

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 January 2025

DOCKET NUMBER: AR20230010038

APPLICANT REQUESTS: reconsideration of his previous request to:

- direct his placement on the Permanent Disability Retired List (PDRL) effective 26 October 2012
- amend the narrative reason for separation on his DD Form 214 (Certificate of Release or Discharge from Active Duty) to reflect physical disability retirement, effective 26 October 2012
- retroactive payment of military retirement pay
- alternatively refer the case to the Office of the Surgeon General (OTSG) for entry into the Legacy or Integrated Disability Evaluation System (IDES)
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Attorney's Request for Reconsideration
- Enclosure 1 - Power of Attorney
- Enclosure 2 - DD Form 214 and prior Army Board for Correction of Military Records (ABCMR) Decision
- Enclosure 3 - Personal Statement
- Enclosure 4 - Medical Documentation
- Enclosure 5 - DA Form 3349 (Physical Profile)
- Enclosure 6 - Chronological Record of Medical Care
- Enclosure 7 - Department of Veterans Affairs (VA) Disability Ratings
- Enclosures 8 through 11 - Chronological Record of Medical Care

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Number AR20190005225 on 12 August 2021.
2. The applicant defers to his attorney.

3. The applicant's attorney states, on behalf of the applicant:

- a. The applicant did not meet medical retention standards, after his last deployment in the Army. The combined effect of his mental health condition and pulmonary vascular disease should have triggered a Medical Evaluation Board (MEB) and entry into the IDES for medical retirement or separation with severance pay consideration. At one point, a medical provider placed him on a permanent profile, yet the Army did not initiate an MEB. The Board's original decision did not consider this evidence. Furthermore, the ABCMR's prior decision did not extend liberal consideration to his original application as required under Department of Defense (DoD) guidance.
- b. The applicant presents new materials including new evidence and arguments the Board did not previously consider. His case deserves reconsideration. The Board should consider all evidence provided with his original application.
- c. The Army honorably discharged the applicant in the rank of sergeant (SGT) on 26 October 2012. He has previously applied to the Board to correct his military records in Docket Number AR20190005225. The Board denied his application. This is his first request for reconsideration. In addition to the materials presented for reconsideration, the Board should consider the evidence from his original application.
- d. His request raises new materials and evidence the Board did not consider previously. First, he has attached his permanent medical profile from 2011 to this request to show he should have been referred to IDES. Second, he has included a personal statement describing his medical conditions, treatment, and Army career in more detail. Third, the Board failed to give his prior petition liberal consideration even though his application for relief raised mental health conditions.
- e. Finally, the legal firm submitted a Freedom of Information Act/Privacy Act request on 3 May 2023 by email for the applicant's original application. As of the date of the reconsideration request, they have not received even an acknowledgement from the Army Review Boards Agency (ARBA) that it received the request and added it to the queue.
- f. The Army went rolling right along but the applicant got left in the rear. Even though he could not perform his job as an 88M (Motor Transport Operator) after his last deployment, his unfitness for duty did not receive a review or consideration for medical retirement or separation. Although he spent the last year of his active duty military career working in a mentorship program at an elementary school near Fort Bliss because he could not perform his Army job, his command failed to look further into the disabilities that prevented him from performing the basic requirements of being a Soldier. And even though he sustained severe mental health and physical injuries,

during his military career, he never had his record reviewed at an MEB or Physical Evaluation Board (PEB).

g. He sacrificed his body and mind in service of his country. His experiences of service and war have not escaped his memory; the memories remain to this day. The VA recognized his service and service-connected injuries, awarding him a 100 percent permanent and total disability rating. In his case, the Army left his health conditions to the VA to sort out rather than take on the more arduous task of assessing whether he met retention standards or should be evaluated for medical retirement or separation.

h. While downrange, in 2010, he started cutting his wrist with a broken watch face. His command had put him under enormous stress and strain, and his prescribed medications seemed to affect him negatively. During his treatment for attempted suicide, Army providers discovered he had a pulmonary embolism.

i. The Army transferred him from Afghanistan to Germany to recover. Given his medical conditions, he should have been assigned to the Warrior Transition Unit (WTU). His chain of command, however, stood in the way. He felt punished for the behavioral and physical health conditions that manifested, during the deployment.

