ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 1 April 2025

DOCKET NUMBER: AR20230014240

APPLICANT REQUESTS: in effect, medical retirement in lieu of discharge for disability with severance pay.

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

- DD Form 149 (Application for Correction of Military Record)
- 26 pages of medical documentation
- 4-page Self-Authored Statement
- DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings, 13 April 2023
- Memorandum for Record, Applicant, 25 April 2023
- Orders 153-0504, U.S. Army Installation Management Command, Fort Bliss, TX 2 June 2023
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Letter, Department of Veterans Affairs (VA), 25 August 2023

FACTS:

1. The applicant states his current disability rating for his eye injury is 40%, which surpasses the required rating of 30% to be considered medically retired from the U.S. Army. *The applicant's complete 4-page statement is available for the Board's review and consideration.*

2. The applicant was commissioned as an infantry officer in the Regular Army on 21 May 2019.

3. On 13 April 2023, a PEB found the applicant unfit due to retinal hemorrhage with macular edema, vitreous floaters. The PEB found the applicant physically unfit and recommended a rating of 0% and that he be separated from service with severance pay.

4. On 28 April 2023, he requested the VA reconsider his disability ratings. He provided a 3-page memorandum rebutting the VA rating for left retinal hemorrhage rated 0%. He argued to obtain a rating of 60% for an incapacitating eye injury that the VA defines in

38 CFR 4.79 as “incapacitating episodes requiring seven or more treatment visits for an eye condition during the past 12 months and further expands on which treatment qualifies in Note (2) as “Examples of treatment may include but are not limited to Systemic immunosuppressants or biological agents; intravitreal or periocular injections; laser treatments; or other surgical interventions. Not only would he meet the requirement for 60%, which is seven or more injections, but he would far surpass it. He urged the VA to reevaluate his condition with the newly provided evidence and exercise common sense in reference to his medical timeline. He was diagnosed with the disorder in December 2022 and will have received 5 intravitreal injections in May, 6 months after diagnosis.

5. His Official Military Personnel File contains a DA Form 199 convened on 22 May 2023, which administratively corrected the prior proceedings to find the applicant physically unfit due to retinal hemorrhage with macular edema, vitreous floaters and recommended a rating of 20% and that he be separated with severance pay.

6. On 22 August 2023, the applicant was honorably discharged due to disability with severance pay. He completed 4 years, 3 months, and 2 days of net active service this period.

7. The applicant provided, in part:

a. Physicians evidence of treatment for central retinal vein occlusion with macular edema and retinal hemorrhage. Initial treatment consisted of a single use prefilled syringe of intravitreal Eylea 2mg/0.05 ml injected 3-4 mm from the limbus. Also injected with Avastin. Injectable treatments were received in the months of December 2022, January 2023, February 2023, April 2023, May 2023, June 2023, July 2023, and August 2023.

b. VA letter dated 25 August 2023, which notes service-connection for left eye retinal hemorrhage with macular edema with vitreous floaters granted with an evaluation of 40% effective 23 August 2023. Additional service-connected ailments resulted in a combined rating evaluation of 90%.

8. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) 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

9. 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 percent.

10. 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

11. Title 38, USC, 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.

12. 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.

13. Title 38, CFR, Part IV is the VA's schedule for rating disabilities. 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.

14. 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 an increase in his military disability rating with a subsequent change of his disability discharge disposition from separate with severance pay to permanent retirement for physical disability. He states:

"I request that the Army Board of Military Corrections grant me a medical retirement from the United States Army, as the current disability rating for my eye injury of 40%,

which is the condition I was separated for, surpasses the required rating of 30% to be considered medically retired from the United States 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 21 May 2019 and was honorably discharged with $51,758.40 of disability severance pay on 22 August 2023 under provisions provided in paragraph 4-27c(3) 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).

e. 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.

