

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 February 2025

DOCKET NUMBER: AR20230012277

APPLICANT REQUESTS: a higher service-connected disability rating of 30 percent (%) or greater. In addition:

- placement on the Permanent Disability Retirement List (PDRL)
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored letter
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Disability Evaluation System (DES) Proposed Rating, dated 6 February 2023
- A letter issued by the Department of Veterans Affairs (VA), dated 7 February 2023
- Medical records (282 pages)

FACTS:

1. The applicant states he received an unfair disability rating and was rushed through the Physical Evaluation Board (PEB) process. He has various conditions that are hindering his life as a whole, he is in constant pain, and is unable to walk or stand for an extended period of time. He is requesting a higher service-connected disability rating of at least 30%, placement on the PDRL due to the severity of his medical issues, and so he may qualify for Tricare benefits. He misses the Army and feels as if his separation was rushed due to his conditions. The statements are available in their entirety for the Board's review.

2. The applicant provides:

a. DES Proposed Rating, dated 6 February 2023, shows the following proposed VA rating decisions as directly related to military service:

- adjustment disorder with mixed anxiety and depressed mood with insomnia disorder, 70% evaluation

- obstructive sleep apnea (OSA), 50% evaluation
- right shoulder strain, 20% evaluation
- degenerative disc disease other than intervertebral disc syndrome (IVDS), 20% evaluation
- left status post arthroscopic acetabuloplasty and labral tear repair with femoral acetabular impingement syndrome with right hip Femoroacetabular impingement (CAM) deformities, 10% evaluation
- bilateral plantar fasciitis, 10% evaluation
- bilateral tinnitus, 10% evaluation
- gastroesophageal reflux disease, 10% evaluation
- left lower extremity radiculopathy, 10% evaluation
- left pinky finger fracture, 10% evaluation
- right femoral acetabular impingement syndrome (includes labral tears) with right CAM deformities, extension, 0% evaluation
- right femoral acetabular impingement syndrome (includes labral tears) with right CAM deformities, abduction/adduction/external/internal, 0% evaluation
- left femoral acetabular impingement syndrome (includes labral tears) with left CAM deformities, abduction/adduction/external/internal, 0% evaluation
- scars, status post left arthroscopic acetabuloplasty with labral tear repair, 0% evaluation

b. in a letter issued by the VA, dated 7 February 2023 shows the proposed total combined rating for the applicant's service-connected disabilities is 100%.

c. Medical records (282 pages), which will be reviewed and discussed by the Medical, and Behavioral Health staff at the Army Review Boards Agency (ARBA).

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

a. He enlisted in the Regular Army on 1 March 2021.

b. DA Form 199 (Informal PEB Proceedings) shows the PEB convened on 10 February 2023, wherein the applicant was found physically unfit with a combined disability rating of 20%, and that the disposition be separation with severance pay. His disabilities consisted of left hip femoroacetabular impingement, a cam deformity and labral tear status post left hip arthroscopy with labral repair femoral osteochondroplasty and acetabuloplasty; Right hip cam-type femoroacetabular impingement. Onset of these conditions was in the year 2022. 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 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 not 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).

(6) The applicant concurred with the PEB's decision and waived a formal hearing in his case.

(7) He did not request a reconsideration of his VA ratings.

c. Orders 066-0502, dated 7 March 2023 show the applicant was to be discharged because of a physical disability. The percentage of disability is 20%, with an effective date of separation of 27 May 2023.

d. His DD Form 214 shows he was honorably discharged from active duty on 27 May 2023 due to disability. He received severance pay in the amount of \$15,789.60 and his disability was non-combat related. He completed 2 years, 2 months, and 27 days of active-duty service. His grade at the time of discharge was specialist (SPC)/E-5. He was awarded and/or qualified for the following awards:

- Army Good Conduct Medal
- National Defense Service Medal
- Army Service Ribbon

4. 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.

5. 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 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 medical conditions be determined unfitting for continued military service, an increase in his military disability rating, and a subsequent change in his disability discharge disposition from separated with severance pay to permanent retirement for physical disability. On his DD 149, he has indicated that other mental health issues are related to his request. He states:

"I believe that I was unfairly rated as I was rushed through the PEB process and given the wrong counsel. I was rated 10% for each of my hips but I believe that was unjust and as well as many other factors were not considered. I also have my back which is diagnosed with a degenerative/bulging disk along with sciatica rated 20%.

