ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 6 February 2025

DOCKET NUMBER: AR20230012135

APPLICANT REQUESTS: a correction to his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show he was medically retired and correction of his record to show a disability rating of 100 percent (%) and placement on the Permanent Disability Retirement List (PDRL)

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored letter (duplicate statement from DD Form 149)
- Permanent Order 339-165, dated 5 December 2011
- DA Form 4187 (Personnel Action) (illegible document)
- DA Form 4187-1-R (Personnel Action Form Addendum) (illegible document)
- Nexus letter, dated 22 June 2021
- DD Form 214

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states, in effect, he is requesting a correction to his DD Form 214 to show he was medically retired with a disability rating of 100%, and placement on the PDRL. At the time of his discharge, the medical board only focused on his wrist disability, instead of evaluating his entire health record. The applicant has a traumatic brain injury (TBI), post-traumatic stress disorder (PTSD), and migraines. He claims medical personnel rushed his process, which resulted in his medical discharge instead of a medical retirement. The applicant further states the Department of Veterans Affairs (VA) rated him at 100% disabled two years after his separation from the Army. He did not add any additional conditions or evidence. The VA used the same medical records as the Army, and he was able to receive his 100% disability rating.

3. The applicant provides:

a. Permanent Order 339-165, dated 5 December 2011, showing he was awarded the Combat Action Badge for personally engaging, or being engaged by, the enemy on 9 November 2011.

b. His Nexus letter, dated 22 June 2021 reflects that his TBI, an in-service claimed condition was incurred or caused during his service in the Army. He has been exposed to explosive blasts including two Improvised explosive devices (IEDs) detonations with close proximity less than 10 feet. Further, as a combat engineer he was exposed to incoming mortar rounds, rocket propelled grenades (RPGs), and rockets during his combat tour in Afghanistan. The letter is available in its entirety for the Board's review.

4. The applicant has service in Afghanistan from 15 August 2011 through 14 August 2012, for which he was awarded the Combat Action Badge.

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

a. He enlisted in the Regular Army on 1 September 2010.

b. DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings) shows the PEB convened on 14 May 2020, wherein the applicant was found physically unfit with a recommended disability rating of 10%, and that the disposition be separated with severance pay, due to left dorsal wrist incisional neuroma, status-post left dorsal wrist ganglionectomy. Onset of this condition was 2013. 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) This condition:

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

(2) The disability disposition is not 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 not result from a combat-related injury under the provisions of 26 USC 104 or 10 USC 10216.

(5) The disability severance pay was awarded for disability incurred in a combat zone or incurred while performing combat-related operations as designated by the Secretary of Defense (10 USC 1212).

c. Orders 164-0002, dated 12 June 2020 show he was due be discharged with severance pay and a disability rating of 10%, due to a disability with an effective date of 27 August 2020. His disability was incurred in a combat zone or incurred during the performance of duty in combat-related operations as designated by the Secretary of Defense (NDAA 2008 Sec 1646).

d. His DD Form 214 shows he was honorably discharged from active duty on 27 August 2020 due to disability, severance pay, combat related. He completed 9 years, 11 months, 27 days of active service, and 3 years of foreign service (Hawaii and Afghanistan). His grade at the time of discharge was sergeant (SGT)/E-5. He was awarded and/or qualified for the following awards:

- Army Achievement Medal (second award)
- Meritorious Unit Commendation
- Army Good Conduct Medal (third award)
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Afghanistan Campaign Medal with two bronze service stars
- Noncommissioned Officer Professional Development Ribbon
- Army Service Ribbon
- Overseas Service Ribbon
- North Atlantic Treaty Organization Medal
- Combat Action Badge

6. 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 is applying to the ABCMR requesting additional conditions be determined to have been unfitting conditions for continued military service with a subsequent increase in his military disability rating and a change of his disability discharge disposition from separate with disability severance pay to permanent retirement for physical disability. He states in part:

> "The reason I feel I should have received 100% retired is because the only thing they focused on was my wrist in my Med Board process. They did not take the time to go through my medical records that led up to me being Med Boarded from the Army. They did not take into consideration my TBI, PTSD or Migraines. I am now 100% and I have not added anything to my records since I got out of the Army."

c. The Record of Proceedings details the applicant's service and the circumstances of the case. His DD 214 for the period of Service under consideration shows he entered the Regular Army on 1 September 2010 and was honorably discharged with $66,126.00 of disability severance pay on 27 August 2020 under provisions provided chapter 4 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (19 January 2017).

d. A Soldier is referred to the Integrated Disability Evaluation System (IDES) when they have one or more conditions which appear to fail medical retention standards reflected on a duty liming permanent physical profile. At the start of their IDES processing, a physician lists the Soldiers referred medical conditions in section I the VA/DOD Joint Disability Evaluation Board Claim (VA Form 21-0819). The Soldier, with the assistance of the VA military service coordinator, lists all other conditions they believe to be service-connected disabilities in block 8 of section II of this form, or on a separate Application for Disability Compensation and Related Compensation Benefits (VA Form 21-526EZ).

