

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 March 2024

DOCKET NUMBER: AR20230007337

APPLICANT REQUESTS: correction of his DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings) by adding additional conditions as unfitting resulting in a higher disability rating.

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

- DD Form 149 (Application for Correction of Military Record)
- 8 pages of medical records
- Department of Veterans Affairs (VA) benefits decision letter

FACTS:

1. The applicant states the percentage of his disability is incorrect due to only taking into consideration his knees and leaving out his back problems, which do not allow him to perform his military duties. Also, anxiety, depression, and insomnia were left out as well. Now, a new problem that should also be taken into consideration is the nerve damage that was caused by the anterior cruciate ligament (ACL) surgery to his right knee while he was on active duty. The pain started immediately after his surgery, and the doctor said it could have been caused by the position of his leg during the surgery, the bandage, and or the surgery in general. It is hard to say how long this problem will continue, but there is a possibility it will last for life. He can no longer walk properly without pain. Many of his medical problems were not taken into consideration before his release and they all prohibited him from performing his job in the Army.
2. The applicant enlisted in the Regular Army on 20 January 2021.
3. On 18 January 2023, a PEB found the applicant unfit for further military service due to left knee patellofemoral chondromalacia and right knee ACL tear status post ACL and meniscus repair. The PEB recommended a 20% combined disability rating and his separation with severance pay. The PEB found him fit for 26 additional conditions. The additional conditions were not identified on the DA Form 199.

4. On 23 January 2023, the applicant concurred with the PEB's findings and recommendations and waived a formal hearing of his case. He did not request reconsideration of his VA ratings.
5. The applicant's DA Form 199 contains the following statements:
 - a. This case was adjudicated as part of the Integrated Disability Evaluation System (IDES).
 - b. As documented in the VA memorandum dated 7 January 2023, the VA determined the specific VA Schedule for Rating Disabilities (VASRD) code(s) to describe the Soldier's condition(s). The PEB determined the disposition recommendation based on the proposed VA disability rating(s) and in accord with applicable statutes and regulations.
6. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged on 18 March 2023 under the provisions of Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation), chapter 4, by reason of disability, severance pay, combat related.
7. The applicant provided his VA benefits decision letter showing he was granted service-connected disability compensation, with a combined disability rating of 100%, for 18 medical disabilities that include adjustment disorder with mixed anxiety and depressed mood (also claimed as insomnia) and thoracic degenerative disc disease and strain (claimed as middle and low back pain).
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 additional medical conditions be determined unfitting for continued military service, an increase in his military disability rating, and a subsequent change in his disability discharge disposition from separated with severance pay to permanent retirement for physical disability. He states:

“The percentage of my disability is incorrect due to only taking into consideration my knees and leaving out my back problems which do not allow me to perform my military duties. Also, anxiety, depression, and insomnia were left out as well. Now, a new problem that should also be taken into consideration is the nerve damage that was caused by the ACL surgery in my right knee while I was on active duty. The pain started immediately after my surgery, and the doctor said it could have been caused by the position of my leg during the surgery, the bandage, and or the surgery in general. It is hard to say how long this problem will continue, but there is a possibility it will last for life. I can no longer walk properly without pain.”

c. The Record of Proceedings details the applicant’s service and the circumstances of the case. His DD 214 shows he entered the regular Army on 20 January 2021 and was honorably discharged with \$31,579.20 of disability severance pay on 18 March 2023 under provisions provided in chapter 4 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 Disability Benefits Questionnaires (DBQ, aka 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 24 October 2022, the applicant was referred to the IDES for "left knee patellar chondromalacia" and "right knee ACL tear s/p ACL and meniscus repair." The applicant claimed thirteen additional conditions on a separate Applications for Disability Compensation and Related Compensation Benefits (VA Form 21-526EZ), including "middle and low back pain" and "insomnia/depression."

h. A medical evaluation board (MEB) determined the referred left and right knee conditions failed the medical retention standards of AR 40-501, Standards of Medical Fitness. The MEB determined eighteen other medical conditions met medical retention standards, including "Thoracolumbar degenerative disc disease" and "adjustment disorder with mixed anxiety and depressed mood." These conditions as written on his MEB narrative summary show they both met the medical retention standards in chapter 3 on Medical retention determination point in chapter 7 of AR 40-501, Standards of Medical Fitness: The low back pain was being treated and had not reached the medical retention determination point and his mental health symptoms were much improved and the condition met medical retention standards.

