

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 March 2024

DOCKET NUMBER: AR20230007673

APPLICANT REQUESTS: correction of his DA Form 199 (Physical Evaluation Board (PEB) Proceedings) to include and award a disability rating for the following conditions:

- Post-traumatic stress disorder (PTSD) with depression
- bilateral knee - patellofemoral osteoarthritis, quadriceps tendonitis, chondromalacia with limitation in extension and instability with limitation in flexion and painful motion
- lumbar strain
- obstructive sleep apnea/hypersomnia
- daytime sleepiness (PTSD related)
- bilateral shoulder pain

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

- DD Form 294 (Application for a review by the Physical Disability Board of Review (PDBR))
- applicant statement
- DA Form 3349 (Physical Profile), 28 April 2004
- DD Form 2808 (Report of Medical Examination), 17 March 2005
- DA Form 3349, 17 May 2005
- Narrative Summary, 17 May 2005
- DA Form 3947 (Medical Evaluation Board Proceedings), 26 May 2005
- DA Form 199, 24 June 2005
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 30 November 2005
- Department of Veterans Affairs (VA) letter, 3 June 2015
- VA letter, 9 July 2015
- VA rating decision letter, 26 March 2021
- VA service-connected disabilities letter, 21 February 2023
- VA service-connected disabilities letter, 7 March 2023
- medical records (49 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 his MEB notes depression was one of his permanent medical injuries from his time on active duty. The Board paperwork did not have information about his mental health diagnoses, PTSD, or depression as service-connected disability from combat. It also does not reflect the knee injury to both knees. he has been deemed unemployable due to his PTSD and major depressive disorder.
3. The applicant underwent a medical examination on 22 April 1982 for enlistment. His Standard Form (SF) 88 (Report of Medical Examination) shows he had a history of right knee injury; however, he was found qualified for enlistment and assigned a physical profile of 111121.

A physical profile, as reflected on a DA Form 3349, SF 88 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 5 May 1982; he remained on active duty though a series of reenlistments.
5. On 12 July 1994, the applicant underwent a PEB for chronic Achilles tendinitis. He was ultimately found fit for his condition due to issuance of military footwear to accommodate his condition and his own request for continuance on active duty.
6. The applicant reenlisted in the Regular Army on 5 June 1995 and 1 March 2000.
7. On 13 November 2003, a Military Occupational Specialty (MOS)/Medical Retention Board (MMRB) convened to determine the applicant's capability to perform the duties of his office, grade, rank, or rating under worldwide field conditions. The applicant appeared before the board with a P3 profile for chronic Achilles tendonitis and bilateral anterior knee pain. This board recommended referral to the Medical Evaluation Board/Physical Evaluation Board (MEB/PEB) for further review.

8. A DA Form 3349, dated 3 May 2004, shows the applicant assigned a profile of 133112 for bilateral left knee pain, right shoulder pain, and depression.

9. A memorandum from the applicant's commander to the Fort Gordon Physical Evaluation Board Liaison Officer (PEBLO) states the applicant was physically incapable of reasonably performing his duties as a 25W (Telecommunications Operations Chief) and is nondeployable due to chronic shoulder and knee problems.

10. A DA Form 3349, dated 3 March 2005, shows the applicant assigned a profile of 133112 for bilateral left knee pain, right shoulder pain, depression and left ankle pain

11. The applicant completed a DD Form 2807-1 (Report of Medical History) on 4 March 2005, reporting he was in good health with the following history:

- hay fever
- left shoulder, torn rotator cuff, surgery 8 June 2004, cannot lift hand over head
- partial Achilles tear and repair
- knee surgery May/June 2001, loses feeling in left leg when sitting too long, swelling in both knees, knees lock when driving, wears a knee brace, painful joints when walking, cannot bend down
- acid reflux, treated since 1999
- weight gain after knee surgery
- high blood pressure
- had a sleep study, takes medication as needed since 1993
- getting depressed at times

12. On 17 March 2005, the applicant underwent a medical examination for the MEB. He was assigned a physical profile of 133112. The summary of defects shows bilateral knee pain, post status left knee lateral release; right shoulder pain, post status rotator cuff repair; and depression. Recommendations show further examination indicated for his acid reflux, hypertension and status post left Achilles tendon rupture.

