IN THE CASE OF: [redacted]

BOARD DATE: 23 May 2024

DOCKET NUMBER: AR20230000974

APPLICANT REQUESTS:

- correction of his records to show he was medically retired.
- processing through the Integrated Disability Evaluation System (IDES)
- any other relief the Army Board for Correction of Military Records (ABCMR) deems full and fitting
- a personal appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- Applicant Personal Statement
- Memorandum in Support of Application/Motion, undated
- Electro diagnostic Examination, 19 December 2017
- Periodic Health Assessment (PHA), 16 September 2019
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 27 November 2019
- Emails with [redacted] Veterans Service Officer (VSO), December 2021 to October 2022
- Statement from Major (MAJ) Retired [redacted] 1 November 2022
- Military Health System (MHS) Genesis Announcement, undated
- Department of Defense Instruction (DoDI) 6040.46 (The Separation History and Physical Examination (SHPE) for the DoD Separation Health Assessment (SHA) Program
- DoD Instruction 1332.18 (Disability Evaluation System)

FACTS:

1. The applicant states, in effect:

a. Through no singular point of failure, his separation processing slipped through the cracks in the system, and he was denied access to the medical disability evaluation process and IDES. This was not due to ineligibility, but merely an inability for those

assisting him to access the appropriate channels and systems. He is hopeful the Army can remedy that now, and provide him access to this entitlement, which he believes would greatly improve his current medical treatment plans, quality of life, and future opportunities for himself and his family, by potentially granting him a permanent disability retirement.

b. From June 2017 through November 2019, he was stationed at the University of [redacted] Reserve Officers' Training Corps (ROTC) Battalion, on active duty. On 27 November 2019, he was separated from service with an honorable discharge. He served a total of 10 years and 11 months as an Infantry Officer in the U.S. Army. Prior to his assignment [redacted]-ROTC, both he and his wife were assigned to 2nd Brigade, 101st Airborne Division, Fort Campbell, KY. They had just returned from a 6-month deployment to Iraq, in support of Operation Inherent Resolve, and within a couple of months they moved their family [redacted]. When he arrived [redacted] he in-processed the unit remotely (email and telephone). His immediate higher headquarters, U.S. Army Cadet Command (USACC), 2nd Brigade, was located at Joint Base McGuire-Dix Lakehurst (JBMDL), NJ, which was over 240 miles away and responsible for over 40 separate units, spread over the entire Northeast. It took several months for his pay and entitlements to sort themselves out and align with his new duty station.

c. When he arrived in Rhode Island he was in a great deal of pain in his right shoulder. He had undergone reconstructive "SLAP" surgery in late April 2017 at Fort Campbell, KY, following over a year of steady pain and decreased strength and range of motion stemming from a bad exit during a fix-wing jump at Fort Benning, GA in late 2015, and then exacerbated during 12 plus months of deployment train-up and combat operations. After retuning from Iraq in January 2017 he was able to undergo surgery, but after a couple of months of recovery his shoulder only seemed worse. By the time he arrived in Rhode Island the pain and discomfort were so overwhelming he could not perform his normal physical fitness activities and many assigned duties without significant pain. His shoulder was weak and inflexible; it was clear that something was not right.

d. His medical was handled through the Naval Health Clinic – New England (NHC-NE), located on the Navy Base in Newport, RI, which was a very small clinic with extremely limited services. As an active-duty member, he was assigned a Primary Care Manager (PCM) from NHC-NE, however, they had almost no in house surgical or specialty services. He was given a referral to an off-post civilian orthopedic doctor, who evaluated him and recommended him for another shoulder repair surgery, immediately. In August 2017, he underwent his second shoulder surgery and subsequent physical therapy, nerve treatments, and recovery.

e. In addition to his shoulder condition, he was also suffering from extensive pain in his jaw, significant issues with his left wrist, Dytrupens in his right hand (benign but mobility-impacting growth along his tendon, which required surgery), and some behavioral health concerns. He had placed his shoulder issues at the top of the list, as they were most obviously impairing his work performance, but it soon became impossible to ignore the other injuries and issues. Over the course of being stationed at [redacted] ROTC, he sought medical treatment for multiple conditions, to include extensive dental reconstruction work and nerve pain therapy procedures to attempt to remedy his facial neuralgia and nerve damage. He also sought treatment for his wrist, surgical removal of a Dytrupens growth in his right hand, extensive pain management for his shoulder (plus back), jaw and hand, and behavioral health counseling. Although his health records from NHC-NE reflect several surgeries, physical therapy, extensive pain management efforts, significant dental reconstruction work, and behavioral health treatment, he was never issued a single Army profile while assigned to [redacted]-ROTC. The NHC-NE staff and civilian providers informed him that they were unable to issue a DA Form 3349 (Physical Profile).

