

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 October 2024

DOCKET NUMBER: AR20230009972

APPLICANT REQUESTS: in effect, entrance into the Integrated Disability Evaluation System (IDES) for sleep disorder vice bi-polar disorder (non-compensable).

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

- DD Form 149 (Application for Correction of Military Record)
- Orders 025-071, 25 January 2017
- DA Form 2173 (Statement of Medical Examination and Duty Status), 8 June 2017
- [REDACTED] Documents
- [REDACTED] Sleep Center 1 PT 1, 16 November 2018 (7 pages)
- [REDACTED] Sleep Center 2, 21 December 2018 (8 pages)
- [REDACTED] Sleep Center 3, 18 July 2020 (5 pages)
- SC Notes 1, 12 March 2022
- Sleep Notes, 22 March 2022 (4 pages)
- SC Notes 2, 23 March 2022 (7 pages)
- Disclosure authorization, 12 October 2022
- Formal Physical Evaluation Board (FPEB) contention, 26 October 2022
- Formal PEB Proceedings, 31 October 2022
- [REDACTED] Chart conversation, 2 November 2022
- Physical Disability Agency (PDA) appeal, 8 November 2022
- Therapist notes, 3 January 2023
- SC Notes 3, 26 January 2023 (170 pages)
- Separation order, 8 August 2023

FACTS:

1. The applicant states he has been misdiagnosed by G1 medical with bi-polar (non-compensable). He has been seeing therapists over two years and they have not seen any signs of bi-polar disorder. He should have gone to the medical board for his sleep disorder. The correction should be made because due to his sleep disorder he has been

diagnosed with all of the following: Sleep-wake disorder, Language disorder, post-traumatic stress disorder (PTSD), Anxiety, Depression, and Obstructive Sleep Apnea.

2. The applicant enlisted in the [REDACTED] Army National Guard ([REDACTED] ARNG) on 5 September 2008.

3. He was ordered to active-duty training (ADT) on 24 September 2008. He completed military occupational specialty training for 45G (Fire Control Repairer). He was honorably released from ADT on 9 June 2009.

4. The applicant provides:

a. Orders 025-071, 25 January 2017, showing he was ordered to annual training from 3 June 2017 – 17 June 2017, at Fort Pickett, VA and return to home station.

b. DA Form 2173 (Statement of Medical Examination and Duty Status) showing he had Uvulitis and would need steroids/Benadryl for treatment.

c. [REDACTED] documents with his medicine list, instructions, and symptoms to look out for after leaving the hospital.

d. [REDACTED] Health Sleep Center 1 PT 1, 16 November 2018 (7 pages) which shows sleep study shows the patient has moderate sleep apnea. Recommended to order CPAP and have him return to have a sleep study with the CPAP so it can be titrated.

e. [REDACTED] Health Sleep Center 2, 21 December 2018 (8 pages) which shows a verbal order for Lincare to provide patient with a full face sleep mask per his request.

f. [REDACTED] Health Sleep Center 3, 18 July 2020 (5 pages) for a pre-procedural examination.

g. SC Notes 1, 12 March 2022, showing he presented to the center on 26 August 2021 and was admitted to services. He continues to be in need of treatment of his current symptoms due to no change in his current daily mood and the PHQ-9 scores. The scores in February and March were 24 with no changes.

h. Sleep Notes, 22 March 2022 (4 pages) answering a question can uvula condition cause obstructive sleep apnea? The provider stated yes, the uvula can affect sleep apnea.

i. SC Notes 2, 23 March 2022 (7 pages) showing appointments that the applicant had.

j. FPEB contention, 26 October 2022, requesting that his case be processed as duty-related.