13. A Narrative Summary (NARSUM) based on the applicant's examination on 17 March 2005, shows his diagnoses of Chronic Right Shoulder Pain (slight/intermittent) status post rotator cuff surgery June 2004 and Bilateral Knee Pain (slight/intermittent) fail retention standards. He was recommended to present to the PEB. His DA Form 3947 (Medical Evaluation Board Proceedings), dated 26 May 2005, mirrors this recommendation.

14. A DA Form 199 shows an Informal PEB convened on 24 June 2005, wherein the applicant was found physically unfit, and his disposition be placement on the Permanent Disability Retirement List (PDRL) with a 0 percent rating.

a. He was found unfit for chronic pain, right shoulder (status post rotator cuff surgery in June 2004) and bilateral knees. No limitation of motion, not requiring narcotics. rated as slight/intermittent.

b. Rated in accordance with U. S. Army Physical Disability Agency (PDA) Policy/Guidance Memorandum #13, dated 28 February 2005, subject: Rating Pain.

c. Applicant has over 22 years of active federal service.

d. The applicant's disability is not based on injury or disease receive in the line of duty as a directed result of armed conflict or instrumentality of war and did not result for a combat related injury as defined by law.

e. The applicant concurred and waived a formal hearing of his case on 8 July 2005.

15. The applicant was honorably retired on 30 November 2005 under the provisions of Army Regulation (AR) 635-40 (Physical Evaluation for Retention, Retirement, or Separation), paragraph 4-24B(1) for disability, permanent. The applicant was credited 23 years 3 months net active service.

16. The applicant applied for Army Combat-Related Special Compensation (CRSC) and is currently compensated for tinnitus and bilateral hearing loss due to an instrumentality of war. He requested and was denied CRSC for the following conditions as there was no evidence to show combat-related event caused condition:

- Posttraumatic Stress Disorder with Major Depressive Disorder
- Obstructive Sleep Apnea with Hypersomnia
- Right Knee Patellofemoral Osteoarthritis, Quadricep Tendonitis with Tear on Right Knee and Chondromalacia with Limitation In Extension
- Hypertension
- Lumbar Strain
- Impingement Syndrome, Left Shoulder, Degenerative Arthritis of The AC Joint
- Impingement Syndrome, Status Post Surgery, Right Shoulder with Degenerative Arthritis of The AC Joint
- Instability, Left Knee
- Gastroesophageal Reflux Disease
- Right Knee Patellofemoral Osteoarthritis, Quadricep Tendonitis with Tear on Right Knee and Chondromalacia with Limitation Inflexion and Painful Motion
- Right Knee Patellofemoral Osteoarthritis, Quadricep Tendonitis with Tear on Right Knee and Chondromalacia with Instability
- Left Knee Arthritis Status Post Surgery
- Left Knee Arthritis Status Post Surgery, Limitation of Flexion
- Erectile Dysfunction

- Right Shoulder Surgical Scars
- Left Knee Surgical Scar

17. The applicant provided:

a. Two letters from the VA stating they have determined he will not benefit from the vocational rehabilitation program and was discontinued due to his unstable health conditions.

b. A VA rating decision dated 26 March 2021 showing he was graded individual unemployability and Dependents' Educational Assistance effective 25 May 2010.

c. Two VA service-connected disabilities letters, dated 21 February 2023 and 7 March 2023, showing the following ratings and conditions:

- 70 percent - posttraumatic stress disorder with major depressive disorder claimed as acquired psychiatric disorder
- 50 percent - right knee patellofemoral osteoarthritis, quadricep tendonitis with tear on right knee and chondromalacia with limitation in extension
- 50 percent - obstructive sleep apnea with hypersomnia
- 30 percent - temporomandibular joint syndrome (claimed as TMJ syndrome)
- 20 percent - instability, left knee
- 20 percent - impingement syndrome, left shoulder; degenerative arthritis of the AC joint
- 20 percent - impingement syndrome, status post-surgery, right shoulder with degenerative arthritis of the AC joint
- 20 percent - lumbar strain (claimed as back condition)
- 20 percent - hypertension
- 10 percent - left knee arthritis status post-surgery, limitation of flexion
- 10 percent - gastroesophageal reflux disease (GERD)
- 10 percent - left Achilles tendinopathy with residual decreased left ankle range of motion (claimed as left Achilles tendon ankle)
- 10 percent - tinnitus
- 10 percent - left knee arthritis status post-surgery
- 10 percent - left knee painful surgical scar
- 10 percent - right knee patellofemoral osteoarthritis, quadricep tendonitis with tear on right knee and chondromalacia with limitation in flexion and painful motion
- 10 percent - right knee patellofemoral osteoarthritis, quadricep tendonitis with tear on right knee and chondromalacia with instability
- 0 percent - bilateral tinea pedis
- 0 percent - bilateral hearing loss