f. His role at [redacted] ROTC required him to be very physically active. As the lead trainer for the MS-III Cadets, preparing for their summer evaluations at Fort Knox, KY – Cadet Summer Training, as well as being slated to lead the Ranger Challenge Team, he was expected to set the example. He was responsible for the Cadets physical training (PT) regimen, as well as their combat and operational training program. Physically he was constantly struggling to meet the expectations and responsibilities as the lead trainer. Daily, he was in a ton of pain and working with pain management throughout his tenure at [redacted] ROTC. He was prescribed various narcotics and pain medications and was unable to function without pharmaceutical pain relief. After his first summer at Fort Knox for training, he realized he was no longer able to physically meet the demands of an Infantry Officer. He returned home in July 2018 and his wrist, shoulder, jaw, and mental health were all in shambles. He was lashing out at his family – frustrated and in pain.

g. In July 2018, he decided to speak to his providers about some of his injuries and his inability to participate in many physical activities with the Cadets. It was expected that he would continue his role as lead trainer, especially since the executive officer (XO), MAJ [redacted] was retiring. His medical records indicated his injuries, but as the NHC-NE was unable to issue an Army profile, his supervisors had simply been trusting in his own assessments about what he was able to physically handle.

h. With an unavoidable split-assignment (dual-military couple), an ongoing custody fight, and the constant pain and treatments for his health complications, he and his wife began to seriously consider the option of his resignation or separation from service. As a prior company commander, he was aware of the medical evaluation board (MEB) process, but not aware on how to initiate it while based in a remote location with only Naval medical support and no service support staff or counselors. For the next several

months, he attempted to gain information and assess all his options; however, his wife's impending permanent change of station was adding additional pressure to his decisions.

i. He spoke with his branch manager about his personal, health and professional concerns and his ongoing deliberations over the idea of leaving service. His branch manager informed him that he saw no path where he could accompany his family to the District of Columbia in Summer 2019. He was told he could drop a separation action, stabilizing in Rhode Island until it was complete, or he would need to attend intermediate level education, likely in Fort Leavenworth, KS, with no guarantee that he would get assigned to the National Capital Region to join his wife in Summer 2020. Neither of those options addressed his ongoing medical concerns or created a path for him to pursue a medical evaluation for separation.

j. His first PCM was a Naval doctor (Lieutenant Commander/LCDR) [redacted] who went on maternity leave sometime in late 2018/early 2019. In late summer/early fall 2018 he went to Dr. [redacted] seeking a physical profile because he was unable to take a PT test without incredible pain, and he knew the battalion would need paperwork to support his missed annual requirement. Dr. [redacted] confirmed that she was unable to issue Army profiles, as the systems were not aligned, and they were not allowed to issue the DA Form 3349. When he asked about the MEB process, she told him she was uncertain how to initiate for an Army officer receiving care from a Naval installation. Recognizing his ongoing injuries and pain, she referred him to a civilian provider for pain management. Most of his care required referrals to other providers, often civilian practioners located outside the clinic. Even his PHA that he took in September 2019 was conducted by another provider at the readiness desk. His other providers, specifically for his wrist and shoulder, were civilians practicing in Rhode Island, so he knew they would not know about the MEB system. His dentist, located in the Naval Health Clinic-New England, Naval Dental Clinic, was also a civilian, and not familiar with the IDES system and not able to access Army systems.

k. In late 2018, he informed his ROTC leadership at URI of his thoughts about ending his time on active duty, specifically discussing his assignment concerns and his frustrations with the Naval clinic regarding his medical status and processing. Being supportive, his leadership sought guidance from their brigade, located [redacted] Eventually, they informed him that the contacts they had spoken with were also unable to assist him with a medical referral, as the brigade did not currently have a Brigade Surgeon or other asset assigned, and that was who wrote those referrals. His battalion commander was uncertain what else could be done since he was not retiring. He was not able to access retirement services. Since he was not a Newport Naval Station asset, he was not able to access Naval support services, and there was no institutional knowledge in the few civilian personnel assigned to [redacted] ROTC regarding processing separations or disability evaluations.

