

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 March 2024

DOCKET NUMBER: AR20230007944

APPLICANT REQUESTS: placement on the Permanent Disability Retired List (PDRL) in lieu of the Temporary Disability Retired List (TDRL) with subsequent TDRL removal.

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

- DD Form 149 (Application for Correction of Military Record)
- [REDACTED] Physical Exam, dated 28 February 2023

FACTS:

1. The applicant states:

a. He is asking to be considered for placement on the PDRL for the medical condition he acquired as a result of military service. His initial disability rating of 50 percent was reduced to 20 percent on or around 13 March 2023. All evidence says otherwise.

b. He is asking to be moved to the PDRL because the Army states they follow and go off the ratings from the Department of Veterans Affairs (VA). In his case, they have done him and his family an injustice, going against what the Army says it will to do protect and serve its Soldiers.

c. He has gone through and exhausted all means available to him through Soldier's Counsel. He was told by Dr. [REDACTED] at Joint Base Lewis McChord (JBLM) that he should have been moved to the PDRL. Not only did he fly out to JBLM in severe pain to see him in person, but he did also not realize that he made him fly from [REDACTED] to JBLM. It was only once he was in the doctor's office that the doctor realized what he and the Army had put him and his family through. Please take him and his family into consideration. God speed.

2. The applicant enlisted in the Regular Army on 29 April 2013.

3. The applicant's DA Form 3349 (Physical Profile), DA Form 7652 (Disability Evaluation System (DES) Commander's Performance and Functional Statement), Medical Evaluation Board (MEB) Narrative Summary (NARSUM), DA Form 3947 (MEB Proceedings), VA Compensation and Pension (C&P) Exam, and VA Rating Decision are not in his available records for review and have not been provided by the applicant.

4. A DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings) shows:

a. An informal PEB convened on 4 March 2020 at JBLM, where the applicant was found physically unfit with a recommended rating of 50 percent and that his disposition be placement on the TDRL with a re-examination in September 2021.

b. The documents used to arrive at these determinations include the Revised DA Form 3947, updated DA form 3349, original DA Form 3349, DA Form 7652, NARSUM, C&P Exam, VA Rating Decision, and Magnetic Resonance Imaging (MRI), dated 26 September 2018 and 5 September 2019.

c. The following are the applicant's medical conditions determined to be unfitting:

(1) Lumbar spondylosis and intervertebral disc disease (MEB diagnoses (Dx) 1, 2); 40 percent. Physical profile limitations associated with this condition make the Soldier unable to reasonably perform duties required by his Military Occupational Specialty (MOS). This disability is unstable because the medical evidence supports there is at least a 50/50 chance that within the next 3 years this condition will probably improve or worsen enough to change the disability rating.

(2) Right lower extremity lumbar radiculopathy (MEB Dx 3); 10 percent; see disability #1.

d. The following are the applicant's medical conditions determined not to be unfitting, as none are listed on the DA Form 3349 as preventing one or more functional activities and there is no evidence to indicate that performance issues, if any, are due to these conditions:

- acute appendicitis surgery residuals with scar (MEB Dx 4)
- benign paroxysmal positional vertigo (MEB Dx 5)
- gastroesophageal reflux disease (MEB Dx 6)
- irritable bowel syndrome (MEB Dx 7)
- post-traumatic headache (MEB Dx 8)
- bilateral shoulder impingement syndrome (MEB Dx 9)
- bilateral triceps tendinitis (MEB Dx 10)
- bilateral medial epicondylitis (MEB Dx 11)
- bilateral dequervain's syndrome (MEB Dx 12)

- bilateral hand strain (MEB Dx 13)
- bilateral patellofemoral pain syndrome (MEB Dx 14)
- bilateral ankle lateral collateral ligament sprain (MEB Dx 15)
- bilateral ankle deltoid ligament sprain (MEB Dx 16)
- bilateral pes planus (MEB Dx 17)
- adjustment disorder with mixed anxiety and depressed mood (MEB Dx 18)
- traumatic brain injury (MEB Dx 19)
- bilateral tinnitus (MEB Dx 20)
- bruxism (MEB Dx 21)
- bilateral temporomandibular joint disorder (MEB Dx 22)
- bilateral dry eye syndrome (MEB Dx 23)
- bilateral corneal scar (MEB Dx 24)
- bilateral inner ear pain (MEB Dx 25)
- chronic fatigue syndrome (MEB Dx 26)
- right heel numbness (MEB Dx 27)
- left sciatica (MEB Dx 28)

e. The PEB recommends placement on the TDRL because at least one unfitting compensable condition is unstable. He will retain the rating for each unfitting, stable condition. On TDRL re-evaluation, the PEB will re-rate only the unfitting, unstable conditions.