j. After he returned to the United States, the Army assigned him to Fort Bliss in El Paso, Texas. Fort Bliss was the last stop in his military career. While there, he did not serve as a Soldier in his designated military occupational specialty (MOS). He served, instead, as a Soldier-mentor to kids in the local elementary school. His command should have referred him to an MEB, once they knew he could no longer perform his military duties because of disabilities.

k. Before the onset of his behavior and medical conditions, he sustained other injuries. His military medical chart reflects injuries to his back and foot. He has a VA disability rating for lingering effects of his toe fracture in Iraq in 2006. He is also rated for lumbosacral strain.

l. The combined effect of these multiple injuries demanded referral to an MEB. The applicant slipped through the cracks of a strained military medical and behavioral health system. The VA, fortunately, provides compensation for his service-connected disability. But he, and other Soldiers, should not have to wait on the VA. They should have their records reviewed within the service, when appropriate. The applicant respectfully asks this Board to reconsider his prior application, and his new materials in support of his application and grant him a physical disability retirement for his eight years of Army service or referral to the IDES.

m. The applicant began his Army career in 2004. He joined because he wanted to fight in Iraq, so he enlisted in [REDACTED] Army National Guard (ARNG) and lobbied

to deploy. Although he did not receive medical clearance initially, he persisted. After he received medical approval, he deployed to Forward Operating Base (FOB) Kalsu, Iraq. This deployment would be his first of three, during his eight years as a Soldier.

n. While in Iraq, he experienced an attack on the FOB's north gate, which killed U.S. servicemembers and local nationals. When he later injured his foot, he was transferred to the 86th Combat Support Hospital in Balad. In the hospital, he saw injured, bloodied people - images he could not erase from his mind. Once he recovered, the Army sent him back to war.

o. He finished his tour of duty overseas, but he was not finished serving. He enlisted in the Regular Army and got assigned to Fort Eustis, Virginia. He began having anxiety and depressive symptoms and had a hard time sleeping. The Army prescribed him medications and sent him back to duty.

p. When he learned that another unit was deploying, he asked to go back to Iraq. Downrange again, his mission was heavy equipment transport (HET). On one mission, his convoy came under fire. During this deployment, his mental health conditions manifested again. Although he was struggling with depression and anxiety and physical pain, he was not ready to leave the Army. In fact, he fought to reenlist and deploy again. His resiliency paid off and he found himself on his way to Afghanistan for his third and final deployment.

q. As he explains in his personal statement, his leadership in Afghanistan wore him ragged. Doctors prescribed one medication after another, but the drugs made him feel worse. He was not getting sufficient sleep because of the high operation tempo, and the lack of rest affected his ability to do his job. The situation and symptoms became so bad that he started cutting his wrist with broken glass from his watch face.

r. The military transported him from the combat zone to Germany. During treatment of his mental health emergency, doctors discovered that he had a pulmonary embolism. This diagnoses kept him in the hospital a few more weeks. Upon discharge, the Army put him in the 41st Rear Detachment. He was on blood thinners and pain killers with a temporary 3 profile. His understanding is that he would move to the WTU.

s. Instead, individuals in the chain of command prevented his assignment to the WTU. They made comments to him that made it seem like they were punishing him for his suicide attempt. Because he was on blood thinners, the unit would not allow him to do meaningful work. His supervisors would not do the necessary paperwork to send him to the WTU. He even had trouble getting rides to his medical appointments, and his unit would not help him. The unit made it difficult for him to attend his appointments

t. On his own initiative, he contacted the U.S. Army Human Resources Command (AHRC) and requested assignment to a non-deploying unit. He left Germany for Fort Bliss, Texas. At Fort Bliss, he did not perform his MOS. He was assigned to the Partners of Education program because of his medical profile limitations. This program placed him at a local elementary school to serve as a mentor to children.

u. After the school year, his profile changed from temporary 3 to permanent 2. But the Army did not refer him to an MEB nor would his chain of command allow him to reenlist. He was forced out of the Army with his medical and mental health conditions unresolved - just another veteran shoved off to the VA for help and compensation.

v. The Army let the applicant's enlistment and military career end without properly vetting his disabilities for medical retirement or separation. Title 10 U.S. Code (USC) chapter 61, gives the Secretaries of Military Departments the authority to retire or discharge servicemembers if they are unfit to perform duties because of physical disability. In the Army, the Physical Disability Agency administers the service's physical disability evaluation system (DES) and implements the Secretary's decisions.