"Thoracolumbar degenerative disc disease: SM [Service Member] was seen in October 2021 for low back pain [LBP]. X-rays of the L-spine showed transitional lumbosacral anatomy [a congenital variant]. An MRI in December 2021 showed "There is a posterior central disc protrusion with annular fissuring that results in moderate spinal canal stenosis and mild bilateral neural foraminal stenosis. The disc appears to contact the bilateral descending nerve roots."

He was seen for LBP again in July 2022, and an MRI in September 2022 showed similar appearance as prior "disc desiccation and mild disc space height loss with broad-based posterior disc bulge. The disc bulge encroaches on the transiting S1 nerve roots bilaterally. Mild canal stenosis is noted along with moderate right and mild left foraminal narrowing." SM was seen by pain management in October 2022 and diagnosed with bilateral lumbar radiculopathy. On November 22, 2022, SM had L5-S1 epidural steroid injection. Recent physical therapy encounters have been focused on treating knee conditions. There are no further post epidural follow-up procedures."

Adjustment disorder with mixed anxiety and depressed mood: SM was seen by BH [behavioral health] in January 2022 because of stress at work. He was diagnosed with adjustment disorder in March 2022. On the follow up in May

2022, the BH note stated that SM had stopped the Lexapro after 3 days, and the note also stated "States for the past 4 weeks he has been doing well.

He reports no anxiety, no depression, no sadness. He states, "Everything is going better". States things at work have gotten better. He states he does not wish to take medication at this time. States his only concern is some decreased concentration and getting distracted easily at work." This condition does not prevent soldier from performing normal duty."

i. On 12 December 2022, he concurred with the MEB's decision, declined the opportunity to request an Impartial Medical Review, declined the opportunity to submit a written rebuttal, and his case was forwarded to a physical evaluation board (PEB) for adjudication.

j. On 18 January 2023, the applicant's informal PEB found his left and right knee conditions to be unfitting conditions for continued military service. They found the remaining medical conditions not unfitting for continued service. The PEB applied the Veterans Benefits Administration (VBA) derived ratings of 10% and 10% respectively and recommended the applicant be separated with disability severance pay. On 23 January 2023, after being counseled by his PEB liaison officer, the applicant concurred with the PEB's findings, waived his right to demand a formal, and declined the opportunity to request a VA reconsideration of the rating (VARR).

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

l. JLV shows he has numerous ratings for VA service-connected disabilities, including chronic adjustment disorder and degenerative arthritis of the spine. 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.

m. 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 that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising official finding that neither an increase in his military disability rating nor a referral of his case back to the DES is warranted. The Board noted the applicant concurred with the MEB's decision, declined the opportunity to request an Impartial Medical Review, declined the opportunity to submit a written rebuttal and his case was forwarded to a physical evaluation board (PEB) for adjudication. Evidence shows the applicant concurred with his PEB's findings and recommendations and waived a formal hearing. He did not request reconsideration of his VA ratings.

2. The Board determined based on the preponderance of evidence and the advising opine there is insufficient evidence that warrants correction of the applicant's DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings) by adding additional conditions as unfitting resulting in a higher disability rating. Based on this, the Board denied relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.

4/8/2024

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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, 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 Department of Defense (DOD) Directive 1332.18 and Army Regulation 635-40.
2. Army Regulation 635-40 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.
 - a. The disability evaluation assessment process involves two distinct stages: the Medical Evaluation Board (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 or 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 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.
 - b. Service members whose medical condition did not exist prior to service who are determined to be unfit for duty due to disability are either separated from the military or are permanently retired, depending on the severity of the disability. 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.
3. Title 10, U.S. Code, section 1201, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30% percent. Title 10, U.S. Code, section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating of less than 30%.
4. Directive-type Memorandum (DTM) 11-015, dated 19 December 2011, explains the IDES. It states:
 - 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 DOD and 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 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 requirements promulgated in DODI 1332.18 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.

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

d. Upon separation from military service for medical disability and consistent with the Board for Correction of Military Records (BCMR) procedures of the military department concerned, the former service member 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 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.

e. If, after separation from service and attaining veteran status, the former service member desires to appeal a determination from the rating decision, the veteran has one year from the date of mailing of notice of the VA decision to submit a written notice of disagreement with the decision to the VA regional office of jurisdiction.

5. 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.

6. Title 38, Code of Federal Regulations, Part IV is the VASRD. 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.

7. Section 1556 of Title 10, U.S. 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 ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//