ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 4 October 2024

DOCKET NUMBER: AR20230013068

APPLICANT REQUESTS: in effect, an increase to his Physical Evaluation Board (PEB) disability rating percentage and consideration of other existing medical conditions.

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

- DD Form 149, Application for Correction of Military Record
- DD Form 2807-1, Report of Medical History
- 5-DA Forms 2173, Statement of Medical Examination and Duty Status
- DD Form 214, Certificate of Release or Discharge from Active Duty
- DD Form 2215, Reference Audiogram
- Standard Form 507 (7-91), Functional Capacity Certificate
- Standard Form 600, Medical Record-Chronological Record of Medical Care
- Periodic Assessment
- Department of Veterans Affairs (VA) benefits information and disability ratings
- Order D 256-22
- National Personnel Records Center letter

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 his medical evaluation board (MEB) failed to consider all his medical conditions, especially the combat related conditions including his post-traumatic stress disorder (PTSD). Therefore, the disability rating listed on his PEB is incorrect. The VA has rated his hearing loss at 50 percent and his PTSD at 70 percent. He further states, in effect:

a. At the time of his retirement, he was dealing with a lot of family and health issues. He just wanted his disability processing over with so that he could address his health and PTSD. He contends he was suffering from PTSD and alcohol related issues along

with family issues. Now that all of this is behind him, he is trying to pick up the pieces and move on.

b. Recently he discovered that his most serious medical and mental health conditions were not even addressed by the PEB. This is extremely unjust because the military was aware of his PTSD, hearing loss, and tinnitus at the time of his PEB.

3. A review of the applicant's record shows he accepted an appointment as a Reserve commissioned officer on 14 July 2005.

4. He entered active duty in support of Operation Enduring Freedom from 12 March 2010 through 25 April 2011. He served in Afghanistan from 25 April 2010 to 11 March 2011.

5. On 10 August 2017, an Informal PEB (IPEB) convened at Joint Base San Antonio to consider the following conditions:

a. Degenerative disc disease - found to be unfitting and given a disability percentage rating of 40%.

b. Status post right wrist injury with limitation of motion - found unfitting and given a given a disability percentage rating of 10%.

c. Status post left wrist injury with limitations of motion, right sciatic radiculopathy left sciatic radiculopathy, chronic hearing loss, and tinnitus met retention standards and were found by the PEB to not be not unfitting conditions because none were listed on a DA Form 3349, Physical Profile, as preventing the applicant from performing one or more functional activities; and there was no evidence to indicate that performance issues, if any, were due to these conditions.

6. The IPEB found the applicant physically unfit and recommended a combined rating of 50% and permanent disability retirement. The applicant concurred with the PEB findings and waived a formal hearing of his case. He declined reconsideration of his VA ratings.

7. Orders D 256—22, 13 September 2017, published by U.S. Army Physical Disability Agency, Arlington, VA released the applicant from assignment and duty because of physical disability incurred while entitled to basic pay and under conditions that permitted his retirement for permanent physical disability. He was placed on the retired list effective 18 October 2017 with a combined disability percentage of 50 percent.

8. The applicant provided:

a. A Report of Medical History completed on 17 March 2014 for the purpose of retention in the U.S. Army Reserve. He reported several conditions to include severe PTSD, hearing loss in his right ear, and tinnitus.

b. A DA Form 2173, initiated on 17 March 2011, while on active duty. This form shows in Item 15, Details of Accident or History of Disease, that at the time of demobilization the applicant complained of a right wrist injury, a right hand condition, sinus changes, a left knee condition, sleep changes, worsened PTSD, increased anger, hearing loss, and headaches. The line of duty determination is not legible on this document.

c. A DD Form 214 showing he was on active duty for the purpose of supporting Operation Enduring Freedom from 12 March 2010 through 25 April 2011.

d. A Reference Audiogram, 30 December 2014.

e. A Functional Capacity Certificate, 30 December 2014, wherein he reported having been treated for PTSD and having issues with his back, hearing, and wrists.

f. A Periodic Health Assessment and other medical records, 30 December 2014, wherein the applicant reported back pain, joint pain, chronic pain, mental health concerns, and taking medication for his PTSD.

g. A VA letter, 12 March 2015, which shows as of 26 April 2023, he was receiving disability compensation of $3068.90. The VA determined that the following conditions were service connected:

