

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 March 2024

DOCKET NUMBER: AR20230005729

APPLICANT REQUESTS: correction of his DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings) to show:

- his disposition as placement on the Permanent Disability Retired List in lieu of separation with severance pay
- his rating as 60 percent in lieu of 20 percent

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

- ARBA online application in lieu of DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) rating decision, 9 January 2023

FACTS:

1. The applicant states he was originally awarded 20 percent disability at the time of separation. The VA conducted a full review and awarded him 60 percent. He requests the Army adjust his rating and disposition.

2. The applicant underwent a medical examination on 7 March 2017 for enlistment. His DD Form 2807-1 (Report of Medical History) shows he reported he was in good health. The corresponding DD Form 2808 (Report of Medical Examination) shows he was found qualified for service without significant defect 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.

3. The applicant enlisted in the Regular Army on 28 March 2017.
4. The applicant was deployed to Poland in support of European Deterrence Initiative from 6 October 2019 to 16 July 2020. He was attached to Schofield Barracks, HI, effective 23 November 2020.
5. A DA Form 199 shows an Informal PEB convened on 28 September 2022, wherein the applicant was found physically unfit with a recommended rating of 10 percent and that his disposition be separation with severance pay.
  - a. The applicant was found unfit for left ankle osteochondral lesion, posterior tibia with synovitis and tendinopathy, medial posttraumatic changes, lateral capsule injury of the deltoid and lateral ligaments/chronic sprain, Achilles tendon enthesopathy, and tarsal tunnel syndrome.
  - b. The applicant concurred and waived a formal hearing of his case on 4 October 2022 and did not request reconsideration of his VA ratings.
  - c. The proceedings were finalized on 6 October 2022.
6. The applicant was honorably discharged on 4 January 2023.
7. The applicant provided his VA decision letter, dated 11 January 2023, showing he was awarded a combined a rating of 60 percent effective 5 January 2023 for the following conditions:
  - 50 percent - obstructive sleep apnea
  - 10 percent - ankle/foot tarsal tunnel syndrome, tendinopathy, limitation of motion, left (claimed as left ankle osteochondral lesion in the posterior tibial articular cartilage with adjacent synovitis, posterior tibial tendinopathy, medial ankle post-traumatic changes, medial malleolus ossicle, lateral capsule injury with ligamentous injury of the deltoid and lateral ligaments, chronic sprain, Achilles tendon enthesopathy, and left ankle/foot tarsal tunnel syndrome)
  - 10 percent - hip strain, limitation of flexion, left (also claimed as groin pain)
  - 0 percent - benign ganglion cyst, upper right extremity (claimed as skin DO, arms)
  - 0 percent - eczema (claimed as skin DO, face)
  - 0 percent - short-lasting unilateral neuralgiform headache (claimed as migraines)
8. 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.

9. 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 the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an increase in his military disability rating and that his disability discharge disposition be changed from separated with severance pay to permanent retirement for physical disability. He states:

“Documentation was provided that stated a change to the percentage given at the time of determining separation status. Initially 20% disability was awarded and was changed after full review of documentation to 60%. The 60% rating was to be awarded at through VA and states this is the rating that was supposed to be given before.”

c. The Record of Proceedings details the applicant's service and the circumstances of the case. His DD 215 shows he was discharged with \$41,088.00 of disability severance.

d. 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 reflected on a duty limiting permanent physical profile. At the start of their IDES processing, a physician lists the Soldiers referred medical conditions in section I the VA/DOD Joint Disability Evaluation Board Claim (VA Form 21-0819). The Soldier, with the assistance of the VA military service coordinator, lists all other conditions they believe to be service-connected disabilities in block 8 of section II of this form, or on a separate Application for Disability Compensation and Related Compensation Benefits (VA Form 21-526EZ).

e. 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.

f. 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.

g. On 11 April 2022, the applicant was referred to the IDES for "Left ankle osteochondral lesion ..." and "Left ankle/foot tarsal tunnel syndrome." The applicant claimed nine additional conditions on a separate Applications for Disability Compensation and Related Compensation Benefits (VA Form 21-526EZ). A medical evaluation board (MEB) determined the two referred conditions failed the medical retention standards of AR 40-501, Standards of Medical Fitness. The MEB determined fifteen other medical conditions met medical retention standards.

h. On 31 August 2022, the applicant concurred with the MEB's decision, declined the opportunity to request an Impartial Medical Review (IMR), declined the opportunity to submit a written rebuttal, and his case was forwarded to a physical evaluation board (PEB) for adjudication.

i. On 28 September 2022, the applicant's informal PEB found his left ankle condition, a combination of the osteochondral lesion and tarsal tunnel syndrome, to be the sole unfitting condition for continued military service. They found the fifteen remaining medical conditions not unfitting for continued service. The PEB applied the Veterans Benefits Administration (VBA) derived rating of 10% and recommended the applicant be separated with disability severance pay. On 4 October 2022, after being counseled by his PEB Liaison Officer (PEBLO) on the PEB's findings and recommendations, the applicant concurred with the PEB's finding, waived his right to a formal hearing, and declined to request a VA reconsideration of his disability rating.

j. The submitted 11 January 2023 VA Ratings Decision and JLV shows the rating for his left ankle condition remained at 10%:

