

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 January 2025

DOCKET NUMBER: AR20230008083

APPLICANT REQUESTS:

- a medical retirement vice medical discharge
- a personal appearance before the Board

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Self-Authored Letter from his Congressional Inquiry
- Department of Veterans Affairs (VA) Joint Disability Evaluation Board Claim
- Email Correspondence from his Physical Evaluation Board (PEB) Liaison Officer (PEBLO)
- DA Form 3349 (Physical Profile)
- DA Form 3947 (Medical Evaluation Board (MEB) Proceedings)
- Disability Evaluation System (DES) Proposed Rating
- U.S. Army Installation Management Command Orders 334-2247 (Discharge Orders)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 19 February 2017
- VA Rating Decision

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, on his application and in his letter from his Congressional inquiry:

a. His disability was initially rated at 30 percent by the MEB then his case went to the PEB. His PEBLO counseled him to accept 20 percent with a severance package.

Due to the severity of his conditions, he accepted the lower rating and medical discharge.

b. At the time, he was trusting what he was told by the PEBLO and his command. While undergoing the MEB, his paperwork was submitted to the VA for compensation. His VA rating is 100 percent for the following conditions:

- Post-traumatic stress disorder (PTSD), 50 percent
- Sleep apnea syndrome, 50 percent
- Migraine headaches, 30 percent
- Degenerative arthritis of the spine, 20 percent
- Limited motion of arm, 20 percent
- Limited flexion of knee, 10 percent
- Limited flexion of thigh, 10 percent
- Lumbosacral or cervical strain, 10 percent
- Limited flexion of knee, 10 percent
- Flat foot condition, 10 percent
- Tinnitus, 10 percent
- Thigh condition, 10 percent
- Foot condition, 10 percent

c. The Army did not include the severed tendon in his right arm as not meeting medical retention standards, though he is unable to use his right arm for any extended period of time. The PTSD was not addressed and is a direct result of the traumatic brain injury (TBI) he sustained. His left foot that was surgically repaired was also not considered as meeting medical standards.

d. Due to his TBI, PTSD, and trust in his PEBLO and command, he did not appeal the decision and accepted their recommended course of action. He has been further educated on the MEB and PEB processes and believes that the discharge in lieu of retirement was hoisted upon him without a full and complete understanding of what he was doing, at the time. He was not only dealing with chronic pain, nightmares, inability to sleep, poor comprehension, impaired memory, impaired concentration, but he was also being told he would have to leave his way of life and start over in a civilian setting.

e. He was not only totally broken, but he was devastated that he could not be retained. He accepted the counsel of the PEBLO and this has negatively impacted not only him but also his family. He is requesting that a review of his discharge take place as he fully believes he should have accepted the retirement at 30 percent and was led astray by his PEBLO.

f. In 2016, he was accepted into the National Intrepid Center of Excellence (NICoE). While in NICoE, he was assessed, diagnosed, and partially treated for a host of injuries

he sustained both in Afghanistan and stateside. The program, at the time, was a thirty day inpatient program with the intent for his home station to continue care. Upon returning, he was notified he was being submitted for an MEB due to the findings of NICOE.

g. He was fairly confident he was going to beat the MEB as he was just coming back from a world class treatment facility. During the process, he was summoned by the nurse who wrote the Narrative Summary. He had his wife by his side when the nurse told him, and he is paraphrasing, this sort of thing rarely happens, during the board, but your medical records say one thing (severity of injuries) and your chain of command's letter says another (they were very favorable as they were hoping to try to keep him in the Army). The nurse said because of this conflicting information, he was 50/50 with the board either recommending a severance from the Army or he could take his chances with the MEB and that he needed to understand that there was a good chance the board's findings would come back not in his favor and he could receive a finding of lower than 20 percent. It was then he had to make a choice, in his opinion, under duress that would affect his family as well as the rest of his life. He was a sergeant first class (SFC) with fourteen years of service. He was committed to serving his fully twenty years and then some. He did not live outside of his means but he was told that in the next thirty days, he would be out of the Army with zero pay check, no job, and he had no plan. They presented an option of \$120,000 severance to take a chance to fight for a medical retirement with an unknown percentage. He has a daughter that requires constant medical care that includes multiple surgeries a year, so he made a decision to ask for the medical separation, so he could pay his bills, and cover her medically until he could find a job because of the possibility that the ratings could be less, after the board.

