

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 June 2024

DOCKET NUMBER: AR20230013260

APPLICANT REQUESTS: correction of his records to show he was retired for physical disability instead of discharged with severance pay.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period 8 August 2000 to 7 August 2004
- Integrated Disability Evaluation System (IDES) Compensation and Pension Examination Note, dated 19 April 2013
- separation orders
- VA Rating Decision, dated 23 September 2021
- Department of Veterans Affairs (VA) benefits decision letter, dated 24 September 2021

FACTS:

1. The applicant states:

a. He was discharged with severance pay with a 20% disability rating, but he should have been medically retired with at least a 40% rating. The VA conceded that during his medical board exam, a clear and unmistakable error occurred by not granting him service connection for left knee strain and left ankle strain. The VA corrected that error, and he was granted service-connection for these conditions. If this error had not occurred, he would have been medically retired and not discharged with severance pay.

b. The symptomatology of traumatic brain injury, post-traumatic stress disorder, and bilateral buttocks muscle injury due to shrapnel injuries were present while serving in the Army but were not taken into account during the medical board process. His left hip was rated at 20% service connected during the medical board exam and is currently 70% service connected. Changing the discharge to medical retirement is the correct thing to do.

2. The applicant enlisted in the Regular Army on 8 August 2000. He served in Kuwait/Iraq from April to August 2003. He was released from active duty and transferred to the U.S. Army Reserve (USAR) Control Group (Reinforcement) on 7 August 2004. On 29 August 2006, he was assigned to a troop program unit.

3. On 14 January 2014, a Physical Evaluation Board (PEB) found the applicant physically unfit for further military service due to residuals of fracture, left hip, PEB referred as: fracture, left hip-femur with history of surgical debridement left greater trochanteric area from 2003 shrapnel injuries. The PEB recommended a 20% disability rating and the applicant's separation with severance pay.

4. The PEB also determined the applicant's conditions of chronic left ankle strain as likely as not secondary to his service left injury fracture and chondromalacia patella, left knee, as likely as not secondary to service-connected left hip injury-fracture of 2003 and ensuring chronic pain were not unfitting because the Medical Evaluation Board (MEB) determined that these conditions met medical retention standards; they were not listed on the Physical Profile as limiting any of the Soldier's functional activities; they were not commented upon by the commander as hindering the Soldier's performance of assigned duties; continued service did not put the Soldier's health at risk from them; and the conditions individually or in combination with the Soldier's other conditions did not put an undue burden on the military to protect the Soldier in performance of their duties.

5. On 22 January 2014, the applicant concurred with the PEB's findings and recommendations and waived a formal hearing of his case. He did not request reconsideration of his VA ratings.

6. The applicant's DA Form 199 (Informal PEB Proceedings) contains the following statements:

a. This case was adjudicated as part of the IDES under the 19 December 2011 Policy and Procedure Directive-type Memorandum (DTM) 11-015.

b. The specific VA Schedule for Rating Disabilities (VASRD) codes to describe the Soldier's condition and the disability percentage was determined by the VA and is documented in the VA memorandum dated 16 December 2013. The disposition recommendation was determined by the PEB based on the VA disability rating proposed and applicable statutes and regulations for the Physical Disability Evaluation System (PDES).

7. On 30 January 2014, the U.S. Army Physical Disability Agency (USAPDA) published orders directing the applicant's discharge from the USAR with entitlement to disability severance pay. The orders show he was assigned a 20% disability rating.

8. The applicant provided his VA Rating Decision, dated 23 September 2021, and highlighted the following VA decisions:

a. The decision to deny service connection or left ankle strain on 16 December 2013 was clearly an unmistakably erroneous; therefore, service connection is established with an evaluation of 10% effective 19 April 2013.

b. The decision to deny service connection for left knee strain on 16 December 2013 was clearly and unmistakably erroneous; therefore service connection is established with an evaluation of 10% effective 19 April 2013.

9. The Army rates only conditions determined to be physically unfitting at the time of discharge, which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career. The VA does not have authority or responsibility for determining physical fitness for military service. The VA may compensate the individual for loss of civilian employability.

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 (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: The applicant is applying to the ABCMR requesting additional conditions be determined to have been unfitting for continued service, a corresponding increase in his military disability rating, and that his disability discharge disposition be changed from separated with disability severance pay to permanent retirement for physical disability. He states:

“The VA has conceded that during the MED board physical exam a CLEAR AND UNMISTAKBLE ERROR had occurred not granting service connection for left knee strain and left ankle strain. The VA has corrected that error and service connected the left knee strain and left ankle strain back dated to the date of the MED board exam. If this error had not occurred, a discharge of military retirement would have been granted and not disability severance pay. The symptomology of TBI, PTSD and bilateral buttocks muscle injury shrapnel wounds were present while serving in the ARMY reserves but were not taken into account during the MED board process. The left hip was rated at 20%service

connected during the MED board exam and is currently 70% service connected. Changing the discharge to medical retirement is the correct thing to do.”

b. The Record of Proceedings details the applicant’s service and the circumstances of the case. Discharge orders published by the U.S. Army Physical Disability Agency show the former USAR drilling Soldier was separated with disability severance pay on 6 March 2014 under provisions provided in Chapter 4 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (20 March 2012). The condition was determined to have been incurred in a combat related.

c. 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, a separate Statement in Support of Claim (VA Form 21-4138), or on a separate Application for Disability Compensation and Related Compensation Benefits.

d. Soldiers then receive one set of 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.