- carpal tunnel syndrome, left wrist – 10 percent
- carpal tunnel syndrome, right wrist – 10 percent
- tinnitus – 10 percent
- PTSD (with depressive features and alcohol abuse/dependence and nicotine dependence) – 50 percent
- Chronic left wrist strain, status post ganglion cyst excision – 10 percent

h. A DA Form 2173, initiated on 12 May 2015 while the applicant was in an active duty status. Item 30, states that on 27 December 2006, the applicant was referred for asymmetrical hearing loss and he was to be fitted for a hearing aid. This condition was found to be in the LD.

i. A DA Form 2173, initiated on 12 May 2015 while the applicant was in an active duty status. Item 30 of this form contains the entry, “DEMOB 20070212, Anxiety Disorder-No Gunnery//20100531 Theater Note, Anxiety//20110207 Theater note-

insomnia//VISTA 20111103 PTSD//VISTA 20120105 PTSD//." This condition was found to be in the LD.

j. A DA Form 2173, initiated on 12 May 2015 while the applicant was in an active duty status. Item 30 of this form contains the entry, "20070312 numbness -lower extremity; Meds-Cyclobenzaprine and Gabapention//20130911 Compression deformity at T-11 20130925 extruded disc fragment w/inferior (R) side extension L4-L5; & at the L4-5 disc level, left sided disc protrusion." This condition was found to be in the LD.

k. DA Form 2173, initiated on 12 May 2015 while the applicant was in an active duty status. Item 30 of this form contains the entry, "20070312 c/o knee pain//20070417 presents with pain when running-TTP on L MCL & pes anserin attachment//Theater note 20110303 TTP at posterior Fossa, along distal aspect of patella//." This condition was found to be in the LD.

l. A VA letter, 8 August 2017, which increased the disability percentage for the applicant's previously rated chronic lumbar strain and degenerative disease of lumbar spine from 20% o 40%. This document further shows his chronic right wrist strain, tatus post ganglion cyst excision also claimed an osteoarthritis right wrist was increased from 0% to 10%. The applicant's overall combined rating increased to 100%, effective 5 March 2015.

m. An NPRC letter, 20 July 2023, which lists all of the applicant's authorized awards.

9. The applicant did not provide a permanent physical profile for his PTSD.

10. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS), the VA's Joint Legacy Viewer (JLV) and records in ePEB (electronic Physical Evaluation Board). The applicant contends that when he was medically retired, he should have received an Army rating for PTSD, Hearing Loss, and Tinnitus. He also contends that his combat related issues were not addressed.

b. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The applicant reportedly enlisted in 1988 and was commissioned in July 2005. He entered the final period of active service 12Mar2010. His MOS was 90A Logistics Officer. He was deployed to Afghanistan Apr2010 to Mar2011 and to

Kuwait Jan2013 to Jul2013. He was processed through IDES and was medically discharged at 50% total rating and placed on the retirement list 18Oct2017.

c. . The IDES proceedings summary

(1) 17Mar2014 Report of Medical History (DD Form 2807-1) for retention in the Reserve. Of relevance, the applicant endorsed severe PTSD and he was in weekly counseling (for substance abuse). He also endorsed right ear hearing loss.

(2) 14Apr2017 MEB Proceedings. Chronic Hearing Loss and Tinnitus were listed on the applicant's DA Form 3947 as meeting retention standards. The MEB NARSUM (narrative summary) indicated he was last seen for hearing aids fitting per audiology in 2014 and that there was an H3 permanent physical profile for Bilateral Hearing Loss. The MEB NARSUM also indicated there was no evidence that the Tinnitus condition had affected his ability to perform his duties. PTSD was not listed on DA Form 3947. The ARBA Medical Reviewer notes the applicant did not claim the PTSD condition on VA Form 21-526EZ, the form used jointly by the VA and DoD for service members to claim benefits for disabling conditions. Based on the disabling conditions reported, the VA conducts a Disability Benefits Questionnaire (DBQ) exam for each listed condition for MEB/PEB review in the IDES process. The applicant did not appeal the MEB proceedings.