l. Unable to figure out any other viable course of action, he submitted his unqualified resignation in February 2019. No one from his higher headquarters called him or counseled him on his decision. He completed almost all the requirements online or over the phone, to include Soldier for Life – Transition Assistance Program (SFL-TAP), RCC briefing, and a Veterans Affairs (VA) disability call. Each discussion was brief, nothing was held in person, and no one was able to advise him on any alternatives to simply submitting an unqualified resignation packet, even with his extensive service records and medical history. He never received the required Army Exit Physical Exam, otherwise known as the Report of Medical Examination (DD Form 2808).

m. On 22 April 2020, he filed his VA disability application with no VSO, no private agency support, and no real idea what he was supposed to claim and how to claim it. The world had effectively shut down due to the pandemic. COVID-19 had shut down all medical and non-essential services, so he was unable to get any continued care in behavioral health, dental, orthopedics, or pain management. He attempted to contact the VSO at [redacted] VA, but he did not hear back and was informed that the office was not open, and all government personnel had been sent home. Telework services were not yet established. This situation complicated his efforts to file a VA claim.

n. In July 2021, he received his initial rating from the VA, with service connections for several of his conditions. In September 2021, he again reached out to the VSO in Rhode Island for assistance but was still unable to make a connection. In December 2021, he supplied him with a signed release of his records and requested his assistance with his appeal. He eventually heard back in May 2022, informing him that an appeal had been initiated but apparently this was a misunderstanding. In September 2022, he finally spoke with the [redacted]VSO, who informed him that no appeal had been done, and the timeline for such an action had passed. Frustrated and confused, he consulted some Army friends stationed at Fort Bragg, NC. They provided him contact information for a VSO in Pinehurst, NC and with her advice and assistance he is actively working on upgrading several of his ratings, as well as preparing a new claim for conditions that were incorrectly denied.

o. He recognizes that VA disability is not the same as medical retirement, and though he is thankful for the support and assistance he received from the VA, based upon the research he has done and the advice he has received since separating, he believes he should have been processed for a medical retirement, but was unfortunately and unjustly denied access to that system. A medical retirement would vastly alter the course of his future, help secure his family's future, and provide opportunities and support that are currently unavailable.

2. The applicant provides the following documentation:

a. A memorandum in support of his application, requesting an expedited review of his request for correction of his records. The applicant's complete memorandum/motion is available for the Board to review. The document states:

(1) The applicant was never provided the opportunity to complete the required Separation History Physical Examination for the Separation Health Assessment Program, in accordance with DoDI 6040.46, which identifies, compiles and documents medical issues at the time of separation and would likely have recognized his medical status and clear eligibility for IDES, and subsequent MEB processing.

(2) Due to the impacts of his geographic limitations, assignment inequities and systemic failures, the applicant was forced to separate from service without any access to a comprehensive medical review and possible determination of eligibility for medical separation or retirement, as is required in accordance with Army Regulation (AR) 635-40 (Physical Evaluation for Retention, Retirement, or Separation), DoDI 1332.18, and DoDI 6040.46.

(3) With no other options made available, or even explained to him, the applicant was forced to submit a simple unqualified resignation, seeking zero evaluation or compensation for his ongoing medical conditions. Many of which would later be linked directly to his service and some with individual ratings at 30 percent and a combined disability rating of 80 percent.

(4) The applicant deployed to two different combat zones, suffered from service-related and service-impacting injuries and conditions, and earned the right to access the IDES program. He should be given the full spectrum of support and advisors through that process, and likely recommended for medical retirement based off the significant impact his service-related injuries and conditions have on his ability to perform his duties.

b. An electro diagnostic examination, which shows he was seen on 19 December 2017 for shoulder pain, status post labral repair. The impression was right suprascapular neuropathy.

c. NHC-NE on 16 September 2019 for a PHA. The applicant complained of throbbing/sharp, constant pain in his right shoulder and left wrist. The pain at the worst level was an 8/10 and at the least level was a 6/10. Medications made it better and contact made it worse.

d. Emails between the [redacted]VSO and the applicant from December 2021 to October 2022.