e. All conditions, both claimed and referred, are rated by the Veterans Benefits Administration (VBA) using the VA Schedule for Rating Disabilities (VASRD). The 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 VBA.

f. The applicant was referred to the DES for “Chronic left hip pain (secondary to shrapnel wounds in 2003 and Left hip fracture)” on 26 July 28 December 2010. The applicant claimed two additional conditions on his VA Form 21-0819: “Left knee condition secondary to left hip condition” and “left ankle conditions secondary to left hip condition.”

g. The MEB determined his “Fracture, Left Hip-Femur” did not meet the medical retention standards of AR 40-501, Standards of Medical Fitness; and the remaining two

conditions – “Chronic left ankle strain” and Chondromalacia Patella, Left Knee” - met medical retention standards. The applicant declined the opportunity for an independent medical review (IMR). On 20 May 2013, he agreed with the MEB’s findings and recommendation and his case was forwarded to a PEB for adjudication.

h. When the informal PEB convened on 14 January 2014, they determined that his left hip condition was unfitting for continued military service and the remaining two conditions were not unfitting for continued military service. The Board made the administrative determination the condition was combat related. They applied the VBA derived ratings of 20% and recommended his separation with disability severance pay. On 22 January 2014, after being counseled on the informal PEB’s findings by her PEB Liaison Officer, the applicant concurred with the informal PEB’s findings, waived his right to a formal hearing, and declined a VA reconsideration of his disability rating.

i. Review of his ePEB case file and records in EMR revealed no material discrepancies or errors. The only contemporaneous entries in the EMR were for his left hip, right foot, and right hand. JLV shows he has been awarded multiple VA service-connected disability ratings, including traumatic brain disease in 2015 (100%), left hip prosthesis in 2022 (70%), limited motion of left knee in 2013 (10%), and limited motion of left ankle in 2013 (10%). He does not have a service-connected mental health condition.

j. The DES compensates an individual only for service incurred 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 authority were granted by Congress to the Department of Veterans Affairs and are executed under a different set of laws. 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:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant’s contentions, the military record, and regulatory guidance were carefully considered. The evidence shows an informal PEB determined that his left hip condition was unfitting for continued military service, and the remaining two conditions (Chronic left ankle strain and Chondromalacia Patella, Left Knee) were not unfitting for continued military service. The PEB applied the VA derived ratings of 20% and recommended the applicant be

separated with disability severance pay. After being counseled on the informal PEB's findings, the applicant concurred with the informal PEB's findings, waived his right to a formal hearing, and declined a VA reconsideration of his disability rating. The Board found no error or injustice in the disability separation processing. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's finding 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 a rereferral of his case to the Disability Evaluation System (DES). Furthermore, there is no evidence that an additional medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his separation. As such, the Board determined that neither an increase in his military disability rating 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
■	■	■	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.

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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, 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 USAPDA is responsible for administering the Army PDES 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 Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation).

2. Army Regulation 635-40 establishes the Army Disability Evaluation System and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating.

a. 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.

b. 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 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.

d. 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 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.

e. 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.

3. Title 10, U.S. Code, section 1201, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30% percent. Title 10, U.S. Code, 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. DTM 11-015, dated 19 December 2011, explains the IDES. It states:

a. The IDES is the joint DOD-VA process by which DOD determines whether wounded, ill, or injured service members are fit for continued military service and by which DOD and VA determine appropriate benefits for service members who are separated or retired for a service-connected disability. The IDES features a single set of disability medical examinations appropriate for fitness determination by the Military Departments and a single set of disability ratings provided by VA for appropriate use by both departments. Although the IDES includes medical examinations, IDES processes are administrative in nature and are independent of clinical care and treatment.

b. Unless otherwise stated in this DTM, DOD will follow the existing policies and procedures requirements promulgated in DODI 1332.18 and the Under Secretary of Defense for Personnel and Readiness memoranda. All newly initiated, duty-related physical disability cases from the Departments of the Army, Air Force, and Navy at operating IDES sites will be processed in accordance with this DTM and follow the process described in this DTM unless the Military Department concerned approves the exclusion of the service member due to special circumstances.

c. IDES medical examinations will include a general medical examination and any other applicable medical examinations performed to VA Compensation and Pension standards. Collectively, the examinations will be sufficient to assess the member's referred and claimed condition(s) and assist VA in ratings determinations and assist military departments with unfit determinations.

d. Upon separation from military service for medical disability and consistent with the Board for Correction of Military Records (BCMR) procedures of the military department concerned, the former service member may request correction of his or her military records through his or her respective military department BCMR if new information regarding his or her service or condition during service is made available

that may result in a different disposition. For example, a veteran appeals VA's disability rating of an unfitting condition based on a portion of his or her service treatment record that was missing during the IDES process. If the VA changes the disability rating for the unfitting condition based on a portion of his or her service treatment record that was missing during the IDES process and the change to the disability rating may result in a different disposition, the service member may request correction of his or her military records through his or her respective Military Department BCMR.

e. If, after separation from service and attaining veteran status, the former service member desires to appeal a determination from the rating decision, the veteran has one year from the date of mailing of notice of the VA decision to submit a written notice of disagreement with the decision to the VA regional office of jurisdiction.

5. Title 38, U.S. Code, Sections 1110 and 1131, permit the VA to award compensation for disabilities which were incurred in or aggravated by active military service. However, an award of a VA rating does not establish an error or injustice on the part of the Army.

6. Title 38, Code of Federal Regulations, Part IV is the VASRD. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge. As a result, the VA, operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform his duties. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

7. Title 10, U.S. Code, section 1556 requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//