(3) 10Aug2017 Informal PEB. The PEB found Degenerative Disc Disease of the Lumbar Spine at 40% and Status Post Right Wrist Injury with Limitation of Motion at 10%, unfitting for continued service. Of note, the Chronic Hearing Loss and Tinnitus conditions were not found unfitting. The total disability rating was 50% and the PEB recommended disposition was permanent disability retirement. The applicant concurred with the PEB findings and waived a formal hearing of his case. He did not request reconsideration of his VA ratings.

d. Chronic Hearing Loss and Tinnitus

(1) 19Sep2012 C&P Examination Note revealed the applicant's hearing test results on 04Mar1989 (near entry into service) were within normal limits.

(2) 16Apr2014 Audiological Assessment. The applicant presented complaining of bilateral hearing loss and ringing. The exam showed normal hearing right ear thru 2kHz; and mild to moderately severe sensorineural hearing loss 3-8kHz. Left ear hearing was normal thru 2kHz; and mild to severe sensorineural hearing loss 3-8kHz. Tympanometry (evaluation of functioning of the middle ear) testing results were normal for both ears.

(3) 03Jul2014, the applicant completed his first-time use hearing aid orientation, fitting and training for his new hearing aids per audiology services.

(4) 12Jul2016 Line of Duty Determination indicated he was approved for In-LOD for Bilateral Hearing Loss that occurred during Active Duty on 27Dec2006.

(5) 08Sep2016 Physical Profile Record showed permanent H3 for Bilateral Hearing Loss and required a MEB review. There were no Section 4 Functional Activities limitations or APFT events prohibited by this condition. The recommendation was to exercise caution when assigning him to tactical assignments in which communication in noise was required, when exposure to hazardous noise was likely, and where the hearing loss may place him at risk. It was also recommended that he be fitted with tactical earplugs or tactical communication and protective systems (TCAPS) for training and deployments. Annual monitoring hearing test was required. The Tinnitus condition was not profiled.

(6) 19Oct2016 Commander's Performance and Functional Statement (DA Form 7652). There was no mention of impact on performance for the hearing and tinnitus conditions.

(7) 10Apr2017 Hearing Loss and Tinnitus DBQ. Hearing Conservation Data showed
evidence of significant changes in hearing thresholds while in service for the right ear. There was severe sensorineural hearing loss in most frequencies (500-8000 Hz) in the right ear. The left ear also showed sensorineural hearing loss across all frequencies (500-8000 Hz) but less severe than on the right and without evidence of significant threshold changes. Tympanometry was normal for both ears.

(8) Opinion/Rationale: At the time of the MEB in 2017, the Hearing Loss condition had not required treatment or assessment by audiology since July 2014. His next visit was in August 2023 per JLV search. The record did not show that the Tinnitus condition had required any specific treatment including sound training, behavioral therapy etc. Per AR 40-501 chapter 3-10, the causes for referral to an MEB were the following: Soldiers incapable of performing their military duties with a hearing aid; Soldiers who failed the Speech Recognition In Noise Test (SPRINT); and Soldiers with a permanent H4 hearing profile. It should be noted the 2017 DBQ exam did not contain a SPRINT. Based on records available for review, evidence was insufficient to support the Chronic Hearing Loss and Tinnitus conditions failed medical retention standards of AR 40-501 chapter 3 at the time of discharge from service. In the ARBA Medical Reviewer's opinion, referral for medical discharge processing for the Chronic Hearing Loss or Tinnitus conditions is not warranted.

e. Behavioral health condition:

(1) 12Feb2007 FD SRC Demobilization Clinic. 39-year-old male mobilized Base OPS, participating in Nicotine Cessation Program, complained of some anxious feelings with onset 3 weeks prior. He also had some insomnia.

(2) May 2010 Navy Role III. He was seeking alprazolam (benzodiazepine) for sleep and for occasional use for stress management (for work). Diagnosis: Acute Stress Disorder. He was jumpy after exposure to a rocket attack when he was standing outside the 4 Seasons restaurant when the rocket hit about 50m from him.