5. On 31 October 2022, a Formal Physical Evaluation Board convened, and the board found the applicant physically unfit and recommended his disposition be referred for case disposition under Reserve Component regulations. The condition found to be unfitting was Bipolar Disorder (non-compensable). It was determined to be non-duty related (NDR). The Soldier was diagnosed with this condition in April 2021. The Soldier is currently prescribed Lithium Carbonate Extended Release and Risperidone. The condition is not compensable because at the time the Soldier was diagnosed with this condition the Soldier was not in an Active-Duty status for more than 30 days or entitled to base pay, and there is no Line of Duty (LOD) investigation for this condition. Additionally, there is no evidence within the Soldier's available case file that indicates that military service has aggravated the condition. In accordance with (IAW) Army Regulation (AR) 635-40 (Disability Evaluation for Retention, Retirement, or Separation), this Soldier is unfit because the DA Form 3349, Physical Profile Record, Section 4, functional activity limitations associated with this condition make this Soldier unable to reasonably perform required duties. The Soldier is mentally competent for pay purposes and able to understand and participate in the Physical Evaluation Board proceedings.

a. This case was adjudicated as a non-duty related case.

b. The applicant did not concur.

6. He appealed the PEB findings.

a. On 1 December 2022, the Deputy Commander, Headquarters, U.S. Army Physical Disability Agency noted the applicant's disagreement with the findings of the FPEB and reviewed the entire case wherein the Soldier non-concurs with the FPEB findings, requesting that, "his case be sent to the Army Human Resources Command (AHRC) for a line of duty (LOD) determination because his behavioral health condition should be considered as duty related and unfitting". In addition, he requests that the FPEB recognize that his unfitting behavioral health condition is not bipolar disorder but rather generalized anxiety disorder.

b. The conclusion is that this case was properly adjudicated by the FPEB, which correctly applied the rules that govern the Disability Evaluation System (DES) in making its determination. The findings and recommendations of the FPEB are supported by a preponderance of evidence and are therefore affirmed. The issues raised in your 8 November 2022 appeal were adequately addressed by the PEB in its formal board proceedings.

7. The applicant provides:

a. Therapist notes, 3 January 2023, stating he presents with symptoms indicative of F43.10-Posttraumatic Stress Disorder, F10.20-Alcohol Use Disorder, Moderate, G47.9-Unspecified Sleep-Wake Disorder, and F80.9- Language Disorder.

b. SC Notes 3, 26 January 2023 (170 pages) in support of his claim.

8. On 8 August 2023, Orders 0005630116.00 issued by [REDACTED] ARNG shows honorable separation action with an effective date of 15 August 2023, with a reason of discharge – involuntary.

9. Accordingly, he was honorably discharged from the [REDACTED] ARNG on 15 August 2023, IAW National Guard Regulation (NGR) 600-200 (Enlisted Personnel Management), Paragraph 6-35I (8): Medical, physical or mental condition retention. His NGB Form 22 (National Guard Report of Separation and Record of Service) shows he completed 14 years, 11 months, and 11 days net service this period.

10. AR 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. 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.

11. 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.

12. 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.

13. Title 38, CFR, Part IV is the VA's schedule for rating disabilities. 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.

#### 14. 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/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 a referral to the Disability Evaluation System (DES) for a sleep disorder. He states:

"I have been misdiagnosed by G1 medical with bi-polar (non-compensable). I have been seeing therapists over two years and they haven't seen no signs of bi-polar disorder. I should have went to the medical board for my sleep disorder.

The correction should be made because of my sleep disorder I have been diagnose all of the following: Sleep-wake disorder, Language disorder, PTSD stress disorder, Anxiety, Depression, and Obstructive Sleep Apnea."

c. The Record of Proceedings outlines the applicant's military service and the circumstances of the case. The applicant's National Guard Report of Separation and Record of Service (NGB Form 22) shows the former drilling member entered the Army National Guard on 5 September 2008 was honorably discharged from [REDACTED] Army National Guard ([REDACTED] ARNG) effective 15 August 2023 under the provisions paragraph 6-35I(8) of NGR 600-200, Enlisted Personnel Management: Medically unfit for retention per AR 40-501, Standards of Medical Fitness. It shows 14 years, 11 months, and 11 days total service for retired pay.