w. Soldiers are referred to the DES through a few mechanisms. First, they may undergo an MEB when they no longer meet retention standards. The regulation for medical retention standards in the Army is Army Regulation 40-501 (Standards of Medical Fitness), Chapter 3. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation) established the Army's DES policy. Second, Soldiers are referred to an MOS Medical Retention Board when they receive a medical profile rating of three or four. Finally, commanders may refer Soldiers for a fitness-for-duty medical examination.

x. At various points in his Army career, the applicant should have been referred to an MEB for one reason or another. At one time, his medical profile showed he could no longer perform the minimum duties of a Soldier. At Fort Bliss, he could not do his MOS and should have been referred then. But his command overlooked him and his conditions, allowing his enlistment to expire without ensuring he received full medical consideration.

y. The applicant's injuries and illnesses should have been referred to an MEB and referral to a PEB. After his deployment to Afghanistan, the Army should have referred him to an MEB. While in service, he had mental health conditions. The DoD's policy is that "special consideration will be given to VA determinations which document post-traumatic stress disorder (PTSD) or PTSD-related conditions connected to military service." The Board must also extend liberal consideration, when an application for relief is based in whole or in part on mental health conditions.

z. Further Army Regulation 40-501, paragraph 3-33c covers anxiety and trauma and stressor related disorders. The applicant's medical records showed persistent and recurrent symptoms that interfered with duty performance and necessitated limitations of duty. After his hospitalization, he was not able to return to his MOS or perform the duties of his MOS. In fact, he spent the last year of his Army career working in an elementary school.

aa. Additionally, Captain (CPT) [REDACTED] put the applicant on a permanent profile on 15 June 2011. The provider noted that the "Soldier suffered from a pulmonary embolism that has been refractive to conventional therapy. Will need to extend treatment." Further, his temporary profiles included at least one 3. His profile extension to 5 March 2011, for example, included a 3 and the provider marked "no" for all functional activities in section 5 of the DA Form 3349 (Physical Profile). The DA Form 3349 itself states, "If Soldier cannot perform any one of these tasks then the PULHES (physical capacity/stamina, upper extremities, lower extremities, hearing and ears, eyes, and psychiatric) must contain at least one 3 and Soldier must be referred to an MEB." On this profile, the PULHES contained a 3 and the applicant could not perform any functional activity of a U.S. Soldier. He should have been referred to an MEB as the DA Form 3349 instructed.

bb. In addition, a Chronological Record of Medical Care from 27 June 2012, further confirms his permanent profile. The provider, [REDACTED] wrote in the records that he "was on profile for pulmonary embolism x2 years., Pt is on a permanent profile with a no for carrying a wpn and no-strenuous activity x2 years." The provider further annotated a profile change to reflect 3 instead of 2 because of his inability to exercise or wield a weapon and references the profile entered by Dr. [REDACTED] on 15 June 2011.

cc. His permanent profile should have at least warranted an MOS Retention Board. His chain of command knew of his duty and medical limitations. As he describes in his personal statement, his unit in Germany prohibited him from performing any meaningful work. They put him in a chair in a day room for entire workdays. Even if the Board finds that an MOS Retention Board was not necessary, it may still conclude that his commanders in 2010, 2011, and 2012 should have referred him for a fitness-for-duty assessment.

dd. Finally, Soldiers must be ready to deploy within 72 hours, according to Army Regulation 40-501. After his evacuation from Afghanistan, he was never able to deploy again or on such short notice. His medical conditions and physical disability, either individually or collectively, were severe enough to warrant referral to an MEB. Since his discharge from the Army, the DoD has raised awareness of and implemented regulations and policies to ensure that servicemembers with mental health conditions are afforded reasonable opportunity for relief from Discharge Review Board and Boards for Correction, even if the condition was diagnosed years later.

ee. The Board must liberally consider the applicant's request for reconsideration. The Kurta and Wilkie memorandums require this standard of review in his case. Applying liberal consideration to his request for relief, the Board must see that he was either entitled to a disability retirement or referral to the DES.

ff. He suffered physically and mentally for his service on three deployments. The Army erred when it did not refer him to the DES for his unfitting conditions. If the Board finds that a physical disability retirement is not justified, it should nonetheless refer his records to the OTSG for referral to the legacy DES.