f. Based on results of a future TDRL evaluation for each unfitting unstable condition, the PEB will determine whether the unstable condition remains unfitting (and compensable). When the PEB determines a condition remains unfitting but is now stable, it will determine whether to retain the initial rating or to award a higher or lower rating. The PEB will retain you on the TDRL (not to exceed 3 years) when the condition remains unfitting and unstable and the combined rating at the time of re-evaluation is at least 30 percent or if the combined rating is less than 30 percent and you have at least 20 years of service.

g. On 9 March 2020, the applicant signed the form indicating he concurred with the findings and recommendation of the informal PEB and waived a formal hearing of his case. He also indicated he did not request reconsideration of his VA ratings.

5. Headquarters, National Training Center and Fort Irwin Orders 093-0029, dated 2 April 2020, released the applicant from assignment and duty because of physical disability incurred while entitled to basic pay and under conditions that permit his placement on the TDRL effective 16 June 2020, with a disability rating of 50 percent.

6. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably retired on 16 June 2020, under the provisions of Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), due

to temporary disability with corresponding separation code SEK. He was credited with 7 years, 1 month, and 18 days of net active service.

8. The complete facts and circumstances surrounding the applicant's removal from the TDRL on or around 13 March 2023 are not in his available service records for review, as they do not contain a second DA Form 199 and the applicant has not provided a copy.

9. The applicant provided a [REDACTED] Inc. Physical Exam, dated 28 February 2023, which shows:

a. The applicant was assessed with new symptoms. He had trauma from a previous helicopter injury in 2019. It is believed he has sciatica in addition to a chronic regional pain syndrome from a common peroneal nerve and possible tarsal tunnel syndrome of the right.

b. An injection of the common peroneal nerve at the fibular head was recommended, to help rule out any other nervous conditions such as tarsal tunnel. The applicant thought the pain improved from a 10 down to a 9. There is still a possibility of tarsal tunnel syndrome and continuing with the therapeutic injection for the next 10 days to see if there's improvement was recommended.

10. 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.

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 (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

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

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

c. The Record of Proceedings details the applicant’s service and the circumstances of the case. His DD 214 for the period of Service under consideration shows he entered the regular Army on 29 April 2013 and was placed on the Temporary Disability Retirement List (TDRL) on 16 June 2020 under provisions in chapter 4 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (19 January 2017). His Physical Disability Information Report (PDIR) shows his percentage of disability was 50.

d. Orders published by the United States Army Physical Disability Agency on 13 March 2023 show he was removed from the TDRL and separated with disability severance pay on 13 March 2023.

e. 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 Soldier’s 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).

f. 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.

g. 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.

h. On 6 November 2019, the applicant was referred to the IDES for “Lumbar spondylosis” (age related degenerative changes of the lumbar spine). The applicant claimed twenty-five additional conditions on a separate Application for Disability Compensation and Related Compensation Benefits (VA Form 21-526EZ) and Statement in Support of Claim (VA Form 21-4138). A medical evaluation board (MEB) determined he had three conditions failed the medical retention standards of AR 40-501, Standards of Medical Fitness: “Lumbar spondylosis;” “Lumbar intervertebral disc syndrome;” and “Right lower extremity lumbar radiculopathy.” The MEB determined 25 additional medical conditions met medical retention standards.

i. On 7 January 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.

j. On 4 March 2020, the applicant’s informal PEB found his lumbar spine conditions and his right lower extremity radiculopathy to be unfitting conditions for continued military service. They found the twenty-five remaining medical conditions not unfitting for continued service. The PEB applied the Veterans Benefits Administration (VBA) derived ratings of 40% and 10% respectively for a combined military disability rating of 50%. They recommended the applicant be placed on the TDRL as the condition was not stable for rating purposes. On 9 March 2020, after being counseled on the PEB’s findings and recommendation by his PEB liaison officer (PEBLO), the applicant concurred with the Board’s findings, waived his right to a formal hearing, and declined to request a VBA reconsideration of the ratings (VARR).

