

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 January 2025

DOCKET NUMBER: AR20230012033

APPLICANT REQUESTS: a reconsideration of his previous request to receive a higher service-connected disability rating. In addition:

- a service-connected disability rating of 50 percent (%) for his Combined/Mixed Classic Migraines.
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- A self-authored letter
- Memorandum subject: Request for Rating, 9 April 2013
- Department of Veterans Affairs (VA) Disability Evaluation System Proposed Rating, 9 September 2013
- Memorandum subject: Permanent Physical Disability Retirement, 2 December 2013
- Orders D 336-15, 2 December 2013
- VA Rating Decision, 7 February 2014
- Three VA Disability Benefits Questionnaires
- A letter issued by the VA, 1 December 2015
- A letter issued by Congressional Liaison and Inquiries (CLI), 10 July 2023

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Dockets Number AR20140004501 on 4 November 2014, and AR20150004435 on 9 February 2016.

2. The applicant states, in effect, he is requesting the reconsideration of his previous request to increase his disability rating for his combined/mixed classic migraines from 30% to 50%, and a total service-connected disability rating of 60%, due to the inconclusive Integrated Disability Evaluation System (IDES) and VA ratings at the time

of separation. Since the IDES, and VA ratings were not completed at the time of his discharge, the VA reevaluated his service connected disabilities and granted him a higher rating. His migraines are service connected, therefore his Army disability rating, should match his VA disability rating of 50%.

3. The applicant provides:

a. A Self authored letter, which is available in its entirety for the Boards review, dated 19 June 2023, shows the applicant explains the IDES process is designed to assist Soldiers in successfully transitioning from the military, however, that was not what he experienced. During the Physical Evaluation Board (PEB) process, he was also preparing for a separation due to his expiration of term of service (ETS). The Physical Evaluation Board (PEB)/IDES were processed in Hawaii during the time he was relocating to Wisconsin. This limited communications with the PEB Liaison Officer (PEBLO) and other officials prior to agreeing to the PEB rating decision. Once separated, he immediately filed a claim with the VA to reevaluate his migraine headaches. The VA decision was delayed, however a decision was rendered within 2 years of the Physical Disability Agency's rating decision.

b. In a memorandum subject: Request for Rating, 9 April 2013, shows the PEB found the applicant physically unfit to continue military service for the following PEB referred unfitting conditions:

- Combined/Mixed Classic Migraine and Muscle Contraction Headaches
- Thoracic Spine Degenerative Disc Disease with increased Kyphosis and Vertebral body wedging

c. A VA Disability Evaluation System Proposed Rating, 9 September 2013, shows the PEB referred combined evaluation of 40%, for service connected conditions incurred in the Gulf Wars as follows:

- Combined/Mixed Classic Migraine and Muscle Contraction Headaches, with a disability rating of 30%
- Thoracic Spine Degenerative Disc Disease with increased Kyphosis and Vertebral body wedging, with a disability rating of 10%

d. In a memorandum subject: Permanent Physical Disability Retirement, 2 December 2013, the applicant was advised he has been found to have a disability and will be permanently retired with a disability rating of 40%.

e. His VA Rating Decision, which is available in its entirety for the Boards review, dated 7 February 2014, shows in pertinent part:

- Service connection for combined/mixed classic migraine and muscle contraction headaches is granted with an evaluation of 30% effective 5 November 2013
- Service connection for thoracic spine degenerative disc disease with increased kyphosis and vertebral body wedging is granted with an evaluation of 10% effective 5 November 2013

f. Three VA Disability Benefits Questionnaires provides information in regard to the applicant's conditions and a completed medical opinion, which will be reviewed by the Medical Staff at the Army Review Boards Agency.

g. In a letter issued by the VA, dated 1 December 2015, it shows the evaluation of combined/mixed classic migraine and muscle contraction headaches is now assigned a 50% evaluation based on very frequent completely prostrating and prolonged attacks productive of severe economic inadaptability .

4. The applicant is authorized foreign service credit currently not on his DD Form 214. Item 12f (Foreign Service), and item 18 (Remarks) on his DD Form 214 for the period ending 4 November 2013, will be administratively corrected in the "Administrative Notes" section of this document without Board action.