d. The applicant was informed his bipolar disorder was medically disqualifying in September 2021. He elected referral to a non-duty related physical evaluation board for a fitness determination for bipolar disorder. A non-duty related physical evaluation board (NDR PEB) allows Reserve Component (RC) Service Members who are not currently on a call to active duty of more than 30 days and who are pending separation for non-duty related medical conditions but desire to remain in their component to enter the Disability Evaluation System (DES) for a determination of fitness. The NDR PEB affords these Soldiers the opportunity to have their fitness for duty determined under the standards that apply to Soldiers who have the statutory right to be referred to the DES

for a duty related medical condition. After 2014, these boards also look to see if the referred condition(s) were duty related. When there is some evidence one or more conditions was likely duty related, they return them to the sending organization for entrance into the duty related processes of the DES.

e. On 17 December 2021, his informal NDR PEB determined his bipolar disorder was unfitting for continued military service and it was not duty-related stating:

“The Soldier was diagnosed with this condition in April 2021. The Soldier is currently prescribed Lithium Carbonate ER and Risperidone. The condition is not compensable because at the time the Soldier was diagnosed with this condition the Soldier was not in an Active Duty status for more than 30 days or entitled to base pay, and there is no Line of Duty investigation for this condition. Additionally, there is no evidence within the Soldier's available case file that indicates that military service has aggravated the condition.”

f. The applicant non-concurred and requested a formal hearing. At the 31 October 2022 formal PEB hearing, the applicant contended the condition was incurred in the line of duty. After hearing from the applicant and evaluating the evidence, the formal PEB maintained the informal PEB's finding the condition was not incurred in the line of duty:

“There was no new evidence presented to the formal board that supports sending this case to Human Resources Command (HRC) for a Line of Duty determination. There is also insufficient evidence to support sending this case to the [REDACTED] ARNG State Surgeon Office for diagnosis and profile review. Although the Soldier testified that he first sought treatment for this condition while attending the Senior Leaders Course (SLC) at [REDACTED] from February – March 2020, he was enrolled in behavioral health case management in January 2020 following a PHA [periodic health assessment] event that was held in December 2019. There is no evidence of behavioral health care, to include medication, provided to the Soldier while on Active-Duty Training orders at SLC.”

g. The applicant appealed to the United States Army Physical Disability Agency who upon review maintained the not in line of duty findings of the informal and formal PEBs.

h. Submitted civilian medical documentation shows the applicant was diagnosed with moderate sleep apnea after a sleep study in November 2018. Subsequent sleep studies show he was being effectively treated with a CPAP (continuous positive airway pressure) machine.

i. Paragraph 3-32b(2)(c) of AR 40-501 (27 June 2091) states:

“If symptoms of hypersomnolence or snoring cannot be controlled with weight loss, PAP therapy, surgery, or an oral appliance, or the Soldier is unable to achieve the minimum adherence to PAP defined in paragraph 3–32b(2), then the Soldier will be referred to the DES.

j. There is no probative evidence the applicant’s condition failed any of these criteria or that it was duty-related in this drilling Guard Soldier.

k. A provider has noted in a 3 January 2023 memorandum that the applicant has symptoms indicative of PTSD, Alcohol use disorder (moderate), Unspecified Sleep-Wake disorder, and language disorder. This is not the same as diagnosed with such a condition and there is no evidence these conditions were preventing the applicant from reasonably performing the duties of his office, grade, rank, or rating prior to his discharge.

l. Other civilian clinical encounters show the applicant has been diagnosed with major depressive disorder and generalized anxiety disorder.

m. The applicant has submitted documentation containing several behavioral health and sleep related diagnoses. However, there is no evidence any of these chronic conditions was incurred or permanently service aggravated while the then drilling Guard Soldier was in a qualified duty status; nor is their evidence that other than his mental health condition failed medical retention in chapter 3 of AR 40-501.

n. There is no evidence the applicant had any duty incurred medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System.

o. JLV shows he has been awarded multiple VA service-connected disability ratings. All of the ratings are for musculoskeletal conditions and none for the conditions addressed by the applicant and in this opine.

p. 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. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

q. It is the opinion of the Agency medical advisor there is insufficient evidence to support a referral of this applicant's case to the DES.