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 2 August 2023, the applicant was referred to the IDES for "Left Retinal Hemorrhage." The applicant claimed nine additional conditions on a separate Application for Disability Compensation and Related Compensation Benefits (VA Form 21-526EZ).

h. A medical evaluation board (MEB) determined his “Retinal hemorrhage with macular edema, vitreous floaters” failed the medical retention standards of AR 40-501, Standards of Medical Fitness. They determined eight additional medical met medical retention standards. On 15 March 2023, the applicant concurred with the MEB’s decision, declined to request an impartial medical review and/or submit a written rebuttal, and his case was forwarded to a physical evaluation board (PEB) for adjudication.

i. On 13 April 2023, the applicant’s informal PEB found his ““Retinal hemorrhage with macular edema, vitreous floaters” to be the sole unfitting condition for continued military service. They found the eight remaining medical conditions not unfitting for continued service. The PEB applied the Veterans Benefits Administration (VBA) derived rating of 0% and recommended the applicant be separated with disability severance pay.

j. On 28 April 2023, after being counseled on the PEB’s findings and recommendation by his PEB liaison officer, the applicant concurred with the PEB and waived his right to a formal hearing. He requested a VA reconsideration of his proposed disability rating (VARR).

k. In their 5 May 2023 response, the VA increased his rating to 20%: It reads in part:

> “In a memorandum dated April 28, 2023, you requested an increased evaluation of 60 percent for your left retinal hemorrhage. Attached treatment records indicate you received intravitreal injections on December 8, 2022, January 5, 2023, February 15, 2023, and April 12, 2023.
>
> You report you are scheduled for another injection on May 24, 2023, however the most recent records (page 22) do not note confirmed scheduling of the follow up appointment. The evidence confirms you have received 4 injections over the past 12 months.
>
> Although the evidence projects future treatments, at this time the actual episode of incapacitation (treatment) has not occurred and the evaluation is based upon the factual (occurred instances) in this case.”

l. This administrative change was made on a new Informal Physical Evaluation board (PEB) Proceedings. Having already accepted the PEB’s recommendation and had his one VARR, the applicant was subsequently separated with disability severance pay.

m. At his first evaluation by a retinal specialist on 8 December 2022, the applicant was briefed on receiving a series of injections:

"I have explained that there is swelling of the macula interfering with visual function. I have also explained that there is evidence of treatable leakage and that consequently, intravitreal Eylea therapy should be considered. The protocol is likely to require repeated intravitreal injections."

n. He has submitted documentation showing he received monthly injections from December 2022 thru August 2023. These injections took place while he was still on active duty. From the VASRD:

Diseases of the Eye	
	Rating
General Rating Formula for Diseases of the Eye:	
Evaluate on the basis of either visual impairment due to the particular condition or on incapacitating episodes, whichever results in a higher evaluation	
With documented incapacitating episodes requiring 7 or more treatment visits for an eye condition during the past 12 months	60
With documented incapacitating episodes requiring at least 5 but less than 7 treatment visits for an eye condition during the past 12 months	40
With documented incapacitating episodes requiring at least 3 but less than 5 treatment visits for an eye condition during the past 12 months	20
With documented incapacitating episodes requiring at least 1 but less than 3 treatment visits for an eye condition during the past 12 months	10
Note (1): For the purposes of evaluation under 38 CFR 4.79, an incapacitating episode is an eye condition severe enough to require a clinic visit to a provider specifically for treatment purposes	
Note (2): Examples of treatment may include but are not limited to: Systemic immunosuppressants or biologic agents; intravitreal or periocular injections; laser treatments; or other surgical interventions	

o. Soldiers are eligible for the IDES, to include new conditions being added, up until the day of separation.

p. JLV shows a 40% rating for this condition effective the day after his separation. This is quite likely due to the additional injections he received after his VARR but before his separation.

q. It is the opinion of the ARBA medical advisor the applicant's military disability rating should be increased to 40% and he should be permanently retired for physical disability effective 22 August 2023.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation and the findings outlined in the medical review, the Board concluded there was sufficient evidence to increase the applicant's disability rating to 40% and to change his narrative reason for separation to medical retirement effective 22 August 2023.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
:XXX	:XXX	:XXX	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected by:

- voiding Orders 153-0504, dated 2 June 2023, and replacing them with medical retirement orders, which reflect a disability rating of 40% (effective 22 August 2023)
- voiding and reissuing the applicant's DD Form 214 for the period ending 22 August 2023, showing a narrative reason for separation as medical retirement
- paying the applicant medical retirement benefits effective 22 August 2023, less the disability severance pay of $51,758.40 previously paid.