4. The applicant provides the following documents:

a. Self-authored statement, 16 May 2023, states, in effect:

(1) He is a disabled veteran of the U.S. Army. He deployed twice to Iraq and once to Afghanistan. He is requesting that the Board change his discharge to a medical retirement. He should have been referred to an MEB, while he was in the Army, and retired medically.

(2) He enlisted in the Army in June 2004 and deployed to FOB Kalsu, Iraq with [REDACTED] ARNG after requesting to be deployed, during a phone call with Major (MAJ) [REDACTED] who then put him on orders to [REDACTED] to mobilize. He did not pass medical in order to be deployed, when he first went through due to a knot on his right tibia. This knot came from a hairline fracture, during basic training at Fort Knox, Kentucky.

(3) He was released and sent back home, but his motivation to be deployed motivated him to see a family doctor who cleared him and said the knot would not hinder his performance or ability to deploy, so he gave MAJ [REDACTED] a call and expressed how he really would like to deploy and was cleared by his family doctor and MAJ [REDACTED] cut him orders once again to go mobilize at [REDACTED]. He passed all medical and was deployed to FOB Kalsu, Iraq and was assigned to Personal Security Detail to General [REDACTED] of [REDACTED] National Guard. He proceeded with this detail for a few months until he started experiencing anxiety then was reassigned to force protection.

(4) While on force protection he experienced a vehicle borne improvised explosive device attack on the FOB's north gate where casualties took place with U.S. servicemembers and local nationals. While setting up a new watch tower, he had the tower base bottom dropped across his left foot, where it completely broke his great toe on the his left foot in half. He was flown from FOB Kalsu to the 86th Combat Support Hospital to have more medical care on his foot. While there, he experienced seeing Marines covered in blood and other servicemembers with various injuries. A boot was

placed on his foot and he was given crutches and sent back to FOB Kalsu to finish out his tour of duty.

(5) He was given the option to reenlist to go on active duty with the Regular Army. He reenlisted and was sent to Fort Eustis, Virginia. After arriving to the 567th Transportation Company, he started experiencing anxiety, depression, and was not sleeping well. Mental health examined him for PTSD. The results did not meet the rating to be diagnosed with PTSD, so he was placed on mood stabilizers and antidepressants.

(6) His daily life and marriage were being affected by these issues. He wanted to be deployed back to Iraq. He found out the 89th Transportation Company was deploying and requested, from his first sergeant (1SG), to be sent to the 89th Transportation Company to redeploy and was denied. The reason given was the 567th Transportation Company just received orders to deploy to Iraq. He ended up deploying with the 567th Transportation Company to Iraq and the unit was split up. Two platoons stayed at Logistics Support Area Anaconda, Iraq with the main body unit attached to a unit from Fort Bragg, North Carolina and two platoons went to Al Taqaddum Air Base (TQ), Iraq which he was part of.

(7) He was tasked to go on a HET mission after having no experience with driving HETs in his career. His main experience was driving M915 semi trucks. He was given a two day driving test period on base before the mission was conducted. The convoy drove out of Combat Outpost Chicago where they were to meet up with a Marine convoy before coming back to TQ, Iraq. After waiting for a couple of hours, the Marine convoy finally arrived and then rounds started to be fired at their vehicles in the convoy and the servicemen that were outside their vehicles checking their loads. SGT N-, who was the applicant's truck commander, refused to let him leave his vehicle to provide suppressive fire even though his weapon was an M249 SAW. This upset and angered him. Once they arrived back at TQ, Iraq, he was told he was being taken off the HET missions but was not given a reason why. He started seeing the chaplain and eventually had his M249 taken away for a week or two.

(8) Once he redeployed back to Fort Eustis, Virginia, he experienced depression, anxiety, body aches, and joint pains. He was within his window to reenlist. He reenlisted to go to Germany to try to deploy to Afghanistan. The unit he was assigned to was the 41st Transportation Company in Grafenwoehr, Germany and they received orders to deploy to Afghanistan in October 2009. He was not cleared to deploy with the main body because of the ongoing medical issues he was dealing with, but he eventually got cleared by getting off the medications the Army put him on.