Soldiers then receive one set of VA Disability Benefits Questionnaires (DBQ) (aka C&P examinations) covering all their referred and claimed conditions. These examinations, which are the examinations of record for the IDES, serve as the basis for both their military and VA disability processing. The medical evaluation board (MEB) uses these exams along with AHLTA encounters and other information to evaluate all conditions which could potentially fail retention standards and/or be unfitting for continued military service. Their findings are then sent to the physical evaluation board for adjudication.

e. All conditions, both claimed and referred, are rated by the VA using the VA Schedule for Rating Disabilities (VASRD). The physical evaluation board (PEB), after adjudicating the case, applies the applicable ratings to the Soldier's unfitting condition(s), thereby determining his or her final combined rating and disposition. Upon discharge, the Veteran immediately begins receiving the full disability benefits to which they are entitled from both their Service and the VA.

f. On 19 September 2019, the applicant was referred to the IDES for "Left Dorsal Wrist Incisional Neurorna, status post Left Dorsal Wrist Ganglionectomy." The applicant claimed ten additional conditions on a separate Application for Disability Compensation and Related Compensation Benefits (VA Form 21-526EZ), including PTSD and traumatic brain injury (TBI). He did not claim a headache condition.

g. A medical evaluation board (MEB) determined his referred condition failed the medical retention standards of AR 40-501, Standards of Medical Fitness. They determined ten additional medical conditions met medical retention standards. They noted there was "No Medical Basis" for the claimed conditions of PTSD and Cognitive Deficits due to mild traumatic brain injury.

h. The claimed TBI and PTSD were addressed in a three-page MEB behavioral health (BH) narrative summary. The provider concluded there was no medical basis for a diagnosis of either condition:

> "After thorough review of the BH Army Medical Records, this examiner does not agree with the Diagnosis of PTSD or severity of symptoms related to the disorder issued by the VA/DBQ provider.
>
> The SM has had several Family Advocacy Program interventions in 2017, related to marital disputes (marital separation). He again reported marital issues (divorce) that are causing him to suffer from sleep disruption. Although during his Intake Interview the SM [service member] reported suffering from sleep issues and nightmares for the past 4-5 years, such complaints or request for treatments for such symptoms were never issued. In fact, per Army Medical Records, the SM issues were, in the Past and currently, related to his marital issues.
>
> Per this examination through AHLTA records review and per Commander's Statement, there is no history of PTSD symptoms or a report of symptoms that would meet DSM-V criteria and would deem issuing a diagnosis of PTSD. Therefore, the newly issued diagnosis of PTSD has No Medical Basis.

In regard to the claimed condition of Cognitive Deficits due to mTBI, there is no medical basis or previous BH claims/treatments related to the disorder. Per VA/DBQ provider examination, on the TBI evaluation the SM scores were all within normal in the 10 Facets; he also scored 29/30 in the MOCA [Montreal cognitive assessment] evaluation (> or = to 26/30 = Normal). Therefore, NO diagnosis for mild traumatic brain injury was issued by the VA/DBQ provider.

Available documentation was sufficiently current to make a medical determination."

i. On 16 January 2020, the applicant concurred with the MEB's decision, declined the opportunity to request an Impartial Medical Review (IMR), declined the opportunity to submit a written rebuttal, and his case was forwarded to a physical evaluation board (PEB) for adjudication.

j. On 14 May 2020, the applicant's PEB found his "Left dorsal wrist incisional neuroma, status-post left dorsal wrist ganglionectomy" was his sole unfitting condition for continued military service. They found the remaining nine medical conditions not unfitting for continued service. The PEB applied the Veterans Benefits Administration (VBA) derived rating of 10% and recommended the applicant be separated with disability severance pay. On 21 May 2020, after being counseled by his PEB Liaison Officer (PEBLO) on the PEB's findings and recommendations, the applicant concurred with the PEB's finding, waived his right to a formal hearing, and declined to request a VA reconsideration of his disability rating.

k. Review of his PEB case file in ePEB along AHLTA records revealed no material inaccuracies, omissions, or discrepancies.

l. There is insufficient probative evidence the applicant had any additional medical condition(s) which would have failed the medical retention standards of chapter 3, AR 40-501 prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System. Furthermore, there is no evidence that any additional medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge.

m. Review of his records in JLV shows he has been awarded multiple VA service-connected disability ratings, including ratings for traumatic brain disease, sleep apnea, and migraine headaches. 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. 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.

n. It is the opinion of the ARBA Medical Advisor that neither an increase in his military disability rating, a change of his disability discharge disposition, nor a referral of his case back to the DES is warranted.

BOARD DISCUSSION:

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

2. The Board carefully considered the applicant's contentions, his military record, his Army Disability Evaluation proceedings, the rating he received and the reason for his separation. The Board considered the applicant's wrist condition that did not meet medical retention standards and his ten other conditions that were determined to meet retention standards. The Board considered the applicant's service-connected VA disability ratings and the review and conclusions of the Agency medical advisor. The Board determined that while the applicant has multiple conditions determined by the VA as disabling, 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. The Board found that the applicant was given due process when his conditions were evaluated and that the conditions identified as meeting or not meeting medical retention standards were not in error or unjust. Based on a preponderance of evidence the Board determined that the applicant's DES outcome was not in error or unjust and that neither an increase in his military disability rating, a change of his disability discharge disposition, nor a referral of his case back to the DES is warranted.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
[redacted]	[redacted]	[redacted]	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

X//Signed//

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, United States Code (USC) (Armed Forces), section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the Army Board for Correction of Military Records (ABCMR) to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation 15-185 (ABCMR), 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.

3. 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.

4. Title 38, United States Code (USC) (Veterans' Benefits), section 1110 (General - Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

5. 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.

6. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation) in effect at the time, prescribes Army policy and responsibilities for the disability evaluation and disposition of Soldiers who may be unfit to perform their military duties due to physical disability. Any medical condition incurred or aggravated during one period of active Service or authorized training in any of the Armed Forces that recurs, is aggravated, or otherwise causes the Soldier to be unfit, should be considered incurred in the line of duty (LOD), provided the origin of such impairment or its current state is not due to the Soldier’s misconduct or willful negligence, or progressed to unfitness as the result of intervening events when the Soldier was not in a duty status.

7. 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%.

8. 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//