e. A statement from MAJ (Retired) [redacted] dated 1 November 2022, which states he was the applicant's XO while assigned to [redacted] ROTC. He states all in-processing and out-processing for an assignment to [redacted] ROTC occurred through email and telephone. There was no local finance support, no human resources support, and no other Army supplied administrative assistance. The applicant arrived at [redacted] ROTC with several medical issues, to include issues with his jaw and shoulder. Shortly after his arrival he underwent a second shoulder surgery. He was able to personally observe how the applicant's physical abilities were limited throughout his time due to his injuries and required ongoing treatment plans. The XO and the battalion commander were aware of his ongoing medical issues; however, they were never successful at assisting him with accessing the MEB system.

f. A MHS Genesis announcement which states the Naval Health Clinic New England would experience delays in routine services when the new electronic health record, MHS Genesis went "Live" on Monday, 23 January 2023. They expected the delays to last several weeks.

g. A copy of DoDI 6040.46, which establishes policy and assigns responsibilities for completion of a SHPE as the principal component of the DoD-Department of VA SHA Program and how the SHPE and SHA program facilitate the transfer of care from the DoD to the VA and support the evaluation of disability claims.

h. A copy of DoDI 1332.18, which establishes policy, assigns responsibilities, and prescribes procedures for referral, evaluation, return to duty, separation, or retirement of Service members for disability.

3. A review of the applicant's service record shows:

a. His DA Form 4037 (Officer Record Brief) contains the following information:

- Basic Date of Appointment – 12 December 2008
- Basic Active Service Date – 15 December 2008
- PULHES/Date – 111111/16 September 2019 (Deployable, no profile)
- Basic Branch - Infantry

b. He was honorably discharged on 27 November 2019. His DD Form 214 shows he completed 10 years, 11 months, and 13 days of net active service. It also shows in:

- Block 18 (Remarks): Service in Afghanistan from 20111205 – 2012100 and service in Iraq from 20160829 – 20170117.
- Block 25 (Separation Authority): Shows AR 600-8-24 (Officer Transfers and Discharges), paragraph 3-5 (Unqualified Resignations)
- Block 28 (Narrative Reason for Separation): Miscellaneous/General Reasons

4. 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 (AHLTA), 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 applied to the ABCMR requesting referral to the Disability Evaluation System (DES). He states:

> "CPT [Applicant] should be evaluated for IDES processing, given the full spectrum of support and advisors through that process, and likely recommended for medical retirement based off the significant impact his service-related injuries and conditions have on his ability to perform his duties."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 for the period of Service under consideration shows the former Officer entered the regular Army on 15 December 2008 and was honorably discharged on 27 November 2019 under the separation authority provided by paragraph 3-5 of AR 600-8-24, Officer Transfers and Discharges: Unqualified Resignations.

d. The EMR shows he had three significant medical issues addressed during his final year of Service and during which he was a miliary instructor in the Reserve Officers' Training Corps (ROTC) at the University [redacted]: Right post-operative shoulder pain with a suprascapular neuropathy: Left wrist arthritis due to a prior scaphoid fracture; and anxiety disorder. These three conditions were in active treatment during his final year of service prior to his voluntary resignation and none had reached their medical retention determination point (MRDP), i.e., were a cause for referral to the DES, prior to his voluntary resignation.

e. MRDP as defined in paragraph 7-4b(2) of AR 40-501, Standards of Medical Fitness (14 June 2017:

> "Soldiers who have one or more condition(s) that do not meet medical retention standards are referred to a MEB/PEB [medical evaluation board / physical evaluation board] after attaining the Medical Retention Determination Point (MRDP). The MRDP is when the Soldier's progress ap-pears to have medically stabilized; the course of further recovery is relatively predictable; and where it

can be reasonably determined that the Soldier is most likely not capable of performing the duties required of his MOS, grade, or rank."

f. Right post-operative shoulder pain with a suprascapular neuropathy: From his orthopedic evaluation on 2 December 2019:

"[Applicant] presents to the office today for evaluation of right shoulder pain that was exacerbated by an injury three weeks ago at ice hockey. He sates he went into the board leading with his shoulder. He does have a lengthy history with the right shoulder. He did have an initial injury while in the military during a parachute jump. He then has a subsequent injury in Iraq when an armor door rammed into his shoulder. He did have an arthroscopic procedure for labral repair after that injury.