(9) He deployed to Mazar-e Sharif, Afghanistan in December 2009 and was assigned bus driving duties, Kalama Operator downloading C130s on the flight line, forklift missions downloading vehicles on base, and doing gun truck missions with the

unit. He was assigned these details because he was the only Soldier in the unit that had all of these military licenses from the cross training he did, while stationed at Fort Eustis, Virginia with 88Hs (Cargo Specialist) and 88Ns (Transportation Management Coordinator). A majority of the Soldiers in the unit only had HMMWV and Palletized Load System licenses. These details lasted for around six to seven months, and he was averaging two to two and a half hours of sleep a night. This took a toll on him mentally and physically, so he offered to train other Soldiers on these vehicles but was told he could not because he was not a master driver, he ended up requesting to see someone for his mental health and that doctor prescribed him Ambien. His chain of command was informed he was taking this medication, but the tasks he was assigned to do did not change or slow down.

(10) He almost injured some Soldiers on a few missions due to hallucinations because of the medication and lack of sleep. He informed the doctor, and the doctor switched his medication to Zoloft. He took the medication for a few weeks and started having suicidal thoughts, severe anxiety, and major depression. He could not see the doctor that prescribed him the medication due to being at Camp Spann doing some tasking there. He was convoyed back to Mazar-e Sharif and was placed on bed watch. He was given Seroquel to try and help him sleep. He ended up breaking the glass in the face of his watch and cutting his left wrist requiring seven stitches.

(11) The unit had him medevac'd to Landstuhl, Germany where he was placed in a psych ward for about three days and evaluated. He was informed he had bipolar type two the first day in there, then he was told he did not have bipolar type two the last day he was in there. After being released from the psych ward, he was awaiting the rear detachment to pick him up, and he started experiencing really sharp pains in his back and chest and had trouble breathing. He eventually started coughing up bright red blood, so he went to the emergency room and the next memory he could recall was awakening and having a catheter and a tube down his throat and his legs and arms bound to the bed. He was informed he had a pulmonary embolism.

(12) He was placed in the hospital for around 19 to 20 days and then eventually released to the 41st Rear Detachment. The doctors placed him on blood thinners and pain killers and a limited temporary 3 profile. The commander, CPT [REDACTED] and 1SG [REDACTED] were relieved of their command of the 41st Transportation Company. Chief [REDACTED] of the WTU contacted him by email through his Army Knowledge Online account inquiring when the 41st Transportation Company was sending him to the WTU. He inquired through Dr. [REDACTED] at Grafenwoehr, Germany and was told to have his unit fill out the matrix for WTU.

(13) The acting commander, Sergeant First Class (SFC) A- and the acting 1SG Staff Sergeant (SSG) [REDACTED] informed him that "He was not going a damn place. And he would not be getting out that easily." SFC A- and SSG [REDACTED] had him sit in a chair in the

day room from the start of business work hours until the end of the workday and he could not touch anything due to him being on blood thinners. This infuriated him because he was not doing his job but was in constant pain. So he contacted AHRC and requested a requisition code to be sent to a nondeployable unit. The requisition code sent him to Fort Bliss, Texas at the 11th Air Defense Artillery, Headquarters, Headquarters Battery.

(14) He arrived at Fort Bliss, Texas and reported to his unit. The commander, CPT [REDACTED] was completing medical appointments for retirement. A cousin of his, SSG D- [REDACTED] was the 2nd Platoon Sergeant and had been in the unit for over seven years and handled all the ranges and important training for the company. CPT [REDACTED] and SSG [REDACTED] recommended he become a mentor at Desertaire Elementary School through Fort Bliss' Partners in Education Program due to all of the medical appointments he had and the limitations of his profile. He could not wear any of his gear, carry a weapon, or participate in any military training.

(15) He completed the school year and was awarded a plaque from Desertaire Elementary School and was awarded the Military Outstanding Volunteer Service Medal. Once the school year was completed, his military profile was changed from a temporary 3 profile to a permanent 2 profile, and the profile remained until he was separated from the Army on 26 October 2012.

(16) He did miss some medical appointments, during the school year since the appointments were being scheduled, during school hours. His dedication to help young kids excel in their academics became the most important mission to him, at the time, and he does completely understand he put his health at risk. He was given the option to stay on coumadin for the rest of his life but chose not to because he had every intention to make a career out of the Army. Once he was in his window to reenlist, the retention noncommissioned officer at Fort Bliss would not allow him to reenlist due to the permanent profile he was on and the medical issues he was dealing with. The new commander, who replaced CPT [REDACTED] had him start clearing to exit the service and around the last week of his time in the Army, his commander transferred him to another unit. He was never informed he was transferred to this unit.