(3) 8Jun2011 Mental Disorder DBQ. The applicant had 24 years in service mostly in the reserve component. He was deployed in Afghanistan (both Camp Leatherneck and in Kandahar) and exposed to combat. Most significant stressor: He witnessed a rocket kill 3 British soldiers. He went to see BH specialist the following day due to feeling anxious, depressed, irritable, and having difficulty sleeping. He went on to endorse characteristic PTSD symptoms but did not engage in BH services. The impact on employment functioning was mild: There was no loss of time from work. He owned his own business doing logistics as he was in the Army. Socially, he tended to be irritable and withdrawn. DSM IV Diagnoses: PTSD. He also met criteria for Alcohol Abuse/Dependance which the examiner deemed was not linked to his military service or the PTSD condition nor was it augmented by either. He had received one DWI in the mid 90's and a second in March 2010—both were prior to his deployments.

(4) 03Dec2012 Camp Shelby Mobilization Evaluation. In October, he had started Temazepam (a benzodiazepine) for sleep and had only required the medication about 5-6 times. He reported a good response to the medication with resolution of symptoms and no medication side effects. His anxiety had been resolved for at least 6 months. He reported having never experienced any suicidal or homicidal thoughts at any time. He reported no past psychiatric treatment, suicide attempts or psychiatric hospitalizations. For corroborating evidence, his supervisor reported that the officer performed well and showed no evidence of psychiatric symptoms in the unit.

(5) 10Jul2013 Camp Shelby SRP, Eisenhower AMC Post Deployment Assessment. He endorsed that becoming easily annoyed or irritable bothered him a little. He reported that while deployed he took Temazepam once or twice. He reportedly had a CENTCOM waiver to deploy on the medication.

(6) 25Nov2013 Social Work Psychosocial Assessment for SUD (Substance Use

Disorder). He was 16 years old when he started drinking, and currently drinks 2-3 times a week in the amount of 5-6 drinks, but only drinks beer. He drank daily when he first returned from Afghanistan. He reported a DUI in Colorado (March 2010) prior to deploying to Afghanistan and an OUI (operating vehicle under the influence) in Maryland (August 2012). The prior DUI from the mid 90's was not discussed in this note. He was 60% service connected by the VA (50% for PTSD) and endorsed that he was unemployed and had not been able to work since June 2013 because of back pain.

(7) 10Dec2013 MH Outpatient Note. He was sleeping well on Temazepam. He had been on other medications for sleep/mood in the past, including Trazodone, Ambien, and Remeron. He prefers Temazepam because it helps him get to sleep and stay asleep. He denied any symptoms of depression/anxiety currently. He requested refill on Temazepam. Diagnoses: PTSD and Depression Not Otherwise Specified.

(8) 21Jan2014 Social Work VAMC. He reported that he had been given ten days in jail for his OUI and would be placed on probation afterward.

(9) 30Dec2014 Periodic Health Assessment. He endorsed PTSD/Sleep Disorder. He was taking Temazepam as needed. He endorsed symptoms of anhedonia, trouble falling asleep, poor appetite or overeating, and trouble concentrating. He endorsed his symptoms made it extremely difficult to take care of things at home or get along with people.

(10) 05Feb2015 Review PTSD DBQ. Diagnoses: PTSD with Depression and Alcohol Dependence. The examiner deemed that the level of occupational and social impairment with regards to all mental diagnose was occupational and social impairment with deficiencies in most areas, such as work, school, family relations, judgment, thinking and/or mood (the 70% rating level). He had not worked in the civilian world since he returned in 2013 but he continued in the Reserves as the Detachment Commander in Houston, one weekend per month. He reportedly was sent home early from Kuwait due to "mouthing off to some colonels". He stated that he was sent to the psych ward, but they did not keep him. This was not documented in the theatre clinical visits available for review. He was previously divorced but reported a good relationship with his current wife. He also reported good relationships with his parents while they were alive, his siblings and one stepchild. He was estranged from the children from his first marriage. He reported being suicidal in the past year and making one suicide attempt, but he was arrested instead. He reported having been arrested 4 times in the past year for fighting, OUI, assault and battery, and for refusing to obey a police officer. He was in jail 2 months in the past 2 years. He admitted abuse of alcohol since 2011, but the abuse had worsened.

(11) 28May2015 Social Work Note VAMC. He was close to completing his OUI probation and needed verification of treatment. He was given a certificate of completion showing he attended SUD treatment during 2014. He attended from Nov2013 to May2014, regularly at first and then more sporadically.