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

l. The narratives for the two disability ratings from his 20 February 2020 VBA Disability Evaluation System Proposed Rating:

“We have assigned a 40 percent evaluation for your lumbar spondylosis and lumbar intervertebral disc syndrome based on:

- Forward flexion of the thoracolumbar spine 30 degrees or less

Additional symptom(s) include:

- With no incapacitating episodes during the past 12 months
- Combined range of motion of the thoracolumbar spine not greater than 120 degrees
- Localized tenderness not resulting in abnormal gait or abnormal spinal contour
- Painful motion upon examination

“We have assigned a 10 percent evaluation for your radiculopathy, right lower extremity based on:

- Mild incomplete paralysis (38 CFR 4.124a)

A higher evaluation of 20 percent is not warranted for paralysis of the sciatic nerve unless the evidence shows nerve damage is moderate. (38 CFR 4.120, 38 CFR 4.124a)

m. The applicant underwent his TDRL reevaluation in August 2022. The examiner noted that both conditions had improved. While the lumbar spine condition continued to fail medical retention standards, the right lower extremity radiculopathy now met medical retention standards “since he currently does not have any ongoing evidence of radiculopathy.” This was confirmed in review of the associated Back (Thoracolumbar Spine) Conditions DBQ.

n. The applicant noted his lumbar spine continued to be symptomatic:

“The veteran stated he still continues to have pain that he was described as 10/10 almost all the time, and the lowest level the pain gets is 5/10. He states he is working, but he states he is doing odd jobs. For example, he is a driver for Uber Eats. He is currently not involved in any type of treatment program to the VA. He is married with 2 children. As stated previously he is not taking any pain medication except for over-the-counter Motrin.

o. Pain is subjectively judged by the patient on a scale of 0 to 10, with 0 being no pain and 10 being severe pain, often described as the worst pain you have ever had or could imagine. Someone with 10/10 severe pain “almost all the time” would be unlikely able to work, typically be involved in some form of treatment, and receiving one or more pain medications in an attempt to decrease their severe pain.

p. The provider documented improvement in his range of motion (ROM). For reference, It active ROM is used to measure how far the patient can move a joint on their own and passive ROM is movement with the assistance of someone else.

“Back range of motion: Performed ×3 active

Flexion 35°

Extension 20°

Right side bending 15°

Left side bending 15°

Right rotation 20°

Left rotation 20°

Passive range of motion

Flexion 90°

Extension 30°

Right side bending 30°

Left side bending 30°

Rotation 30°

Left rotation 30°.

There is no change range of motion with repetitive motion.

q. The provider went on to opine about the discrepancies in examination:

“Please note there is an inconsistency with range of motion measurements and observed behavior. For example, he was able to sit up on the examination table with his legs in full extension without difficulty [*Note - This make a 90-degree angle equivalent to flexing the lumbar spine forward to 90 degrees while standing].

He was able to dress and undress and was able to bend down and remove his socks without difficulty. As a result, this examiner does not believe he was giving his best full effort during [active] range of motion measurements.”

r. On 6 September 2022, the TDRL PEB determined his lumbar spine condition remained unfitting for continued military Service and was now stable for rating purposes. They determined his right lower extremity radiculopathy was not unfitting. Using the VASRD, they derived and applied a 20% disability to his lumbar spine condition:

“The TDRL back exam reports range of motion of 35 degrees forward flexion, 20 degrees extension, 15 degrees right lateral flexion, 15 degrees left lateral flexion,

20 degrees right lateral rotation, and 20 degrees left lateral rotation. Muscle strength is 5/5 bilaterally with normal reflexes and normal sensory exam. Straight leg raising is negative bilaterally. There are no signs of radiculopathy with no constant pain, no intermittent pain, no paresthesias or numbness. There is no ankylosis or IVDS. No assisted devices are used. No imaging studies have been performed.