(17) He left the Army and continued treatment for his disabilities at the [REDACTED] VA hospital and was given 90 percent VA disability. He enrolled in college courses and was doing fairly well for some time, while getting treatment for mental and physical issues through [REDACTED] VA in [REDACTED] and then his conditions worsened. He applied and was given a service dog through Puppies Behind Bars after a two week instructional course with the service dog. He was able to petition and become a 7th degree Royal Arch Mason.

(18) He wanted to rejoin the active duty Army and decided to try reenlisting but was told no numerous times, due to his VA ratings. He could not understand because his DD Form 214 (Certificate of Release or Discharge from Active Duty) is honorable and states he does not need any waivers to come back into the Army. But his medical disabilities will not allow him to reenlist, which tells him he should have received a medical retirement or separation with severance pay.

(19) Since leaving the Army, he has worked through other trauma. In March 2013, his cousin, SSG [REDACTED] who was a type two diabetic on a limited profile, was forced by the commander to take a physical fitness test, which he did. After completing it, he went home and died. In May 2013, SGT [REDACTED] a fellow Soldier, and a good friend, committed suicide at Fort Hood, Texas. In March 2018, Private First Class [REDACTED] a fellow Soldier and friend he served with during his first deployment to Iraq, died from an overdose on drugs. He was rated as a 100 percent disabled veteran with the VA dealing with PTSD.

(20) The applicant has felt guilt, depression, and anger, since he left the service. He honestly believes some of these deaths could have been prevented and only happened due to poor leadership. He also knows the Army could have handled his medical disabilities better. He honestly feels like he has been left behind.

(21) All this has caused a lot of strain on his mental health and his family. He is asking the Board for a reconsideration of his request for medical retirement or at the least to accept him into the DES legacy program. He is limited on a lot of things he can do not only as a person but as a father and husband due to his mental and physical disabilities, from his time in the Army. Not only does he endure physical disabilities that were incurred, during his time in the Army, but he also relives the mental injuries from his service daily and nightly.

b. DA Forms 3349 (Physical Profile), show he was placed on profile on/for:

- 8 June 2010, temporary profile, PULHES 31111 for pulmonary embolism
- 2 December 2012, temporary profile, PULHES 31111 for pulmonary embolism

c. Document entitled "PCL-M Summary Report", 30 December 2005 states his score falls in the range between 17 - 34. This indicates that although he had some symptoms related to stressful military experiences over the past month, they are likely to diminish over time and they are not likely to evolve into problems interrupting the normal, daily routines of life. If they persist, however, he may wish to discuss these with a chaplain, clergy, or mental health care provider.

d. Medical documents, which are available for the Board's review and will be reviewed by the ARBA Medical Section who will provide an advisory.

e. VA rating decision, 30 August 2019, shows he has the following service-connected disabilities:

- PTSD and depressive disorder, 100 percent, effective 13 February 2018
- Pulmonary vascular disease with right lung pleural effusion, 30 percent effective 27 October 2012
- Cervical strain with muscle spasms, 30 percent effective 3 April 2013
- Right ankle impingement, 20 percent effective 28 March 2015
- Left ankle impingement/sprains, 20 percent effective 28 March 2015
- Lumbar strain with IVDS and thoracolumbar scoliosis, 20 percent effective 2 March 2018
- Patellofemoral pain syndrome right knee, 10 percent effective 27 October 2012
- Patellofemoral pain syndrome left knee, 10 percent effective 27 October 2012
- Gastroesophageal reflux disease, 10 percent effective 27 October 2012
- Right lower extremity radiculopathy associated with lumbar strain with IVDS and thoracolumbar scoliosis, 10 percent effective 28 March 2015
- Left lower extremity radiculopathy associated with lumbar strain with IVDS and thoracolumbar scoliosis, 10 percent effective 28 March 2015
- Surgical scars with pain, basal cell carcinoma excision, left upper extremity, 10 percent effective 14 August 2015
- Left 1st toe fracture, 10 percent effective 2 March 2018
- Tinnitus, 10 percent effective 21 December 2018

5. 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 on 27 December 2005. He remained in the Regular Army through immediate reenlistments.

b. He served in Iraq from 27 July 2007 to 30 July 2008 and in Afghanistan from 3 December 2009 to 30 June 2010.

c. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably discharged, for completion of required active service, on 26 October 2012. He completed 6 years, 9 months, and 27 days of active duty service with 10 months and 17 days of total prior active service and 7 months and 12 days of total prior inactive service. He had immediate reenlistments from 30 December 2005 to 26 October 2008.

d. His service record was void of medical documentation or documentation showing he underwent an MEB or PEB.