(12) 08Sep2016 Physical Profile Record showed a permanent S2 for PTSD. There were no Section 4 Functional Activities limitations or APFT events prohibited by this condition. His profile indicated he must have access as needed for BH services.

(13) 19Oct2016 Commander's Performance and Functional Statement (DA Form 7652). Command indicated the applicant's impairment in performance was due to physical conditions.

(14) 20151116 to 20161115, 20150503 to 20151111 and 20140503 to 20150502 Officer Evaluation Reports. Concerning potential, he was rated by senior rater as "highly qualified".

(15) 18Apr2017 the applicant completed an application requesting for his wife to be his caregiver. Neither were working and he was endorsing that he needed help with his ADLs (activities of daily living) due to pain in his back and knees. The request was denied— the VA Caregiver Support Coordinator explained that it had been 3 years since he had been seen by VA primary care or MH services (except for SUD).

(16) Opinion/Rationale: Notwithstanding the 70% VA Rating for PTSD since 05Dec2014, in the ARBA Medical Reviewer's opinion, the PTSD condition did not fail medical retention standards of AR 40-501 chapter 3 due to the following observations: The condition had not failed conservative treatment measures—the applicant endorsed benefit from psychotropic medication although he did not take it regularly. There were at least 3 failed attempts in 2014 to engage him in regular BH services beyond substance abuse counseling (01May2014 MH Note VAMC). The 2015 Review PTSD DBQ examiner noted the recent suicide ideation and attempt, violent behavior and conflict with law enforcement and worsening alcohol abuse but did address the possible link between the PTSD condition and the Alcohol Dependence condition and impact on his mental health symptoms and/or behavior. The applicant did not endorse abstinence from alcohol. At the time of the MEB/PEB proceedings in 2017, the applicant was taking an as needed prescription medication for symptoms. The PTSD condition had not been associated with mania, psychosis, and had not required psychiatric hospitalization. The condition had not required any duty limitations and command rated him as "highly qualified". During 20130702 thru 20140701 rating period, the rater specifically commented concerning the applicant, he "performed very well during this

rating period… Despite being an O3 in an O5 billet…he worked at communicating well with me and his fellow team leaders". And during the 20150503 thru 20151111 rating period, the rater wrote, he "has performed in an exemplary manner…select for promotion when eligible". The applicant had a permanent S2 physical profile (since 2014) for PTSD, consistent with having been diagnosed with a mental health condition that had required treatment and warranted ongoing access to treatment but without requiring duty limitations. Referral for medical discharge processing for a BH condition including but not limited to PTSD, is not warranted.

e. Combat Designation. The applicant contended that the PEB did not address his combat related issues. Per regulation, the PEB makes determinations of combat incurred/combat relatedness only for those conditions that they found unfitting for continued service. The 10Aug2017 Informal PEB found Degenerative Disc Disease of the Lumbar Spine (lumbar condition) and Status Post Right Wrist Injury with Limitation of Motion (wrist condition), unfitting. The PEB determined that the applicant's unfitting conditions were not based on combat incurred or combat related injuries. Based on the evidence currently available for review (and summarized below), the ARBA Medical Reviewer concurs with the PEB's determination. Of note, the available record did not show that the applicant received a Purple Heart or Combat Action Badge. There were no theater notes or contemporaneous medical documentation which provided a nexus between a specific combat event and the applicant's lumbar or right wrist conditions. It should be stated, the summary review below focused only on the lumbar and right wrist conditions because they were the only conditions the PEB found unfitting.

f. Lumbar condition. MEB NARSUM notes indicated the applicant reported back pain since 2007. There were no clinic visits or back films found for back pain for the 2007 time frame. However, a 12Mar2007 note indicates the applicant complained of Tingling of the left toes and numbness of the left leg (from the knee down), during the visit. 13Jun2011 showed Degenerative disk disease L4-5 and L5-S1. There were no clinic visits or back films found for the 2011 time frame. The applicant endorsed back pain during the 10Jul2013 Camp Shelby SRP, Eisenhower AMC Post Deployment Assessment without injury or method of injury noted. The MEB and PEB indicated a 23Sep2013 Orthopedics note endorsed that the applicant had been experiencing back pain since 2007. The method of injury was not noted. The 25Sep2013 Cypress Fairbanks Medical Center lumbar MRI showed extruded disc fragment at L4-L5 and an L2 vertebral body lesion (?hemangioma). 11Mar2014 lumbar MRI revealed L4/L5 left paracentral disk protrusion impinges upon the left L5 nerve root, L5/S1 disk herniation and L2 vertebral body abnormality. The lumbar studies in 2013 and 2014 gave no indication of method of injury or time frame of the injury.