h. In 2019, he was admitted into another Polytrauma Program in [REDACTED] called Post Deployment Rehabilitation Evaluation Program because of a host of injuries both physical and mental which really took their toll on him. It was in this world class program that doctors, nurses, and other medical professionals found out that Army doctors had missed a bunch of injuries, during the initial MEB process. During his four months of inpatient rehabilitation, he was approached a few times by his providers to submit for an Army discharge upgrade from separation to retirement. Under their watchful eye, he submitted his packet for an upgrade. A few months later, he received a letter, in the mail, that stated they received his packet and that it could take up to two years to be reviewed. It is now 2023.

i. The following 5 years have been full of ups and downs relating to this discharge review. He had patience and followed the guidelines. He was told that it could take up to two years for a decision. He followed up each year with them and was only told to keep waiting. He received his letter from the board only for them to tell him that they could not make a decision because they could not find his separation on the Interactive Personnel

Electronic Records Management System (iPERMS). He immediately went on iPERMS and was able to find the information. He emailed the human resource representative that was dealing with his case to tell them it was an administrative error because he was able to view his MEB on iPERMS. They told him the decision was final.

j. On 28 September 2023, he received a letter from the Army Review Boards Agency (ARBA) stating his packet was redirected to the ABCMR and in 6 to 8 months he will have a finding. He reached out to his Congressional Representative for help. He has submitted a packet, therefore he does not know what is being reviewed. He is extremely worried that what is or is not in front of the Board is going to hinder his findings and because of the "administrative error" he is afraid they forwarded his case without all of the proper documents. All he is asking is to know what is in front of the Board and what is needed to be presented to the Board to help his case.

k. A timeline of events is as follows:

- December 2019, he submitted his discharge review, he was told it would take two plus years to make its way through the system
- 18 May 2021, his findings were complete and a letter was written but not sent to him
- 4 June 2021, his rebuttal was due, he was not notified
- 10 February 2022, he checked on his findings; he was told it was not ready and he needed to wait eighteen plus months
- 10 July 2023, he checked back and got his findings; the results were his discharge was not in iPERMS and they could not properly adjudicate the findings; these findings were final

l. He is aware this timeline does not make sense and this adds to his frustration. The timeline is as accurate as the dates were either timestamped through email, on official letterhead, or in memorandum format. He did what he was supposed to and it is his belief the Army system failed him.

m. He would like to submit the proper paperwork to advocate on his behalf. That advocacy would be for a medical retirement. That retirement would be an incredible weight off his shoulders. He would have access to Army adaptive programs designed for Soldiers like him. He would be validated that his service to this country, deploying to Afghanistan three time as an infantryman, was seen not as waste. He has served honorably and will always serve this country he loves honorably. He would like a fair chance at advocating for something he has earned.

3. The applicant provides:

a. VA/Department of Defense Joint Disability Evaluation Board Claim, 12 July 2016, which shows his medical conditions to be considered as upper back injury/pain, hip condition, neck condition, headaches, hearing loss, tinnitus, PTSD, depression, anxiety, insomnia, TBI, memory loss, right hand condition, photophobia, obstructive sleep apnea, knee condition, foot condition, left shoulder condition, neurocognitive disorder, left testicle disorder, ulcerative colitis, erectile dysfunction, and vestibular disorder/vertigo.

b. Emails between the applicant and his PEBLO 7 July 2016, 13 July 2016, 14 July 2016, and 26 July 2016, which inform him of the assignment of the PEBLO, upcoming appointments, and him requesting a copy of his permanent profile.

c. DA Form 3349 (Physical Profile), 9 September 2016, shows he had a permanent profile for mild TBI with residuals, PTSD, hearing loss, neck injury/pain, lower back injury/pain, and pauses in breathing during sleep. The entire profile is available for the Board's review and will be reviewed by the ARBA medical section who will provide an advisory.

d. DA Form 3947 (MEB Proceedings), 9 September 2016, which shows his medical conditions, and that he was referred to a PEB. The MEB includes the narrative summary, which is available for the Board's review and will be reviewed by the ARBA Medical Section.