Rated at 20% for forward flexion of the thoracolumbar spine greater than 30 degrees but not greater than 60 degrees.”

s. Because his final rating was less than 30%, the PEB recommended he be separated with disability severance pay. On 2 October 2022, after being counseled on the PEB’s findings and recommendation, the applicant non-concurred with the Board’s findings and demanded a formal hearing with a personal appearance and the assistance of regularly appointed counsel.

t. The applicant was present for and represented by regularly appointed counsel at his formal PEB on 26 January 2023. Following the presentation and review of evidence and the applicant’s sworn testimony, the Board confirmed the informal PEB’s findings and recommendation:

The Soldier contends that his lumbar spondylosis (MEB Dx 1 [Dx = diagnosis]) and lumbar intervertebral disc syndrome (MEB Dx 2) be restored to the pre-TDRL re-examination rating of 40% and that his right lower extremity lumbar radiculopathy (MEB Dx 3) should continue to be unfitting at 10%. In full consideration of the exhibits and sworn testimony presented by the Soldier, along with the Soldier’s existing case file, the PEB has determined the lumbar spondylosis (MEB Dx 1) remains unfitting and rated at 20%, that he no longer fulfils diagnostic criteria for lumbar intervertebral disc syndrome (MEB Dx 2), and the right lower extremity lumbar radiculopathy (MEB Dx 3) is not unfitting.

The Soldier testified that he has experienced chronic back pain and numbness in his right foot, reporting that treatment has been ineffective in providing relief. The Soldier provided evidence in the form of e-mails with a Veterans Affairs Provider and statement from a chiropractor. However, the Soldier’s testimony concerning the severity of symptoms does not correlate with the medical documentation in the case file and the TDRL exam of record.

The TDRL examiner noted inconsistencies on back range of motion measurements, in that motion was greater on casual observation than during formal measurement. During testimony, the Soldier was observed to stand and sit voluntarily, and despite reporting constant ten out of ten pain, the Soldier did not appear to be in discomfort during over one hour and forty minutes of testimony.

The TDRL examiner reported back flexion of 35 degrees with combined range of motion of 125 degrees for initial range of motion, and the same degrees of motion for estimated range of motion during flare ups and with repeated use over time. The examiner reported that the Soldier does not have intervertebral disc syndrome of the thoracolumbar spine. The corresponding rating under VASRD is 20% using the General Rating Formula for Diseases and Injuries of the spine. Regarding the right lower extremity radiculopathy: the preponderance of evidence does not support finding the Soldier unfit for this condition, due to overall or combined effect, with any other condition.”

u. The PEB used appropriately applied VASRD code 5242 - Degenerative arthritis of the spine - in their correct derivation of his 20% rating. This code along with many other spine related codes uses the General Rating Formula for Diseases and Injuries of the Spine. Bracketing his 20% rating:

“Forward flexion of the thoracolumbar spine greater than 60 degrees but not more than 85 degrees; or combined range of motion greater than 120 degrees but not greater than 235 degrees; or muscle spasm, guarding, or localized tenderness not resulting in abnormal gait or abnormal spinal contour ... 10%

Forward flexion of the thoracolumbar spine between 30-60 degrees; or combined motion is less than 120 degrees; or muscle spasm or guarding severe enough to result in an abnormal gait or abnormal spinal contour 20%

Forward flexion of the thoracolumbar spine 30 degrees or less; or, favorable ankylosis of the entire thoracolumbar spine 40%”

v. The applicant appealed the formal PEB’s findings and recommendation to the United States Army Physical Disability Agency. In their 10 March 2023 appeal response, they state that after reviewing the entire case they concurred with the formal PEB:

“We found no evidence that is contrary to the re-examination dated 11 August 2022, in which your client’s lumbar spondylosis and lumbar intervertebral disc syndrome condition(s) resulted in any incapacitating episodes during the past 12 months that would warrant a 40% rating.

Although SSG [Applicant] provided supporting evidence dated 6 December 2022 through 28 January 2023 for conditions unrelated to his back conditions, the memorandum dated 20 January 2023 from his civilian chiropractor did not provide a history of treatment nor any range of motion descriptives.

