

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 5 March 2024

DOCKET NUMBER: AR20230007278

APPLICANT REQUESTS:

- correction of his DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings) to show:
 - the addition of his bilateral ankle condition with a 10 percent rating
 - a total rating of 30 percent vice 20 percent
 - his disposition as placement on the Permanent Disability Retired List (PDRL) vice separated with severance pay
- a personal appearance before the Board via video/telephone

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 3947 (Medical Evaluation Board (MEB) Proceedings), 30 July 2020
- DA Form 199, 21 August 2020
- Department of Veterans Affairs (VA) Ankle Conditions Disability Benefits Questionnaire, 9 June 2022
- VA Rating Decision, 7 July 2022
- medical records (8 pages)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states during his medical discharge process, his ankle conditions were removed from the proceedings. He had an examination on his ankles without tests or flexion measurements. If done the results would have shown he did not meet medical standards for his ankle condition, along with his other claimed conditions. He had Achilles tendonitis which required surgeries in and out of service on each ankle, without

resolution. If included, his overall Army disability rating would have been 30 percent or more, granting him Tricare. He was clearly in pain every day and his examination was not documented correctly or completed as it should have been. After service, his orthopedic doctor indicated his previous surgeries were done incorrectly, requiring another set of surgeries in 2022. He was awarded VA disability of 10 percent for each ankle due to heel pain and flexion issues, which he claimed during his medical discharge examination.

3. The applicant underwent a medical examination for enlistment on 4 August 2016. His DD Form 2807-1 (Report of Medical History) shows he reported he was in good health without defect. The corresponding DD Form 2808 (Report of Medical Examination) shows he was found qualified for service 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 Regular Army on 17 April 2017. He completed his required training and was assigned to Hunter Army Airfield, Savannah, GA effective 29 April 2018.

5. The applicant underwent a MEB on 30 July 2020.

a. The following conditions did not meet retention standards:

- right lower leg injury/pain. status post endoscopic gastrocnemius recession w/ residuals
- left lower leg injury/pain. status post endoscopic gastrocnemius recession w/ residuals

b. The following conditions did meet retention standards:

- shoulder strain, left
- lumbosacral strain
- unequal leg length, bilateral
- knee strain, bilateral
- foot strain, bilateral
- gastroesophageal reflux disease (GERD)

- scars, right lower extremity, status post-surgery
- scars, left lower extremity, status post-surgery

c. The following conditions had no VA confirmed diagnosis:

- left foot heel pain, claimed condition
- right foot heel pain, claimed condition

d. The case was referred to a PEB.

e. The applicant acknowledged he was counseled and concurred with the Board decision on 3 August 2020. He did not request and Impartial Medical Review (IMR) and did not wish to submit a written rebuttal.

6. A DA Form 199 shows an Informal PEB convened on 21 August 2020, wherein the applicant was found physically unfit with a recommended rating of 20 percent and that his disposition be separation with severance pay.

b. The applicant was found unfit for:

- (1) right lower leg injury and pain (MEB diagnosis 1)
- (2) left lower leg injury and pain (MEB diagnosis 2)

(3) The medical records indicate he first sought treatment on 30 November 2018 while stationed at Fort Stewart, GA, after reporting chronic ankle and foot pain. Although the narrative summary reported he had symptoms of this condition prior to military service, there is not clear and unmistakable evidence that this condition existed prior to service. The presumption of service aggravation is not overcome. Treatment has included heel lifts, inserts, and surgery (16 December 2019) to elongate the Achilles tendon with no improvement to his symptoms. He continues to have duty limiting symptoms and pain. He is unfit because these conditions prevent him from being able to occasionally push/pull 346 pounds (RQ-7 Shadow) approximately 50 feet in completion of assigned 15E (Unmanned Aircraft Systems Repairer) duties.

c. The following conditions were determined not to be unfitting:

- Shoulder strain, left
- Lumbar strain
- Unequal leg length, bilateral
- Knee strain, bilateral
- Bilateral foot strain
- Gastroesophageal reflux disease

- Scars, right lower extremity s/p surgery
- Scars, left lower extremity s/p surgery
- Claimed condition left foot heel pain (No VA diagnosis)
- Claimed condition right foot heel pain (No VA diagnosis)

d. This case was adjudicated as part of the Integrated Disability Evaluation System (IDES).

e. The applicant concurred and waived a formal hearing of his case on 24 August 2020. He did not request reconsideration of his VA ratings.

f. The proceedings were finalized on 26 August 2020.

7. The applicant was honorably discharged on 23 October 2020 under the provisions of Army Regulation (AR) 635-40 (Personnel Separations-Disability Evaluation for Retention, Retirement, or Separation) for disability, severance pay, non-combat related. He was credited 3 years 6 months 7 days net active service this period.

8. The applicant provided his VA Rating Decision dated 7 July 2022 showing he was granted service-connected disability for the following conditions effective 24 October 2020:

- 30 percent - unspecified anxiety disorder (claimed as stress)
- 10 percent - left ankle status post endoscopic bilateral gastrocnemius resection surgery
- 10 percent - right ankle status post endoscopic bilateral gastrocnemius resection surgery
- 10 percent - tinnitus (claimed as ears ringing, ringing in ears)

9. 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.

10. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. Paragraph 2-11 states applicants do not have a right to a formal hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

11. 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 (EMR) (AHLTA and/or 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 is applying to the ABCMR requesting his bilateral ankle conditions be determined to have been unfitting conditions for continued military service with a subsequent increase in his military disability rating and a change of his disability discharge disposition from separate with disability severance pay to permanent retirement for physical disability. He states:

“During my medical discharge process my ankles were removed from claim for an unknown reason. I had an exam done on my ankles where the doctor did no tests or measurements. If done correctly, results would have shown that I did not meet medical standards for my ankle flexion, along with my other claimed conditions. Along with no ankle flexion I had Achilles tendonitis which required me to have surgeries in service, and out of service on each leg, both which never fixed my issues. This all impacted my overall Army percentage awarded to me during my discharge process, which granted me severance pay instead of a rating of 30% or higher that would have granted me Tricare.”

c. The Record of Proceedings details the applicant's service and the circumstances of the case. His DD 214 for the period of Service under consideration shows he entered the Regular Army on 17 April 2017 and was honorably discharged with \$20,056.80 of disability severance pay on 23 October 2020 under provisions provided in paragraph 4-24 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (19 January 2017).

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 Disability Benefits Questionnaires (DBQ) (aka 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 28 April 2020, the applicant was referred to the IDES "Residual Left Lower Leg Pain, s/p [status post] Left Endoscopic Gastrocnemius Recession" and "Residual Right Lower Leg Pain, s/p Right Endoscopic Gastrocnemius Recession." These are the in-service surgeries the applicant is referencing. The applicant claimed eight additional conditions on a separate Application for Disability Compensation and Related Compensation Benefits (VA Form 21-526EZ). Though he claimed "Heel/foot pain bilateral", he did not claim an ankle condition.

h. His referred conditions as documented on his MEB narrative summary (NARSUM):

"Equinus foot/ankle morphology is an EPTS [existed prior to service] condition of 'short heel cords' [aka Achille's tendon] initially seen in young children. He did admit that he had prior to service (not disclosed at MEPS) multiple leg problems starting at least at age 10, including unequal leg length, ankle, foot, and knee problems that can be associated with Equinus foot morphology ... Since this was his first report of foot and ankle problems in AHLTA, his report of 'chronic' problems indicates a pre-service symptomatic problem that was not disclosed at MEPS."

i. Equinus is limited dorsiflexion at the ankle (moving the foot upward) or within the foot, often resulting to what is often referred to as toe walking. A common cause is tightness in the Achilles tendon and/or calf muscles, and this can either be congenital or develop later in life due to a number of causes.

j. There are eight DBQs in the applicant's MEB case file. The applicant's referred conditions were addressed in his Knee And Lower Leg Conditions DBQ as the surgeries

involved the muscles of his lower legs. These outpatient surgeries were performed to address his chronic Achilles tendonitis / pre-service equinus ankle deformity. A gastrocnemius recession in effect lengthens the muscles and tendons at the back of the leg, thereby allowing the heel to shift downward into a more neutral, less flexed position.



a, b Postsurgery Gap in Achilles tendon before and after forcing the ankle in dorsal flexion. **c, d** Ankle range-of-motion(Ankle-ROM) presurgery and postsurgery with the ankle in forced dorsal flexion

Needle-based gastrocnemius lengthening: a novel ultrasound-guided noninvasive technique. J Orthop Surg Res

k. There are several variations of this procedure but they are similar in that they make incisions in the overlying fascia and/or tendon creating gaps which heal with intervening scar tissue resulting in an overall lengthening of the gastrosoleus complex.

l. A medical evaluation board (MEB) determined his referred conditions failed the medical retention standards of AR 40-501, Standards of Medical Fitness. They determined ten additional medical conditions met medical retention standards. This included his claimed left and right heel/foot pain for which the applicant had a DBQ and the MEB noted for each "NO VA DX" (diagnosis). On 3 August 2020, 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.

m. On 21 August 2020, the applicant's informal PEB found his right and left leg conditions unfitting for continued military service. They found the remaining ten medical conditions not unfitting for continued service. The PEB applied the Veterans Benefits Administration (VBA) derived ratings of 10% to each condition for a combined military disability rating of 20% and recommended the applicant be separated with disability severance pay. On 24 August 2020, 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.

n. Review of his PEB case file in ePEB along AHLTA records revealed no material inaccuracies, omissions, or discrepancies.

o. 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.

p. Review of his records in JLV shows he has been awarded multiple VA service-connected disability ratings, including 10% ratings limited motion of his left and right ankles. 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. 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.

q. It is the opinion of the ARBA Medical Advisor that neither an increase in his military disability rating, a change of his disability discharge disposition, nor a referral of his case back to the DES is warranted.

BOARD DISCUSSION:

1. The applicant's request for a personal appearance hearing was carefully considered. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. 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.

a. The evidence shows an MEB determined his referred medical conditions failed the medical retention standards of AR 40-501, Standards of Medical Fitness. The MEB determined ten additional medical conditions met medical retention standards. This included his claimed left and right heel/foot pain. An informal PEB found his right and left leg conditions unfitting for continued military service. The PEB found the remaining 10 medical conditions not unfitting for continued service. The PEB applied the VA derived ratings of 10% to each condition for a combined military disability rating of 20% and recommended the applicant be separated with disability severance pay.

b. The Board reviewed and agreed with the medical reviewer's determination that a review of his PEB case file in ePEB along AHLTA records revealed no material inaccuracies, omissions, or discrepancies. 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. 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.

c. The Board determined that neither an increase in his military disability rating, a change of his disability discharge disposition, nor a referral of his case back to the disability evaluation system is warranted.

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.

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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 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. Army Regulation 15-185 (Army Board for Correction of Military Records), paragraph 2-11, states applicants do not have a right to a formal hearing before the ABCMR. The Director of the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//