e. VA Disability Evaluation System Proposed Rating, 31 October 2016, shows the following proposed disability ratings:

- Obstructive sleep apnea, 50 percent
- PTSD, 50 percent
- Migraine headaches, 30 percent
- Left shoulder strain, 20 percent
- Thoracolumbar degenerative disc disease, 20 percent
- Cervical strain, 10 percent
- Limitation of flexion due to left hip strain, 10 percent
- Impairment of thigh due to right hip strain, 10 percent
- Right knee strain, 10 percent
- Left knee strain, 10 percent
- Bilateral pes planus, 10 percent
- Left foot hallux valgus, 10 percent
- Tinnitus, 10 percent

f. Orders 334-2247, published by Headquarters, United States Army Garrison, Fort Benning, 29 November 2016, honorably discharged him effective 19 February 2017 with 20 percent disability. He was authorized disability severance pay in the rank of SFC.

g. VA Rating Decision, 2 March 2017, shows his disability ratings as follows:

- Obstructive sleep apnea, 50 percent
- PTSD and TBI, 50 percent
- Migraine headaches, 30 percent
- Left shoulder strain, 20 percent
- Thoracolumbar degenerative disc disease, 20 percent
- Bilateral pes planus, 10 percent
- Cervical strain, 10 percent
- Impairment of thigh due to right hip strain, 10 percent
- Left foot hallux valgus, 10 percent
- Left knee strain, 10 percent
- Limitation of flexion due to left hip strain, 10 percent
- Right knee strain, 10 percent
- Tinnitus, 10 percent

4. The applicant's service record contains the following documents:

a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows he enlisted in the Regular Army and entered active duty on 7 January 2003. He remained in the Regular Army.

b. He served in Afghanistan from 6 August 2003 to 19 May 2004, 31 January 2006 to 28 May 2007, and 7 July 2009 to 25 June 2010.

c. DA Form 199 (Informal PEB Proceedings), 4 November 2016, shows he had the following disabilities, which made him physically unfit for service:

- Thoracolumbar degenerative disc disease
- Residuals of TBI with migraine headaches, visuospatial, and vestibular disorder

He was found fit for the following conditions:

- Sensorineural hearing loss
- Tinnitus
- PTSD
- Obstructive sleep apnea
- Strain, cervical
- Strain, right hip
- Strain, left hip
- Strain, left shoulder

- Strain, right knee
- Chronic left testicular pain with retracting left testicle
- Erectile dysfunction
- Pes planus, hammer toes, right foot
- Pes plan, hammer toes, hallux valgus status repair, left foot
- Extensor tendon laceration status post surgery with residual symptoms, eight hand
- Acute colitis

The board found him physically unfit and recommended a rating of 20 percent and that he be separated with severance pay. The applicant concurred with the findings and waived a formal hearing of his case. He did not request reconsideration of his VA ratings.

d. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably discharged on 19 February 2017. He completed 14 years, 1 month, and 13 days of active service. He received disability severance pay in the amount of \$112,313.60. He was discharged for disability, severance pay, combat related (enhanced). DD Form 215 (Correction to DD Form 214) corrected his severance pay to \$119,464.80.

5. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. 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.

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 (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:

2. The applicant has applied requesting additional medical conditions be determined unfitting for continued service with a corresponding increase in his military disability rating and subsequent change in his disability discharge disposition from separated with disability severance pay to permanently retired for physical disability. He states in part:

"I was initially rated 30% by the Medical Board, it went to the Physical Evaluation Board. My Physical Evaluation Board Liaison Officer, [REDACTED], counseled me to accept 20% with a severance package. Due to the severity of my conditions, I accepted the lower rating and medical discharge. At the time I was trusting of what I was told by the PEBLO and my command.

While undergoing the Medical Board my paperwork was submitted to the VA for compensation. The VA rating is 100% for the following conditions: post-traumatic stress disorder (50%), sleep apnea syndromes (50%), migraine headaches (30%), degenerative arthritis of the spine (20%), limited motion of arm (20%), limited flexion of knee (10%), limited flexion of thigh (10%), lumbosacral or cervical strain (10%), limited flexion of knee (10%), flat foot condition (10%), tinnitus (10%) thigh condition (10%), thigh condition (10%), foot condition (10%) ..."