5. The applicant's service record shows the following:

a. He enlisted in the Regular Army on 2 June 2010, and was honorably discharged from active duty to accept commission in the Army, on 3 November 2010.

b. The applicant has Service in Afghanistan from 1 April 2011 through 31 March 2012, for which he was awarded the Purple Heart and the Combat Action Badge.

c. DA Form 71 (Oath of Office), 4 November 2010, reflects he was appointed as a Regular Army Commissioned Officer, in the rank/grade of 2LT/O1.

d. DA Form 199 (Informal PEB Proceedings) shows the PEB convened on 15 November 2013, wherein the applicant was found physically unfit with a recommended disability rating of 40%, and that the disposition be permanent disability retirement, due to Combined/Mixed Classic Migraine and Muscle Contraction Headaches, and Thoracic Spine Degenerative Disc Disease with increased Kyphosis and Vertebral body wedging. Onset of these conditions was 2011. The applicant concurred with the findings, waived a formal hearing of his case, and did not request reconsideration of his VA rating. This document further shows the PEB made the following administrative determinations:

(1) These conditions:

- Were incurred or aggravated in the line of duty in a duty status
- It was not due to intentional misconduct, willful neglect, or unauthorized absence
- They are permanent and stable

(2) The disability disposition is based on disease or injury incurred in the line of duty in combat with an enemy of the United States and as a direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a period of war (5 USC 8332, 3502, and 6303). (This determination is made for all compensable cases but pertains to potential benefits for disability retirees employed under Federal Civil Service.)

(3) Evidence of record reflects the Soldier was not a member or obligated to become a member of an armed force or Reserve thereof, or the NOAA or the USPHS on 24 September 1975.

(4) The disability did result from a combat-related injury under the provisions of 26 USC 104 or 10 USC 10216.

e. Orders D 336-15, dated 2 December 2013, show the applicant was to be retired because of a physical disability incurred while entitled to basic pay and under conditions that permit retirement for permanent physical disability. The percentage of disability is 40, with an effective date of retirement of 6 January 2014.

f. His DD Form 214, shows he was honorably released from active duty on 4 November 2013 due to the completion of his required active service. He completed 3 years, and 1 day. His grade at the time of discharge was first lieutenant (1LT)/O-2. He was awarded and/or qualified for the following awards:

- Afghanistan Campaign Medal with two bronze service stars
- Army Commendation Medal (second award)
- Valorous Unit Award
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Army Service Ribbon
- Overseas Service Ribbon (second award)
- North Atlantic Treaty Organization Medal
- Combat Action Badge

g. DD Forms 215 (Correction to DD Form 214), show the following amendments to the applicant's DD Form 214 for the period ending 4 November 2013:

- Item 12a (Date Entered this Period): 4 November 2010

- Item 13 (Awards): Purple Heart

6. In a prior ABCMR Docket Number AR20140004501 on 4 November 2014 the applicant requested continuation on active duty from 4 November 2013 (the date he was honorably released from active duty) to 6 January 2014 (the date he was retired by reason of disability). Although this application is discussed in within Docket Number AR20150004435, it is not relevant to the applicant's current request.

7. In a prior ABCMR Docket Number AR20150004435 on 9 February 2016, the applicant requested reconsideration of his previously denied request for continuation on active duty (COAD), and as a new request for the Board to increase his retirement percentage due to administrative errors he incurred from the VA during his IDES processing. The Board noted that the evidence presented did not demonstrate the existence of a probable error or injustice. Therefore, the Board determined that the overall merits of his case were insufficient, and relief was not warranted.

a. His PEB findings were supported by a preponderance of the evidence, were fully reviewed, and approved by the applicant, were not arbitrary or capricious, and were not in violation of any statute, directive, regulation, or written policy.

b. Only conditions found to be unfitting before the Soldier is separated from the military can be found to be compensable by the military. The fact that the applicant's overall combined rating was increased by the VA after leaving the Army does not negate the combined findings of the VA during his IDES processing.

8. Army Regulation 15-185 (ABCMR), currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

9. Due to the applicant's request for a disability rating of 50% for his Combined/Mixed Classic Migraine and Muscle Contraction Headaches, and a total disability rating of 60%, the case is being forwarded to the Medical staff at ARBA.

10. MEDICAL REVIEW:

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

b. The applicant is applying to the ABCMR requesting an increase in his military disability rating. He states:

“Increase DoD disability rating for combined/mixed migraines from 30% to 50% ... IDES VA rating was not fully developed at the time of discharge. VA conducted another rating decision within 24 months, increasing the migraine rating from 30% to 50%.”

c. The Record of Proceedings details the applicant’s service and the circumstances of the case. Orders published by the United States Army Physical Disability Agency on 2 December 2013 show he was permanently retired for physical disability effective 6 January 2014 with a military disability rating of 40%.

d. Soldiers in the Integrated Disability Evaluation System receive one set of VA C&P examinations covering all their referred and claimed conditions. These examinations are the examinations of record for the IDES and serve as the basis for both their military and VA disability processing. The medical evaluation board (MEB) uses these examinations 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.

e. All conditions, both claimed and referred, are rated by the Veterans Benefits Administration using the VA Schedule for Rating Disabilities (VASRD). This use of the VASRD for military disability ratings is required by law. 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.