6. On 12 August 2021, the Board made a decision in his previous case in ABCMR Docket Number AR20190005225, wherein he requested a change in his type of separation to retirement. The Board stated, after reviewing the application and all supporting documents, the Board determined relief was not warranted. Based upon the available documentation and the findings of the medical advisor, and by a preponderance of evidence, the Board concluded there was insufficient evidence of an error or injustice, which would warrant a change to his narrative reason for separation, finding no error or injustice.

7. 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.

8. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR) (AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant has applied to the ABCMR requesting reconsideration of their prior denial of his request for a referral to the Disability Evaluation System (DES) and a subsequent permanent retirement for physical disability.

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 for the period of Service under consideration shows he entered the regular Army on 30 December 2005 and was honorably discharged on 26 October 2012 at the completion of his required active service under authority provided in chapter 4 of AR 635-200, Active Duty Enlisted Administrative Separations (17 December 2009). It shows he served in Iraq from 27 July 2007 thru 30 July 2008 and in Afghanistan from 3 December 2009 thru 30 June 2010. He was not awarded a combat action badge. His reentry code of "1" denotes he was fully eligible to reenlist.

d. This request was previously denied by the ABCMR on 12 August 2021 (AR20190005225). Rather than repeat their findings here, the board is referred to the record of proceedings and medical advisory opinion for that case. This review will concentrate on the new evidence submitted by the applicant.

e. The four-page medical advisory for AR20190005225 does an excellent job of discussing the applicant's medical conditions and issues related to that and thus this request for reconsideration. The medical documentation submitted with this application was reviewed. It is from the EMR and JLV and was thoroughly addressed in the prior medical advisory and so will not be repeated here. So, in essence, no new probative evidence was presented with this application.

f. Evidence clearly shows the applicant had mental health condition(s) and pulmonary emboli along with other conditions during his Service. And while they were duty limit for some period of time, the record shows improvement to the point where they were no longer duty limiting.

g. The final NCO Evaluation Report in iPERMS was an annual covering 6 November 2010 thru 5 November 2011, the same period during which and after he had his mental health issues and pulmonary emboli. Though he was on the temporary profile(s) noted in the record, it shows he was a successful Soldier during this period. His senior rater blocked him with a "1" on a scale of 1 to 5 for Overall Performance, a "2" for Overall Potential, and top-blocked him as among the best stating:

- promote with peers
- send to Advanced Leaders Course when available
- assign to position of greater responsibility that will enhance his overall potential
- dedicated NCO whose performance and abilities were demonstrated daily

h. The DES provided compensation to Service Members whose military careers are cut short due to service incurred injuries or conditions. 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."

i. There is insufficient probative evidence the applicant had a mental health or other medical condition which failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge; or which prevented the applicant from reenlisting and continuing his military career. Thus, there was no cause for referral to the Disability Evaluation System.

j. JLV shows he continues to maintain the multiple VA service-connected disability ratings previously noted in AR20190005225. Some have been increased in the interim and the diagnosis for his mental health condition has been changed from major depressive disorder (50%) to PTSD (100%).

k. 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 thus result in termination of their military 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.

l. It is the opinion of the ARBA medical advisor that a referral of his case to the DES remains unwarranted.

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 that the applicant's Department of Veterans Affairs rating determinations are based on the roles and authorities granted by Congress to the Department of Veterans Affairs and executed under a different set of laws. Based on this, the Board determined placement on the Permanent Disability Retired List or a referral of his case to the Disability Evaluation System (DES) is 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

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 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.
2. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 4 (Separation for Expiration of Service Obligation) states a Soldier will be separated upon expiration of enlistment of fulfillment of service obligation.
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. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NRs) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

9. 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//