3. The Record of Proceedings details the applicant's service and the circumstances of the case. The DD 214 for the period of Service under consideration shows he entered the regular Army on 7 January 2003 and was separated with \$112,313.60 of disability severance pay on 20 June 2017 under provisions provided in chapter 4 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (20 March 2012).

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).

4. Soldiers then receive one set of 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.

5. 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.

6. On 7 July 2016, the applicant was referred to the IDES for "Upper Back Injury / Pain." The applicant claimed twenty-two additional conditions, including those noted on his DD 293. A medical evaluation board (MEB) determined he had four medical conditions which failed the medical retention standards of AR 40-501, Standards of Medical Fitness: "Thoracolumbar Degenerative Disc Disease," "mTBI [mild traumatic brain injury]," "Chronic Posttraumatic Migraine Headache," "mTBI, Residual Visual Spatial Disorder," and "mTBI, Vestibular Disorder." The MEB determined fifteen additional conditions met medical retention standards, including PTSD and sleep apnea.

7. From the MEB narrative summary for these two conditions:

"Posttraumatic Stress Disorder (S2)

VA DX: Posttraumatic Stress Disorder; Alcohol Use

SM [service member] reports that he was involved in multiple firefights, exposed to car bombs, mortars and suicide bombers and witness mass casualties during his three deployments to Afghanistan. He was initially evaluated by BH [behavioral health] in 2010 at Madigan AMC [Army Medical Center], Ft Lewis, WA primarily for complaints of marital problems, but was also noted to have Anxiety.

He was evaluated for his residual symptoms by the TBI Clinic at Martin ACH [Army Community Hospital] in March 2016. SM was subsequently referred to the National Intrepid Center of Excellence (NICOE) at Walter Reed NMMC [National Military Medical Center] in Bethesda, MD for intensive therapy. He was diagnosed with ADHD [attention-deficit/hyperactivity disorder], Depressive Disorder NOS [not otherwise specified] and PTSD.

SM is currently prescribed Lexapro and Concerta. He is noted by the VA to have some occupation and social impairment with reduced reliability and productivity due to his symptoms. However, SM is generally noted to be function satisfactorily in his duties as an instructor.

The condition is not duty limiting, and meets retention standards per AR 40-501, para 3-41.e (1, 2). This condition has not failed conservative treatment or

necessitated significant duty limitations as substantiated by AHLTA notes, profile history, and Commander's statement.

Obstructive Sleep Apnea (P2)

VA DX: Obstructive Sleep Apnea

SM had a Sleep Study in 2014 which was not significant for OSA but noted mild respiratory induced arousals and had mild nocturnal hypoxemia. CPAP [continuous positive airway pressure] was recommended at the time for sleep disordered breathing, but SM reports he was never told how to use it.

More recently, in May 2016, had another Sleep Study at Walter Reed with an AHI [apnea-hypopnea index] of 10.7 events per hour. He was diagnosed with mild OSA. SM's CPAP machine was adjusted and he was instructed on how to use it. He reports that the CPAP significantly improves the quality of his sleep.

The condition is not duty limiting, and meets retention standards per AR 40-501, para 3-41.e (1, 2). This condition has not failed conservative treatment or necessitated significant duty limitations as substantiated by AHLTA notes, profile history, and Commander's statement."

8. On 14 September 2016, the applicant agreed with the MEB findings and recommendation and his case was forwarded to a physical evaluation board (PEB) for adjudication.

9. On 4 November 2016, the applicant's informal PEB determined his thoracolumbar degenerative disc disease was the sole unfitting condition for continued military service. They found the eighteen remaining medical conditions not unfitting for continued military service, including those associated with his mTBI.

10. Paragraph 4-19e of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (20 March 2012), lists the common criteria PEBs use in evaluating fitness:

"d. Decision on fitness.

(1) The first and most important determination made by the PEB is whether the Soldier is physically fit or unfit to perform the duties of the Soldier's office, grade, rank, or rating. All other actions are directly or indirectly tied to this one finding.

(2) The determination of physical fitness will be made by relating the nature and degree of physical disability of the Soldier to the requirements and duties that the Soldier may reasonably be expected to perform in their primary military occupational specialty (MOS).

