluation System and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability. Once a determination of physical unfitness is made, all disabilities are rated using the Department of Veterans Affairs Schedule for Rating Disabilities (VASRD).

a. Paragraph 3-2 states disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in military service.

b. Paragraph 3-4 states Soldiers who sustain or aggravate physically-unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

(1) The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

(2) The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.



5. AR 40-501 (Standards of Medical Fitness) governs medical fitness standards for enlistment, induction, appointment (including officer procurement programs), retention, and separation (including retirement). The Department of Veterans Affairs Schedule for Rating Disabilities (VASRD). VASRD is used by the Army and the VA as part of the process of adjudicating disability claims. It is a guide for evaluating the severity of disabilities resulting from all types of diseases and injuries encountered as a result of or incident to military service. This degree of severity is expressed as a percentage rating which determines the amount of monthly compensation.

6. Section 1556 of Title 10, USC, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//