

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 March 2024

DOCKET NUMBER: AR20230007681

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
- medical retirement instead of discharge with severance pay
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) My HealtheVet Personal Information Report/Radiology Reports

FACTS:

1. The applicant states:

a. He feels he did not get the help he needed during his separation process. He should have been qualified for a medical retirement, not a medical separation. He has enough magnetic resonance imaging (MRI) results to prove his disabilities should have been rated 30% disabling resulting in his medical retirement. It was June 2020 when he was discharged, and he was rushed out the door with no guidance or assistance because 95% of civilians were not at work due to COVID. He was under a lot of stress and anxiety during this time as he did not want to get out and his whole career just got dropped out. He did not know he could claim more stuff. He was under the impression that whatever they said is what he was to be given without his say. It was nobody's fault in particular and he understands the seriousness of the COVID issue and everyone doing the best they could with what they had.

b. Now he is asking for help to get the correct discharge he should have received. He was unaware of the system to readjust his discharge. As most things in the military, the benefits are hidden in a sense that they are not advertised to people without deep searching or knowing someone who may have the information. The Army has the best

benefits in the world but finding them is the hard part. If he knew about this the month he got out, he would have applied immediately. His wife has a friend in the medical field, and she explained his story to her friend who referred them to this system. He truly hopes this can get approved so he can continue to take care of himself and his three children with the proper benefits.

c. He was medically separated from the Army on 7 June 2020. He feels he should have been medically retired but was only granted 10% disability rating for his hearing. Extraordinarily little guidance or face to face interaction was provided during the Medical Evaluation Board (MEB) process due to COVID-19. He started the MEB process around February 2020, most civilians involved were not at work, so guidance was not available. He was not aware that he should have gotten MRIs done to evaluate other injuries he had sustained throughout his career. He was informed that the Army was discharging him due to hearing loss and that the VA will take care of the rest. He was injured due to his parachute collapsing during the early part of his career, and during his participation in Operation Dustwin in Afghanistan. After being separated and COVID-19 restrictions began lifting, he started getting MRIs done from the VA so they could see what was wrong with him. The VA told him that if he would have gotten these MRIs done in the Army, the Army would have retired him.

2. The applicant enlisted in the Regular Army on 18 July 2008.

3. On 7 April 2020, an informal Physical Evaluation Board (PEB) found the applicant unfit for continued military service due to sensorineural hearing loss, left with hearing aids, tinnitus, and sensorineural hearing loss, right with hearing aids, tinnitus. The PEB recommended a 0% disability rating and his separation with severance pay. The PEB found him fit for 12 additional conditions because the MEB indicated the conditions met retention standards per Army Regulation 40-501 (Standards of Medical Fitness), did not indicate that any of the conditions prevented the Soldier from performing any functional activities, and did not indicate that performance issues, if any, were due to these conditions.

4. On 13 April 2020, 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 contain the following statements in section VI:

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

b. As documented in the VA memorandum dated 4 March 2020, the VA determined the specific 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 7 June 2020 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 My HealtheVet Personal Information Report/Radiology Reports showing he was examined for conditions that include history of neck and back pain with paresthesias 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 (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 additional unidentified 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:

"I feel I did not get the full help I needed getting out. I should have been qualified for a Medical Retirement not a Medical Separation. I have enough MRIs to prove my disability to reach the Army 30% for Medical Retirement. It was June 2020 when I got out and was rushed out the door, with no guidance and assistance. 95% of civilians were not at work due to COVID. I was under a lot of stress and anxiety during this time as I was not wanting to get out and my whole career just got dropped out.

I did not know I could claim more stuff, I was under the impression that whatever they said is what I was to be given without my say. It was at fault of no ones in particular, but I understand the seriousness of the COVID issue and everyone doing the best they can with what they had. But now I just ask for the proper help to get the right discharge that should have been given to me.”

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 18 July 2008 and was honorably discharged with disability severance pay on 7 June 2020 under provisions provided in paragraph 4-22b(9) and 4-27c(3) 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 21 January 2020, the applicant was referred to the IDES “bilateral sensorineural hearing loss with hearing aids.” The applicant claimed eleven additional

conditions on a separate Application for Disability Compensation and Related Compensation Benefits (VA Form 21-526EZ).

h. A medical evaluation board (MEB) determined his referred condition failed the medical retention standards of AR 40-501, Standards of Medical Fitness. They determined twelve additional medical conditions met medical retention standards. On 3 March 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.

i. On 7 April 2020, the applicant's informal PEB found his right and left sensorineural hearing loss with the use of hearing aids was his sole unfitting for continued military service. They found the twelve remaining medical conditions not unfitting for continued service. The PEB applied the Veterans Benefits Administration (VBA) derived rating of 0% and recommended the applicant be separated with disability severance pay. On 13 April 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.

j. 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.

k. Review of his records in JLV shows he has been awarded multiple VA service-connected disability ratings, including ratings for PTSD, migraine headaches, and lumbosacral strain. 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.

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

2. The Board concurred with the conclusion of the ARBA Medical Advisor that there is no evidence the applicant had any additional medical conditions which failed medical retention standards prior to his discharge. Based on a preponderance of the evidence, the Board determined the applicant's discharge for disability with severance pay 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, 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 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 IDDES. It states:
  - a. The IDDES 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 IDDES 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. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)) provides Department of the Army policy, criteria, and administrative instructions regarding an applicant's request for the correction of a military record. Paragraph 2-11 states applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

8. 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//