"Service connection for ankle/foot tarsal tunnel syndrome, tendinopathy, limitation of motion, left (claimed as left ankle osteochondral lesion in the posterior tibial articular cartilage with adjacent synovitis, posterior tibial tendinopathy, medial ankle post-traumatic changes, medial malleolus ossicle, lateral capsule injury with ligamentous injury of the deltoid and lateral ligaments, chronic sprain, Achilles tendon enthesopathy, and left ankle/foot tarsal tunnel syndrome) is granted with an evaluation of 10 percent effective January 5, 2023.

k. The VBA and subsequently the PEB combined these ratings to avoid “pyramiding.” Within the VASRD, §4.14 of Part 4 of Title 38 states that when symptoms overlap and could be considered under multiple codes, “the evaluation of the same disability under various diagnoses is to be avoided ... and ... the evaluation of the same manifestation under different diagnoses are to be avoided.” This is known as “pyramiding,” where a Veteran would receive multiple ratings for the same symptoms, e.g. breathing treatment for asthma and obstructive sleep apnea; and concentration problems in a Veteran who has both a mild traumatic brain injury and PTSD.

l. The applicant’s rating remained 10%. Even if it had been increased by the VBA following his discharge, the awarding of a higher VA rating does not establish prior error or injustice. A disability rating is intended to compensate an individual for interruption of a military career after it has been determined that the individual suffers from an impairment that disqualifies him or her from further military service. The rating derived from the VA Schedule for Rating Disabilities reflects the disability at the point in time the VA exams were completed.

m. There is no evidence the applicant had any additional medical condition(s) which would have failed the medical retention standards of chapter 3, AR 40-501 prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System. Furthermore, there is no evidence that any additional medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge.

n. Review of his PEB case file in ePEB along with his encounters in AHLTA revealed no substantial inaccuracies or discrepancies.

o. JLV shows he has been awarded several VA service-connected disability ratings, including sleep apnea (50%) and limited flexion of the thigh (10%). These VA ratings are what yield a combined 60% VA service-connected disability rating. However, the DES only compensates an individual for service incurred medical condition(s) which have been determined to disqualify him or her from further military service and consequently prematurely ends their career. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

p. It is the opinion of the ARBA medical advisor that neither an increase in his military disability rating nor a referral of his case back to the DES is warranted.

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.
2. The Board concurred with the conclusion of the ARBA Medical Advisor that there is no evidence the applicant had any additional medical conditions that failed medical retention standards prior to his discharge. Based on a preponderance of the evidence, the Board determined the disability rating the applicant received prior to discharge was not in error or unjust.

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.

X

CHAIRPERSON

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. AR 635-40 (Personnel Separations-Disability 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.

a. 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. The percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Ratings are assigned from the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD). The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting, or ratable condition, is one which renders the Soldier unable to perform the duties of their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. 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.

3. 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.

4. 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.



5. Department of Defense (DoD) Directive-Type Memorandum (DTM) 11-015 (Disability Evaluation System) explains the Integrated Disability Evaluation System (IDES). The version in effect at the time defined the IDES process and procedures. The guidelines within the DTM were incorporated in the DoD Manual Number 1332.18 (DES Manual: General Information and Legacy DES Time Standards).

a. The IDES is the joint DoD-VA process by which DoD determines whether wounded, ill, or injured Service members are fit for continued military service and by which the DOD and the VA determine appropriate benefits for Service members who are separated or retired for a Service-connected disability. The IDES features a single set of disability medical examinations appropriate for fitness determination by the Military Departments and a single set of disability ratings provided by the VA for appropriate use by both departments. Although the IDES includes medical examinations, IDES processes are administrative in nature and are independent of clinical care and treatment.

b. Unless otherwise stated in this DTM, DOD will follow the existing policies and procedures promulgated in DOD Directive 1332.18 (Disability Evaluation System (DES)) and the Under Secretary of Defense for Personnel and Readiness Memoranda. All newly initiated, duty-related physical disability cases from the Departments of the Army, Air Force, and Navy at operating IDES sites will be processed in accordance with this DTM and follow the process described in this DTM unless the Military Department concerned approves the exclusion of the Service member due to special circumstances. Service members whose cases were initiated under the legacy DES process will not enter the IDES.

c. IDES medical examinations will include a general medical examination and any other applicable medical examinations performed to VA compensation and pension (C&P) standards. Collectively, the examinations will be sufficient to assess the member's referred and claimed condition(s) and assist the VA in ratings determinations and assist military departments with unfit determinations.

d. Within 15 days of receiving the proposed disability ratings from the Disability Rating Activity Site (D-RAS), the PEB will apply the rating using the diagnostic code(s) provided by the D-RAS to the Service Member's unfitting conditions and publish the disposition recommendation. For example, if the PEB identifies a condition to the D-RAS as "schizophreniform disorder," but the D-RAS rates the condition as "psychotic disorder NOS (VASRD 9210), the PEB will apply the rating as "schizophreniform disorder rated as psychotic disorder NOS (VASRD 9210).

e. Upon separation from military service for medical disability and consistent with Board for Corrections of Military Records (BCMR) procedures of the Military Department concerned, the former Service member (or his or her designated representative) may

request correction of his or her military records through his or her respective Military Department BCMR if new information regarding his or her service or condition during service is made available that may result in a different disposition. For example, a veteran appeals the VA's disability rating of an unfitting condition based on a portion of his or her service treatment record that was missing during the IDES process. If the VA changes the disability rating for the unfitting condition based on a portion of his or her service treatment record that was missing during the IDES process and the change to the disability rating may result in a different disposition, the Service member may request correction of his or her military records through his or her respective Military Department BCMR.

//NOTHING FOLLOWS//