- 0 percent - erectile dysfunction
- 0 percent - right shoulder surgical scars
- 0 percent - left knee surgical scar
- 0 percent - surgical scars, right knee

18. 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.

#### MEDICAL REVIEW:

1. 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:

2. The applicant is applying to the ABCMR requesting they determine additional medical conditions were unfitting for continued military service prior to his permanent retirement for physical disability; a corresponding increase in his prior military disability rating of 0%; and revocation of his initial orders permanently retiring him for physical disability with reissuance of a second set of orders again permanently retiring him for physical disability with a higher military disability rating. He states:

The Medical Evaluation Board (MEB) director, E.L.D. stated that depression was one of the permanent medical injuries from my time on active duty. Contrarily {sic}, the military acronym PULHES physical capacity/stamina (P), upper extremities (U), lower extremities (L), hearing and ears (H), eyes (E), and psychiatric (S) the psychiatric (S) had the number two in its box. The physical profile designation of "2" indicates some medical condition may require some activity limitations.

I served my country for twenty-three plus years on active duty and was medically retired after attending a Medical Evaluation Board (MEB). I'm requesting the Army to reevaluate my case because I was diagnosed with PTSD felt to be indicated for a possible case of the Persian Gulf illness in September 1994. While looking for the medical board paperwork to give to the Veteran Administration for PTSD claim, I

found the DA Form 199, Jun 97 from the physical evaluation Board (PEB) proceedings. The board paperwork didn't have any information about my mental health diagnoses, PTSD, or depression service-connected disability from combat.”

3. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 shows he entered the regular Army on 1 September 1982 and was permanently retired for physical disability on 30 November 2005 under provisions in paragraph 4-24b(1) of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (1 September 1990): Permanent retirement for physical disability (see 10 USC 1201 or 1204).” His discharge orders show his disability percentage was 0% and that he had 23 years, 3 months, and 0 days of net active service.

4. Paragraph c-12c of appendix C of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (1 September 1990) states:

Retired pay. A Soldier is eligible for disability retired pay if he has a rating of less than 30 percent and has 20 years of active service for retirement (19 years and 6 months of active service is not 20 years for retirement) or a disability rating of 30 percent or more.

5. Because the applicant had a 0% disability rating but more than 23 years of active federal service, he was retired for length of service under paragraph (b)(3)(A) of 10 U.S. Code § 1201 - Regulars and members on active duty for more than 30 days: retirement.

6. This length of service retirement with its monthly retirement payments and other benefits is awarded to these Soldiers because they have earned it and it is clearly more beneficial to a single payment of disability severance pay which is often recouped by the VA.

7. Submitted medical documentation shows the applicant was thought to have mild PTSD in 1994, underwent a Gulf War Illness evaluation that year at Madigan Army Medical Center, had a history of “sleep disorder” sine 1994, and underwent left knee arthroscopy in 2002.

8. The applicant was placed in a duty-limiting permanent physical profile on 28 April 2004 for “Bilateral left knee pain, Right shoulder pain” with a non-duty-limiting permanent profile for “depression.”

9. As part of her medical evaluation board (MEB), duty limiting left ankle pain was added on 17 May 2005. On 26 May 2005, the MEB determined he had two conditions which failed the medical retention standards in AR 40-501, Standards of Medical Fitness (29 August 2003): "Chronic right shoulder pain (slight/intermittent) status post rotator cuff surgery June 2004" and "Bilateral knee pain (slight/intermittent)." From the MEB narrative summary:

CURRENT CONDITION: Currently SFC [Applicant] is stationed at Fort McPherson near and around Atlanta. He is retirement eligible. He has been directed by an MMRB [MOS Medical Retention Board] to be engaged in the Medical Evaluation Board. It is clear he is unable to do basic soldiering activities due to his chronic pain although review of his medical record demonstrates he's on very little in terms of pain medication. His condition should be considered chronic and stable, the prognosis is good, compliance unknown.