(3) Changes in medications or other therapy for chronic conditions do not alone establish deterioration of a chronic condition. Unless recent, significant deterioration has occurred or unexpected adverse results are evident from the new treatment, such changes are not a basis for finding a Soldier unfit.”

11. The MEB narrative summary provider’s reasoning for finding this mTBI residuals failed medical retention standards and required referral to a PEB for adjudication:

“He is noted by the VA Examiner to objective evidence of impairment from TBI residuals that impact his ability to work. Although he has been able to function in a garrison environment as an instructor, he would put himself and others at risk in a field training or deployment environment as he would have to avoid hazardous activities such as climbing or working at heights and Combatives. He would also physically have difficulty responding appropriately in a high threat or high tempo environment

Impact on Duty Performance: It is unlikely that there will be significant improvement or worsening of the condition during the next 5 years. He is unable to perform in the environment required for MOS duties, training, and deployment. SM needs restrictions in the work environment and activities to include keeping still, sit or lie down when symptoms occur, gradually resume activity, avoid sudden position changes, do not try to read when symptoms occur, avoid bright lights.”

12. The PEB’s rationale for finding his “Residuals of traumatic brain injury with migraine headaches, visuospatial and vestibular disorder” not unfitting for continued service addressed findings of the MEB and was both thorough and detailed:

“The Soldier is fit for residuals of traumatic brain injury with migraine headaches, visuospatial and vestibular disorder. The evidence supports that this condition does not prevent reasonable duty performance. Continuing in the military does not pose a risk to the Soldier or to others. This condition does not impose unreasonable requirements on the military to maintain or protect the Soldier.

The Soldier has a history of multiple concussive events including blast exposure during deployment to Afghanistan in 2003, 2007 and 2009. The most recent event

was in 2014 when he was injured during combatives while in a choke hold. The Soldier was assessed at the NICOE at Walter Reed in May 2016. He was diagnosed with mild TBI with chronic headaches, visuospatial and vestibular disorder.

However, there is no evidence these conditions have ever interfered with performance of the Soldier's duties. The Commander very strongly recommends retention. Sections III B and III D of the Commander's Statement, dated 12 July 2016, presents a very strong argument in support of the Soldier's ability to perform in his MOS [military occupational specialty] with respect to his mild TBI.

"Since returning from NICOE, SFC [Applicant]'s performance has steadily increased. The staff there confirmed TBI is present, but also confirmed that the side effects of it are manageable, and outlined practices for SFC [Applicant] to begin which is {sic} does so on a daily basis. The result is a more focused, upbeat, and productive man". Therapy appointments have "not interfered with his ability to report for duty each day and make significant contributions."

The Commander also notes that since reporting for duty at the US Army Marksmanship Unit, effective 4 February 2014, the Soldier has performed in a superior manner. The Commander noted that the Soldier "has been the lynch pin in standing up the first marksmanship trainer course specifically intended to train NCO's - the Marksmanship Master Trainer Course (MMTC) ...

Currently, MMTC is in its second and successful ATRRS [Army Training Requirements and Resources System] pilot course, largely due to Brian and his expert influence in conveying the course's intent and importance to the previously mentioned senior leaders ... is also routinely involved in conducting briefings ... also serving as a subject matter expert for doctrine development ... and provided two briefs to the United States Army's Sergeant Major's Academy, one of which was the CSM [Command Sergeant Major] of the Army's Nominative Conference".

The Soldier was promoted to SFC on 1 June 2015. The Soldier's ability to perform at this level definitively establishes that the residuals of his mild TBI do not interfere with the performance of his duties. (DA 3947, NARSUM, DA 7652, DA 3349, VA C&P Exam)"

13. The PEB applied the Veterans Benefits Administration (VBA) derived ratings of 20% for his thoracolumbar spine condition and recommended the applicant be separated with disability severance pay. On 14 November 2016, after being counseled

on the PEB's findings and recommendation by his PEB liaison officer, the applicant concurred with the PEB, waived his right to a formal hearing, and declined to request a VBA reconsideration of his disability ratings (VARR).