During this recovery, he had a subsequent injury when a refrigerator fell on his arm. He had a 2nd arthroscopic procedure several weeks later to do a repeat repair of the labrum and biceps tenodesis. He had progressed well with physical therapy and home exercises until the most recent injury …

I am concerned for the new injury of the rotator cuff based on his mechanism of injury and his current symptoms … I would recommend a new MRI to evaluated for any rotator cuff tearing and this will greatly alter management moving forward and may require subsequent surgical procedure."

g. No MRI or further encounters were found in the EMR or submitted with the application.

h. Left wrist arthritis due to a prior scaphoid fracture: The applicant fractured his left scaphoid at age 19 and it underwent avascular necrosis leading to deformity and collapse of the bone resulting in the gradual development of post-traumatic arthritis. The applicant underwent evaluation by a hand specialist on 1 November 2019:

"[Applicant] is a 34-year-old left hand dominant male who presents upon referral from [redacted] PA for chronic left wrist pain. He suffered a closed scaphoid fracture as a teenager and was treated with casting x 6 weeks. He was aware he developed scaphoid AVN [avascular necrosis] but did not have any further treatment. He has reinjured the wrist several times when it got caught in parachute equipment, got caught in hydraulic lock while at work.

He complains of difficulty with any pushing type of motion. He cannot perform bench press, pushups without having acute flare of pain which persists for several days to weeks. Bicep curls and pulling aren't as much of a problem. Leaving active-duty military in 1 month; planning to go to PA school. Enjoys parachuting recreationally as well. Non-smoker. On Buspar for anxiety."

i. Surgical options were then discussed with the applicant on 15 November 2019 and again on 31 December 2019 at which time the procedure was discussed in detail and informed surgical consent was obtained.

j. The applicant underwent a left wrist exploration with a posterior interosseous nerve neurectomy and four corner fusion in March 2020.

k. Anxiety disorder: The applicant was diagnosed with anxiety disorder in February 2019 and referred for mental health evaluation / treatment in the spring of 2019. He was first evaluated by a psychiatrist at the Naval Health Clinic New England located in Newport, Rhode Island. In April 2019. He was initially diagnosed with anxiety disorder, unspecified, and a diagnosis of associated panic disorder was later added. His final encounter as just prior to his separation after which the provider declared the applicant "Psychiatrically fit for full duty & for military separation:"

> "Psychiatric Follow Up - Termination of Care session.
>
> [redacted] … Patient is separating from service this month. He will become his wife's military dependent. He was referred by Dr. [redacted] & was initially evaluated by me on 16 APR 2019. The service member declines use of any SSRI's. Psychotropic medication: Buspar 30 mg orally at bedtime & 5 mg during the day plus Ativan 1/2 to 1 mg orally per day PRN [as needed] severe anxiety, not to exceed 5 days per week. He does not use Ativan on weekends.
>
> Compliance with Buspar was estimated to be at 95 %. No psychotropic medication side effects. He reported alcohol use twice per week. His wife PCS'ed to the Pentagon in mid-SEP 2019. He is currently sleeping 4 to 5 hours per night. He wakes up around 3 am every morning - he is not willing to take SSRI's to address this. Appetite is "normal" however he tends to eat only one full meal per day and snacks the rest of the time. Mood was described as "pretty normal." Energy level is "lower than I would like it to be".

l. The applicant's final Company Grade Plate (O1 - O3; WO1 - CW2) Officer Evaluation Report (DA Form 67-10-1) shows the applicant passed his final Army Physical Fitness Test on 11 January 2019, met height and weight standards, and continued to excel as an Army Officer. His Senior Rater noted he rated 91 officers in the grade of Captain, marked him as "Highly Qualified," and wrote:

> "CPT [Applicant] is a top 20% officer and is ready now to serve in the most challenging assignments. Intelligent and passionate about developing our Army's future leaders, Jeremy is a team player who excels in a mission command environment where there is a premium placed on creating trust and a shared understanding. Promote to Major and select for CGSC [Command and General Staff College]."

m. There is no evidence the applicant had any medical condition which would have failed the medical retention standards of chapter 3, AR 40-501 prior to his voluntary resignation. Thus, there was no cause for referral to the Disability Evaluation System.

n. Paragraph 5a in appendix 2 to enclosure 3 of Department of Defense Instruction 1332.18 SUBJECT: Disability Evaluation System (DES), 5 August 2014 states:

> "The DES compensates disabilities when they cause or contribute to career termination."

o. This concept is incorporated in paragraph 4-1c(2) of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (19 January 2017). It states that one of the objectives of the DES is to "Provide benefits for eligible Soldiers whose military Service is terminated because of a disability incurred in the LOD [line of duty]."

p. JLV contains no VA associated encounters, diagnoses on his medical problem list, or service-connected disabilities.

q. It is the opinion of the Agency Medical Advisor that a referral of his case to the DES is unwarranted.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. The Board concurred with the conclusion of the ARBA Medical Advisor that there is no evidence the applicant had any medical condition which would have failed medical retention standards prior to his voluntary resignation. Based on a preponderance of the evidence, the Board determined the reason for his separation is not in error or unjust.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
[redacted]	[redacted]	[redacted]	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.