g. Wrist condition. MEB NARSUM notes indicated the applicant was evaluated in

2011 and the method of injury was unknown. PEB Proceedings (DA Form 199) indicated that the LOD memo dated 25Apr2016 stated the condition began while deployed to Afghanistan on 14Feb2011 without known mechanism of injury and designated the condition "V1/V3-No, not direct result of armed conflict". Review of records in JLV revealed on 14Feb2011 (theatre at facility MCA-AHLTA-KAF), the applicant reported pain in the right hand dorsum. He denied trauma or injury. During follow up visit on 22Feb2011, he stated the right hand pain started about 5 or 6 days prior. He reported there was swelling around lateral side of wrist. He denied any trauma to hand or wrist; however, he stated the pain started after he had been loading equipment onto a truck. He stated that he could not bend or flex the wrist and had loss of grip in the hand. The right-hand film series completed in theatre on 24Feb2011 TMDS Kandahar was negative for bony, soft tissue or joint abnormalities. The 30Mar2011 right wrist film series was negative for abnormalities. Then he presented as a new consult from Kirk Army Hospital on 12Apr2011 (Chesapeake Bone & Joint Center) reporting pain and swelling in the right hand. The provider's impression was his symptoms were possibly due to an old fracture. The follow up 26Apr2011 note indicated the Right Hand Swelling was Resolved. He denied right hand pain, swelling, numbness, tingling or weakness. The exam showed full ROM. The right hand film showed no overt bony pathology. Three years later, the applicant was seen 21Mar2014 Orthopedic Surgery Consult VAMC with complaint of bilateral wrist pain for 3 years. He reported that he had injured the right wrist in Afghanistan. The 30Mar2017 Wrist Conditions DBQ noted onset of symptoms in 2003 and that he was diagnosed with Bilateral Carpal Tunnel Syndrome. He was status post right wrist release surgery in 2016 and pending left wrist release surgery. The outside surgical records were not in the record.

BOARD DISCUSSION:

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 referral for medical discharge processing for chronic hearing loss or tinnitus conditions and/or discharge processing for a behavioral health condition, including, but not limited to post-traumatic stress disorder (PTSD) are not warranted.

a. The evidence shows an informal Physical Evaluation Board (PEB) convened on 10 August 2017 and determined two medical conditions were unfitting for continued

military service; degenerative disc disease of the lumbar spine and status post right wrist injury with limitation of motion. The PEB then applied the Department of Veterans Affairs Schedule for Rating Disabilities (VASRD) derived ratings of 40 percent and 10 percent respectively to these conditions, for a combined rating of 50 percent. The PEB recommended the applicant's disposition be permanent disability retirement. After being counseled on the PEB findings, on 11 August 2017, he concurred with the PEB findings and waived a formal hearing of his case. He did not request reconsideration of his VA ratings.

b. The Board noted the applicant's contention of his additional medical issues and increased VA disability rating. However, the Board reviewed and concurred with the medical advisor's review finding these additional conditions (hearing loss or tinnitus and/or PTSD) did not fail medical retention standards while in military service. A military 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 rating derived from the VASRD reflects the disability at the point in time the VA examinations were completed. The military's Disability Evaluation System (DES) does not compensate service members for anticipated future severity or potential complications of conditions incurred during or permanently aggravated by their military service. The VA has those roles and authorities according to their laws. Therefore, the Board found no error or injustice in his military disability rating or conditions. The Board determined a referral to DES is not warranted or an increase in his military disability rating was not 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.

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, U.S. Code, 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 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. Title 10, U.S. Code, 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 DOD Directive 1332.18 and Army Regulation 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, Medical Services-Standards of Medical Fitness, chapter 3, as evidenced in an 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 PEB. 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, U.S. Code section 1110, General - Basic Entitlement: 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. Title 38, U.S. Code, section 1131, Peacetime Disability Compensation - Basic Entitlement: 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 other than 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. Section 1556 of Title 10, United States Code, 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//