f. His Informal Physical Evaluation Board (PEB) Proceedings show that on 15 November 2013 the board determined he had two conditions unfitting for continued military Service: “Combined/Mixed Classic Migraine and Muscle Contraction Headaches” and “Thoracic Spine Degenerative Disc Disease with increased Kyphosis and Vertebral body wedging at T 7-9.” The PEB determined nine additional conditions were not unfitting for continued service.

g. The PEB applied the ratings derived by the Veterans Benefits Administration of 30% and 10% respectively for a combined military disability rating of 40%. The PEB recommended he be permanently retired for physical disability. On 16 November 2013, after being counseled on the PEB’s findings and recommendation, the applicant

concurred with the Board's findings, waived his right to a formal hearing, and declined to request a VA reconsideration of his disability ratings.

h. A 1 December 2015 VA ratings decision shows the rating for his migraine headaches was increased to 50%.

i. The awarding of a higher VA rating does not establish prior error or injustice. A disability rating is intended to compensate an individual for interruption of a military career after it has been determined that the individual suffers from an impairment that disqualifies him or her from further military service.

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

k. It is the opinion of the ARBA medical advisor that an increase in his military disability rating is 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 and standard 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 an increase in his military disability rating is unwarranted. The Board determined there is insufficient evidence to support the applicant's contentions for reconsideration of his previous request to receive a higher service-connected disability rating of 50 percent (%) for his Combined/Mixed Classic Migraines.

2. The Board noted the applicant's rating disabilities reflected his disability at the point in time the VA exams were completed. Evidence shows the applicant's rating was increased to 50% in 2015. However, the Board agreed based on regulatory guidance a disability rating is intended to compensate an individual for interruption of a military career after it has been determined that the individual suffers from an impairment that

disqualifies him or her from further military service. The Board found no error or injustice and denied relief.

3. 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:

Except for the correction addressed in Administrative Note(s) below, the Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR20140004501 on 4 November 2014, and AR20150004435 on 9 February 2016.

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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's records shows pursuant to Orders SB-279-005, dated 6 October 2011, and Permanent Order 033-015 of the Army Commendation Medal, dated 30 April 2012, he is authorized foreign service credit for the period ending 4 November 2013, currently not on his DD Form 214. As a result, amend:

- Item 12f (Foreign Service) by adding: 1 year, 0 months, and 0 days
- Item 18 (Remarks) by adding: "Service in Afghanistan from 1 April 2011 through 31 March 2012"

REFERENCES:

1. Army Regulation 15-185 (ABCMR), currently in effect, prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative 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.

2. Title 10, United States Code (USC) (Armed Forces), chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with Department of Defense (DOD) Directive 1332.18 and AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in a Medical Evaluation Board (MEB); when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an MOS 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 the Informal Physical Evaluation Board (PEB) Proceedings. The purpose of the MEB is to determine whether the service member's injury or illness is severe

enough to compromise his/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 or not 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 either are 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 one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

c. 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. Reasonable performance of the preponderance of duties will invariably result in a finding of fitness for continued duty. 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.

3. Title 10, United States Code (USC) (Armed Forces), 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%. Title 10, United States Code (USC) (Armed Forces), section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating of less than 30%.

4. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), establishes the Army Physical Disability Evaluation System according to the provisions of Title 10, United States Code (USC), Chapter 61, (10 USC 61) and Department of Defense Directive (DODD) 1332.18. It 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 or her office, grade, rank, or rating. If a Soldier is found unfit because of physical disability, this regulation provides for disposition of the Soldier according to applicable laws and regulations. The objectives of this regulation are to maintain an effective and fit military organization with maximum use of available manpower, provide benefits for eligible Soldiers whose military service is terminated because of a service-connected disability, provide prompt disability processing while ensuring that the rights and interests of the Government and the Soldier are protected.

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in an 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 or directed by medical providers.

b. The disability evaluation assessment process involves two distinct stages: the MEB and PEB. The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his or her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members whose medical condition did not exist prior to service who are determined to be unfit for duty due to disability are either separated from the military or are permanently retired, depending on the severity of the disability. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

c. The percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Ratings are assigned from the Veterans Affairs Schedule for Rating Disabilities (VASRD). The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting or ratable condition is one which renders the Soldier unable to perform the duties of his or her office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of his or her employment on active duty. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

d. Physical disability evaluation will include a determination and supporting documentation on whether the Soldiers disability compensation is excluded from Federal gross income under the provisions of Title 26, United States Code (USC), section 104. The entitlement to this exclusion is based on the Soldier having a certain status on 24 September 1975 or being retired or separated for a disability determined to be combat related as set forth in this paragraph. The determination will be recorded on the record of proceedings of the Soldier's adjudication.

5. Title 10, United States Code (USC) (Armed Forces), section 1556 (Ex Parte Communications Prohibited) 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 applicant's (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//