10. On 21 June 2005, the applicant agreed with the MEB's findings and recommendation, and his case was forwarded to a physical evaluation board (PEB) for adjudication.

11. The informal PEB convened on 24 June 2005 and determined the two conditions which had failed medical retention standards were also unfitting conditions for continued service. They derived and applied a combined military disability rating of 0% disability and recommended the applicant be permanently retired for physical disability. On 8 July 2005, after being counseled on the board's findings and recommendation by his PEB liaison officer, he concurred with the PEB and waived his right to a formal hearing.

12. The applicant states his depression was an S2 on his permanent physical profile and that should have been found unfitting. However, a designator of 2 does not indicate a condition is a cause for referral to an MEB and his depression was not found to fail medical retention standards. Paragraph 7-3d(2) of AR 40-501 states the 2 designator for one of the PULHES factors denotes:

"A physical profile designator of "2" under any or all factors indicates that an individual possesses some medical condition or physical defect that may require some activity limitations."

13. Table 7-1 of AR 40-501 - Physical profile functional capacity guide – states for an S2:



“May have history of recovery from an acute psychotic reaction due to external or toxic causes unrelated to alcohol or drug addiction.”

14. Paragraph 3-1 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (1 September 1990) states:

“The mere presence of an impairment does not, of itself, justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier reasonably may be expected to perform because of his or her office, grade, rank, or rating.”

15. There is no probative evidence the applicant’s mental health condition, or any additional duty incurred medical condition would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, 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.

16. JLV shows he has been awarded numerous VA service-connected disability ratings, including ratings for PTSD and sleep apnea in 2007 and rating(s) for musculoskeletal issues in each extremity from 2005 thru 2017. 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. Congress granted these roles and authorities to the Department of Veterans Affairs, and these roles and authorities are executed under a different set of laws.

17. It is the opinion of the ARBA Medical Advisor that neither a referral of his case back to the DES nor revocation of his initial orders permanently retiring him for physical disability with reissuance of a second set of orders again permanently retiring him for physical disability with a higher military disability rating is warranted.

BOARD DISCUSSION:

1. The Board carefully considered the applicant's request for correction of his DA Form 199 to include the aforementioned additional conditions with award a disability rating for each condition. Additionally, the Board thoroughly reviewed and considered, all statements and supporting documents provided by the applicant, the evidence found within the military record, and the regulatory and statutory guidance.
2. Based on the opinion of the ARBA Medical advisor, there is no probative evidence the applicant's mental health condition, nor any additional duty incurred medical condition would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, 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.
3. The Board found relief was not 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, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. 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.

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

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

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

4. 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.

5. USAPDA Policy/Guidance Memorandum Number 13, dated 28 February 2005, provides guidance for rating unfitting conditions that are manifested with pain with and without supportable medical findings for rating an underlying condition. It stipulates, in relevant part, that pain is rated by intensity and frequency of pain. Intensity (severity) of pain is rated as minimal, slight, moderate, or marked. Frequency of pain is rated as intermittent, occasional, frequent, or constant. When there is evidence of an underlying medical condition that is manifested by more than just pain, the underlying impairment should be rated. Examples are fibromyalgia, osteoarthritis, bursitis, ligament tear, muscle tear, or previous muscle or bone injury. A Soldier's total rating may exceed 20 percent and may include a separate rating for pain up to the maximum of 20 percent under 5099-5003. When pain is rated as minimally intense, and frequency occurs intermittently, occasionally, frequently, or even constantly, a Soldier will be rated as 0 percent disabled. A 10 percent rating is allowed when intensity of pain increases to slight, moderate, or marked, and the frequency is frequent, constant, intermittent, or occasional.

6. Department of Defense Financial Management Regulation (DoD FMR) provides in chapter 63, paragraph 630101 the CRSC was effective on 31 May 2003 to provide special compensation to members of the uniformed service who may have retired pay reduced by reason of receiving VA disability compensation where a portion of such VA compensation is the result of disabilities that are combat-related. Eligibility requirements have changed since its inception. CRSC is not military retired pay. It is payable from funds appropriated for pay and allowance payable by the Secretary of the Military Department concerned.

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.

//NOTHING FOLLOWS//