14. His final NCO Evaluation Report, covering 1 February 2016 thru 16 December 2016, shows he had continued to be a successful Soldier throughout his time in the DES. His rater marked him as "Exceeded Standard" stating:

"o utilized his above average ability to communicate with Senior Leaders of the Army to persuade them to help in the Army's efforts to effectively change marksmanship training for the better

o consistently fought to take care of his Soldiers whether it be through better training or to get them the much-needed recovery time from their high OPTEMPO"

15. His senior rater blocked him as "Highly Qualified" going on to opine:

"I rank SFC [Applicant] 7/8 assistant team chiefs I senior rate. SFC [Applicant]'s passion, energy, and dedication to exceedingly high quality marksmanship instruction reflects unlimited potential to succeed in any future assignment. SFC [Applicant] consistently finds non-standard solutions to complex problem sets to achieve successful results at higher echelons. Send to SLC [Senior Leader Course] immediately and promote with peers."

16. Paragraph 3-1 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (20 March 2012) 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 their office, grade, rank, or rating."

17. Review of the submitted documentation, ePEB case file, and AHLTA record found no material errors of deficiencies.

18. There is insufficient probative evidence the applicant had additional condition(s) which were unfitting for continued service under provisions of AR 635-40 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(s) prevented the

applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge.

19. JLV shows the applicant has been awarded numerous VA service-connected disability ratings, including ratings for PTSD, sleep apnea, migraine headaches, and limited motion of his left upper extremity. 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.

20. 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 review based on law, policy, and regulation. Upon review of the applicant's petition, available military records, and the medical review, the Board concurred with the advising official finding insufficient evidence the applicant had additional conditions which were unfitting for continued service.

a. The evidence shows a Physical Evaluation Board (PEB) convened on 4 November 2016 and determined his thoracolumbar degenerative disc disease was the sole unfitting condition for continued military service. The PEB found eighteen remaining medical conditions not unfitting for continued military service, including those associated with his mTBI. The PEB then applied the Department of Veterans Affairs Schedule for Rating Disabilities (VASRD) derived ratings of 20 percent to this condition.

b. The Board noted the applicant's contention of additional conditions rated by the VA. However, the awarding of additional VA ratings and/or conditions does not establish prior error or injustice. A military 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. The rating derived from the VASRD reflects the disability at the point in time the VA examinations were completed. The military's Disability Evaluation System (DES) does not compensate service members for anticipated future severity or potential complications of conditions incurred during or permanently aggravated by their military service. The VA has those roles and authorities according to their laws. Therefore, the Board found no error or injustice in his military disability rating or those conditions rating by the PEB at the time. The Board determined an increase in his military disability rating was not warranted.

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

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.

4/10/2025

X [REDACTED]

CHAIRPERSON

[REDACTED]

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, 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. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

3. 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 Department of Defense Directive 1332.18 and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

4. 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. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with AR 40-501, chapter 3, as evidenced in a medical evaluation board (MEB); when they receive a permanent physical profile rating of "3" or "4" in any functional capacity factor and are referred by a Military Occupational Specialty 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 physical evaluation board (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. Service members 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 and length of military service. Individuals who are "separated" receive a onetime 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 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 medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

5. Title 10, USC, 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, USC, 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 percent.

6. Army Regulation 40-501 (Standards of Medical Fitness), provides policies and procedures on medical fitness standards for induction, enlistment, appointment, and retention. Paragraph 3-33 (anxiety, somatoform, or dissociative disorders) states the causes for referral to an MEB are as follows:

- persistence or recurrence of symptoms sufficient to require extended or recurrent hospitalization; or
- persistence or recurrence of symptoms necessitating limitations of duty or duty in protected environment; or
- persistence or recurrence of symptoms resulting in interference with effective military performance

7. Title 38, USC, sections 1110 and 1131, permits the VA to award compensation for disabilities that were incurred in or aggravated by active military service. However, an award of a higher VA rating does not establish error or injustice on the part of the Army. The Army rates only conditions determined to be physically unfitting at the time of discharge which disqualify the Soldier from further military service. The VA does not have the authority or responsibility for determining physical fitness for military service. The VA awards disability ratings to veterans for service-connected conditions, including

those conditions detected after discharge, to compensate the individual for loss of civilian employability. These two government agencies operate under different policies. 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.

8. 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.

//NOTHING FOLLOWS//