//SIGNED//

X _____

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, 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, under the operational control of the Commander, U.S. Army Human Resources Command (AHRC), is responsible for administering the Army Physical Disability Evaluation System (PDES) and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with Department of Defense Directive 1332.18 and Army Regulation 635-40.

a. Soldiers are referred to the PDES 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, when they receive a permanent medical profile, P3 or P4, and are referred by an MOS Medical Retention Board, when they are command-referred for a fitness-for-duty medical examination, and when they are referred by the Commander, (AHRC).

b. The PDES assessment process involves two distinct stages: the MEB and the 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 are either 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 retirement payments 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 their 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.

2. Army Regulation 40-501 provides that for an individual to be found unfit by reason of physical disability, he or she must be unable to perform the duties of his or her office, grade, rank or rating. Performance of duty despite impairment would be considered presumptive evidence of physical fitness.

3. Army Regulation 635-40 establishes the PDES 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 their office, grade, rank, or rating. It provides that an MEB is convened to document a Soldier's medical status and duty limitations insofar as duty is affected by the Soldier's status. A decision is made as to the Soldier's medical qualifications for retention based on the criteria in Army Regulation 40-501. Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in service.

a. Paragraph 2-1 provides that the mere presence of impairment does not of itself justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the member reasonably may be expected to perform because of their office, rank, grade, or rating. The Army must find that a service member is physically unfit to

reasonably perform their duties and assign an appropriate disability rating before they can be medically retired or separated.

b. Paragraph 2-2b(1) provides that when a member is being processed for separation for reasons other than physical disability (e.g., retirement, resignation, reduction in force, relief from active duty, administrative separation, discharge, etc.), his or her continued performance of duty (until he or she is referred to the PDES for evaluation for separation for reasons indicated above) creates a presumption that the member is fit for duty. Except for a member who was previously found unfit and retained in a limited assignment duty status in accordance with chapter 6 of this regulation, such a member should not be referred to the PDES unless his or her physical defects raise substantial doubt that he or she is fit to continue to perform the duties of his or her office, grade, rank, or rating.

c. Paragraph 2-2b(2) provides that when a member is being processed for separation for reasons other than physical disability, the presumption of fitness may be overcome if the evidence establishes that the member, in fact, was physically unable to adequately perform the duties of his or her office, grade, rank, or rating even though he or she was improperly retained in that office, grade, rank, or rating for a period of time and/or acute, grave illness or injury or other deterioration of physical condition that occurred immediately prior to or coincidentally with the member's separation for reasons other than physical disability rendered him or her unfit for further duty.

d. Paragraph 4-10 provides that MEBs are convened to document a Soldier's medical status and duty limitations insofar as duty is affected by the Soldier's status. A decision is made as to the Soldier's medical qualification for retention based on criteria in Army Regulation 40-501, chapter 3. If the MEB determines the Soldier does not meet retention standards, the board will recommend referral of the Soldier to a PEB.

e. Paragraph 4-12 provides that each case is first considered by an informal PEB. Informal procedures reduce the overall time required to process a case through the disability evaluation system. An informal board must ensure that each case considered is complete and correct. All evidence in the case file must be closely examined and additional evidence obtained, if required.

f. The regulation states that after the Soldier has been processed through the PDES and a PEB has determined that the Soldier is qualified for disability retirement but for the fact that their disability is determined not to be of a permanent nature and stable can be placed on the temporary disability retired list (TDRL). The TDRL is used in the nature of a "pending list." It provides a safeguard for the Government against permanently retiring a Soldier who can later fully recover, or nearly recover, from the disability causing him or her to be unfit. Conversely, the TDRL safeguards the Soldier from being

permanently retired with a condition that may reasonably be expected to develop into a more serious permanent disability.

4. 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 percent.

5. Title 38, U.S. Code, sections 1110 and 1131, permits the VA to award compensation for medical conditions incurred in or aggravated by active military service. The VA, however, is not empowered by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual may have a medical condition that is not considered medically unfitting for military service at the time of processing for separation, discharge, or retirement, but that same condition may be sufficient to qualify the individual for VA benefits based on an evaluation by that agency.

6. 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//