I tore both of my labrums in my hips. I had Arthroscopy surgery for the left hip and I have not recovered yet. I am very much afraid to do my right hip. The longer I wait the higher the chances of having total hip surgery. It is very painful and I developed Neuropraxia in my left leg due to the surgery."

c. The Record of Proceedings details the applicant's service and the circumstances of the case. His DD 214 shows he entered the regular Army 1 March 2021 and was honorably discharged with \$15,789.60 of disability severance pay on 27 May 2023 under provisions provided in paragraph 4-27c(3) 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 limiting permanent physical profile. At the start of their IDES processing, a physician lists the Soldiers referred medical conditions in section I the

VA/DOD Joint Disability Evaluation Board Claim (VA Form 21-0819). The Soldier, with the assistance of the VA military service coordinator, lists all other conditions they believe to be service-connected disabilities in block 8 of section II of this form, or on a separate Application for Disability Compensation and Related Compensation Benefits (VA Form 21-526EZ).

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

f. 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.

g. On 9 November 2022, the applicant was referred to the IDES for "Bilateral hip pain." The applicant claimed nineteen additional conditions on a separate Applications for Disability Compensation and Related Compensation Benefits (VA Form 21-526EZ), including depression. A medical evaluation board (MEB) determined the referred left and right hip conditions failed the medical retention standards of AR 40-501, Standards of Medical Fitness. The MEB determined fifteen medical conditions met medical retention standards, including "adjustment disorder with Adjustment Disorder with mixed anxiety and depressed mood."

h. His mental health condition as documented on his MEB narrative summary:

"Adjustment Disorder with Mixed Anxiety and Depressed Mood, Insomnia Disorder: Per records reviewed, SM [Service Member] has sought out mental health care to positively cope with mental health issues and stressors in order to gain assistance with the management of symptoms and does not demonstrate a mental health condition which has interfered in a significant way with occupational and social functioning.

Per BH records reviewed, there is no evidence that this condition has required any hospitalizations, duty limitations, or that it significantly limits or interferes with satisfactory performance of duties. Therefore, this condition is considered medically acceptable.”

i. The applicant had only one behavioral health encounter in the EMR. This 18 May 2022 encounter was for a groups session in which Soldiers were introduced to the variety of behavioral health evaluation and treatment options available to the Soldiers. Pertaining to the applicant, the provider wrote:

“Mental Status Examination: SM [service member] arrived on time for scheduled appointment and was dressed appropriately. SM made good eye contact. SM spoke with normal rate, rhythm, tone. SM was alert and oriented to person, place, time, and situation. SM’s attention and concentration appeared good. SM denied any current suicidal or homicidal thoughts, intent, or plan. SM denied thoughts of hurting self or others and was not deemed an imminent risk of harm to self or others at this time. SM denied auditory or visual hallucinations.”

j. On 5 January 2023, he concurred with the MEB’s decision, declined the opportunity to request an Impartial Medical Review, declined the opportunity to submit a written rebuttal, and his case was forwarded to a physical evaluation board (PEB) for adjudication.

k. The applicant’s informal PEB found his left and right hip conditions to be unfitting conditions for continued military service. They found the remaining medical conditions not unfitting for continued service. The PEB applied the Veterans Benefits Administration (VBA) derived ratings of 10% and 10% respectively and recommended the applicant be separated with disability severance pay. On 20 January 2023, after being counseled by his PEB liaison officer, the applicant concurred with the PEB’s findings, waived his right to demand a formal, and declined the opportunity to request a VA reconsideration of the rating (VARR).

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

Review of his PEB case file in ePEB along with his encounters in EMR revealed no substantial inaccuracies or discrepancies.

m. JLV shows he has numerous ratings for VA service-connected disabilities, including ratings for chronic adjustment disorder, sleep apnea, and degenerative arthritis of the spine. However, the DES only compensates an individual for service incurred medical condition(s) which have been determined to disqualify him or her from further military service and consequently prematurely ends their career. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

n. It is the opinion of the ARBA medical advisor that neither an increase in his military disability rating nor a referral of his case back to the DES is warranted.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's request, available military records and medical review, the Board concurred with the advising official finding that neither an increase in his military disability rating nor a referral of his case back to the DES is warranted. The opine noted there is insufficient evidence the applicant had any additional duty incurred medical condition which would have failed the medical retention standards

2. The Board determined there is insufficient evidence to support the applicant's contentions for a higher service-connected disability rating of 30 percent (%) or greater. The Board noted the applicant's request for placement on the Permanent Disability Retirement List (PDRL) is without merit. The Board agreed, the applicant after being counseled by his PEB liaison officer, concurred with the PEB's findings, waived his right to demand a formal, and declined the opportunity to request a VA reconsideration of the rating. Based on the preponderance of evidence, the Board found no error and denied relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	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. 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 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.

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. 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.

b. 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.

5. 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%.

6. 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//