Furthermore, the VA Chula Vista medical records dated 23 September 2022 reports your client’s last visit for back pain with Dr. [REDACTED], Internist was 18 December 2020.

Therefore, the rating of 20% for the lumbar spondylosis and lumbar intervertebral disc syndrome condition(s) is consistent with the application of the Veteran's Affairs Schedule for Rating Disabilities (VASRD).

We conclude that your client's case was properly adjudicated by the FPEB in accordance with the rules that govern the Physical Disability Evaluation System (PDES) in making its determination. The findings and recommendations are supported by a preponderance of evidence and are therefore affirmed."

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

x. JLV shows was awarded numerous VA service-connected disability ratings on 17 June 2020 (his first day on the TDRL), including a 40 % rating for his lumbar spine. None of these VA ratings appear to have been reevaluated. Even if a subsequent reevaluation were to maintain or increase this rating, the awarding of a higher VA rating does not establish prior error or injustice. A disability rating is intended to compensate an individual for interruption of a military career after it has been determined that the individual suffers from an impairment that disqualifies him or her from further military service.

y. The rating derived from the VA Schedule for Rating Disabilities reflects the disability at the point in time the VA exams were completed. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions incurred during or permanently aggravated by their military service. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

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

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted.

2. The Board concurred with the conclusion of the ARBA Medical Advisor that the evidence supports the determination by the TDRL PEB that his disabling conditions had improved, thereby warranting a reduction in his disability rating. Based on a preponderance of the evidence, the Board determined the applicant's removal from the TDRL and discharge for disability with severance pay was not in error or unjust.

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.

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. Army Regulation 635-40 (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. 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:

(1) The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

(2) The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

c. 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.

d. The Temporary Disability Retired List (TDRL) is used in the nature of a "pending list." It provides a safeguard for the Government against permanently retiring a Soldier who can later fully recover, or nearly recover, from the disability causing him/her to be unfit. Conversely, the TDRL safeguards the Soldier from being permanently retired with a condition that may reasonably be expected to develop into a more serious permanent disability.

e. Requirements for placement on the TDRL are the same as for permanent retirement. The Soldier must be unfit to perform the duties of his/her office, grade, rank, or rating at the time of the evaluation. The disability must be rated at a minimum of 30 percent, or the Soldier must have 20 years of service. In addition, the condition must be determined to be temporary or unstable.

f. Soldiers will be placed on the TDRL when they would be qualified for permanent disability retirement and the preponderance of evidence indicates one or more conditions will change within the next 5 years so as to result in a change in rating or a finding of fit. The Army Disability Evaluation System will re-evaluate each Soldier placed on the TDRL at least once every 18 months. Evaluation may be sooner. Once the Physical Evaluation Board (PEB) finds each condition is stable upon evaluation, the PEB will assign a final rating that includes the ratings for the disabilities determined to be permanent and stable when the Soldier was placed on the TDRL or during preceding TDRL adjudications.

g. A final determination of the case of each Soldier on the TDRL will be made at the latest upon the expiration of 5 years after the date when the Soldier was placed on the TDRL. If, at the time of that determination the physical disability for which the Soldier was placed on the TDRL still exists, it will be considered to be permanent and stable. Placement on the TDRL confers no right to remain on the TDRL for the entire 5-year period.

h. If upon reexamination, Soldiers whose disabilities have stabilized and who are not determined fit for duty and meeting medical retention standards for the conditions for which they were placed on the TDRL will be removed from the TDRL and placed on the PDRL if the physical disability rating remains 30 percent or greater. If upon reexamination, the Soldier is found unfit for duty and not meeting medical retention standards but the stabilized physical disability percentage is rated at below 30 percent, the Soldier will be removed from the TDRL and separated with severance pay if the Soldier has less than 20 years of active Federal service.

i. When the recommendation of the PEB is placement or retention on the TDRL, failure to report for a scheduled periodic examination or to inform U.S. Army Human Resources Command of a change in address will result in the suspension of retired pay.

2. Title 38, U.S. Code, 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.

3. Title 38, U.S. Code, 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.

4. Title 10, U.S. Code, section 1556 requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

5. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

//NOTHING FOLLOWS//