10/2/2024

X [redacted]

CHAIRPERSON

[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. Army Regulation (AR) 600-8-24 (Officer Transfers and Discharges), prescribes policies governing the transfer and discharge of Army officer personnel. Paragraph 3-5 (Unqualified Resignation) states any officer on active duty (for more than 90 calendar days) may tender a resignation under this paragraph except when action is pending that could result in resignation for the good of the Service (RFGOS); officer is under a suspension of favorable actions, pending investigation, under charges; or any other unfavorable or derogatory action is pending. An officer who submits an unqualified resignation accepted by Human Resources Command will receive an honorable discharge or a general discharge under honorable conditions.

2. AR 40-501 (Standards of Medical Fitness), governs medical fitness standards for enlistment, induction, appointment, retention, and separation. It states medical evaluation of certain enlisted military occupational specialties and officer duty assignments in terms of medical conditions and physical defects are causes for rejection or medical unfitness for these specialized duties. If the profile is permanent the profiling officer must assess if the Soldier meets retention standards. Those Soldiers on active duty who do not meet retention standards must be referred to a medical evaluation board.

3. AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation) prescribes 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. It implements the requirements of Title 10, U.S. Code, chapter 61; Department of Defense Instructions (DoDI) 1332.18 (Disability Evaluation System (DES)); DoD Manual 1332.18

(DES Volumes 1 through 3) and Army Directive 2012-22 (Changes to Integrated Disability Evaluation System Procedures) as modified by DoDI 1332.18.

a. The objectives are to maintain an effective and fit military organization with maximum use of available manpower; provide benefits to eligible Soldiers whose military service is terminated because of a service-connected disability; provide prompt disability evaluation processing ensuring the rights and interests of the Government and Soldier are protected; and, establish the Military Occupational Specialty Administrative Retention Review (MAR2) as an Army pre-DES evaluation process for Soldiers who require a P3 or P4 (permanent profile) for a medical condition that meets the medical retention standards of Army Regulation 40-501.

b. Public Law 110-181 defines the term, physical DES, as a system or process of the DoD for evaluating the nature and extent of disabilities affecting members of the Armed Forces that is operated by the Secretaries of the military departments and is composed of medical evaluation boards, physical evaluation boards, counseling of Soldiers, and mechanisms for the final disposition of disability evaluations by appropriate personnel.

c. The DES begins for a Soldier when either of the events below occurs:

(1) The Soldier is issued a permanent profile approved in accordance with the provisions of Army Regulation 40–501 and the profile contains a numerical designator of P3/P4 in any of the serial profile factors for a condition that appears not to meet medical retention standards in accordance with AR 40–501. Within (but not later than) 1 year of diagnosis, the Soldier must be assigned a P3/P4 profile to refer the Soldier to the DES.

(2) The Soldier is referred to the DES as the outcome of MAR2 evaluation.

d. A medical evaluation board is convened to determine whether a Soldier's medical condition(s) meets medical retention standards per Army Regulation 40-501. This board may determine a Soldier's condition(s) meet medical retention standards and recommend the Soldier be returned to duty. This board must not provide conclusions or recommendations regarding fitness determinations.

e. The physical evaluation board determines fitness for purposes of Soldiers' retention, separation, or retirement for disability under Title 10, U.S. Code, chapter 61, or separation for disability without entitlement to disability benefits under other than Title 10, U.S. Code, chapter 61. The physical evaluation board also makes certain administrative determinations that may benefit implications under other provisions of law.

f. Unless reserved for higher authority, the U.S. Army Physical Disability Agency approves disability cases for the Secretary of the Army and issues disposition instructions for Soldiers separated or retired for physical disability.

4. Title 10, U.S. Code, 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, 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.

5. Section 1556 of Title 10, United States Code, 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.

6. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//