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 does not show the applicant had any duty-related conditions that would have been a basis for referring him to the Disability Evaluation System. Based on a preponderance of the evidence the Board determined the applicant's discharge based on a non-duty related disabling condition 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.

3/29/2025

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, USC, Section 1201 provides for the physical disability retirement of a member who has either 20 years of service or a disability rating of 30% or greater.

2. 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 at less than 30%.

3. Title 38, USC, 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.

a. 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.

b. The VA does not have 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. 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 her 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.

4. National Guard Regulation 600-200 (Enlisted Personnel Management) prescribes the criteria, policies, processes, procedures and responsibilities to classify; assign; utilize; transfer within and between states; provides Special Duty Assignment Pay; separate, and appoint to and from Command Sergeant Major, Army National Guard (ARNG) and Army National Guard of the United States (ARNGUS) enlisted Soldiers.

a. Chapter 6 all involuntary administrative separations require commander to notify Soldiers concerning intent to initiate separation procedures. All Soldiers being involuntarily separated will be afforded a reasonable opportunity to provide a written response for consideration by the separation authority.

b. Paragraph 6-35l (8) states medically unfit for retention per AR 40-501. Commanders, who suspect that a Soldier may not be medically qualified for retention, will direct the Soldier to report for a complete medical examination per AR 40-501. If the Soldier refuses to report as directed, see paragraph 6-36u below. Commanders who do not recommend retention will request the Soldier's discharge. When medical condition was incurred in line of duty, the procedures of AR 600-8-4 will apply. Discharge will not

be ordered while the case is pending final disposition. This paragraph also includes those Soldiers who refuse or ineligible to reclassify into a new MOS. RE 3.

5. Army Regulation (AR) 40-501 (Standards of Medical Fitness), in effect at the time, provided medical fitness standards of sufficient detail to ensure uniformity in medical evaluation of certain enlisted military occupational specialties and officer duty assignments in terms of medical conditions and physical defects which are causes for rejection or medical unfitness for these specialized duties. Chapter 3 (Medical Fitness Standards for Retention and Separation, Including Retirement), states give the various medical conditions and physical defects which may render a Soldier unfit for further military service. Soldiers with conditions listed in this chapter will be evaluated by a medical board and will be referred to a physical evaluation board (PEB).

6. AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation), prescribes policy and implements the requirements of chapter 61 (Retirement or Separation for Physical Disability) of Title 10, U.S. Code (USC). The regulation states:

a. The mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of his or her office, grade, rank, or rating. A Soldier is physically unfit when a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

b. Based upon the requirements of section 1203 of chapter 61, Title 10, USC, states Soldiers, not otherwise eligible for military retirement, with a disability not the result of intentional misconduct or willful neglect, and with less than a 30 percent disability rating, will receive severance pay.

c. The VA Schedule for Rating Disabilities (VASRD) is primarily used as a guide for evaluating disabilities resulting from all types of diseases and injuries encountered as a result of, or incident to, military service. Because of differences between Army and VA applications of rating policies, differences in ratings may result. Unlike the VA, the Army must first determine whether or not a Soldier is fit to reasonably perform the duties of his office, grade, rank, or rating. Once a Soldier is determined to be physically unfit for further military service, percentage ratings are applied to the unfitting conditions from the VASRD. These percentages are applied based on the severity of the condition at the time of separation.

7. Directive-Type Memorandum (DTM) 11-015 explains the Integrated Disability Evaluation System (IDES). It states, the IDES is the joint Department of Defense (DoD) VA process by which the DOD determines whether wounded, ill, or injured service members are fit for continued military service and by which DoD and VA determine

appropriate benefits for service members who are separated or retired for a service-connected disability. The IDES features a single set of disability medical examinations appropriate for fitness determination by the Military Departments and a single set of disability ratings provided by VA for appropriate use by both departments. Although the IDES includes medical examinations, IDES processes are administrative in nature and are independent of clinical care and treatment.

//NOTHING FOLLOWS//