

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 August 2024

DOCKET NUMBER: AR20230014995

APPLICANT REQUESTS: reconsideration of his previous request for evaluation by the Disability Evaluation System (DES) Medical Evaluation Board (MEB) for a medical retirement.

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

- Self-authored statement
- Letter or email to Army Board for Correction of Military Records (ABCMR)
- Orders 205-020, 24 July 2001
- Orders 206-032, 25 July 2006
- Medical Summary, 28 January 2015
- Orders 067-001, 7 March 2016
- Case Management Division (CMD) letter AR20180002006, 6 March 2019
- Advisory, Return to Sender envelope, 6 April 2019
- AR20180002006 Record of Proceedings, 23 July 2019
- Veterans Affairs (VA) claims decision, 22 October 2021
- VA letter, 25 October 2021
- Bio of career and awards

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Number AR20180002006 on 23 July 2019.

2. The applicant states per a letter from the Director, Case Management Division, dated 6 March 2019, and attached as Enclosure 1, ABCMR made a final determination on his case based on available facts and documents. Notice was sent to him about the final determination from the Director, ABCMR Surge Team, dated 18 October 2019, and attached as Enclosure 2. The notice denied his application. He provides the following new evidence/argument.

a. On page 5 of Enclosure 2, paragraph 4e., There is no evidence for the Board to review that completed the interstate transfer from the District of Columbia Army National Guard (DCARNG) to Georgia (GA) GAARNG. He attached as Enclosure 3, orders to and from Georgia. A medical summary dated 28 January 2015, that recommended him for a MEB. He also included other information about his military career that demonstrates years of honorable service.

b. On page 5 of Enclosure 2, paragraph 5., In the processing of this case, a medical advisory opinion, dated 1 March 2019, was received from the Army Review Boards Agency Medical Advisor. The advisory official stated that the applicant met medical retention standards for physical, medical, dental, and/or behavioral conditions in accordance with (IAW) chapter 3, Army Regulation (AR) 40-501 (Standards of Medical Fitness), and following the provisions set forth in AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation), that were applicable to the applicant's era of service. The applicant's medical conditions were duly considered during medical separation processing. A review of the available documentation found insufficient evidence of medical disability or condition that would support a change to the character and/or reason for the discharge in this case.

c. He attached as Enclosure 4, a letter from the VA dated 25 October 2021, that states the effective date of a combined rating evaluation of 80% as effective 19 July 2016, which is within months of discharge on 6 March 2016. He included the discharge paperwork as Enclosure 5, and he also attached VA File Number [REDACTED], which is from the VA Benefits Administration and attached as Enclosure 6.

d. This new evidence contradicts the Army Review Boards Agency medical Advisor's 1 March 2019, statement that there is insufficient evidence of medical disability or condition. Within months of discharge, he was 80% disabled according to the Department of Veterans Affairs.

e. On page 6 of Enclosure 2, paragraph 6., "The applicant was sent a copy of this advisory opinion on 6 March 2019 to give him an opportunity to submit a rebuttal. He did not respond." He attached as Enclosure 7, an envelope that was routed to the wrong mailing address on or about the timeframe of the 6 March 2019, advisory opinion. He did not receive the 6 March 2019, advisory opinion and, therefore, did not respond due to not having notice of the opportunity to respond. The letter was mailed to his old residence but for some reason did not get forwarded to his new residence despite him having requested mail-forwarding. The letter was also mailed to his then-legal advisor at the District of Columbia Army National Guard (DCARNG).

f. The envelope is marked with sticker "return to sender, unable to forward" that is dated 10 April 2019. This is because at the time the agency attempted to deliver service to his then-legal advisor at the DCARNG, the Army had mobilized the attorney for a tour

of duty as an investigator and was no longer serving as his legal advisor. Due to the nature of how the Army utilizes their legal personnel for a variety of roles and missions, this caused a breakdown in communication between himself and the Army Review Boards Agency. Unfortunately, he was not able to correct the communication breakdown because the mail did not reach him before the deadline had elapsed.

g. It is noteworthy that the 6 March 2019, letter (Enclosure 1) states there was a hold on processing his application for 30-days from the date of the letter. The letter is dated 6 March 2019 + 30-days = 4 April 2019. The deadline of 4 April 2019 had elapsed by the time the sticker "return to sender" was placed on the envelope as stated above. He attached this envelope as evidence of an unavoidable communication breakdown and evidence that he was not dismissive or deliberately non-responsive.

h. He asks to please consider this new evidence to determine that it is in the interest of justice to correct of his military records from standard military retirement to a medical retirement via the Disability Evaluation System (DES) MEB.

i. He is unable to work and survive solely on his VA and Social Security. Your assistance in correcting his military records will have a direct impact on his quality of life and will correct the wrong that occurred when he was improperly discharged from the District of Columbia Army National Guard. He respectfully requests correction of his military records from standard military retirement to a medical retirement via the DES MEB.

j. In a letter or email to ABCMR undated he stated he was looking for the ABCMR to do is; confirm that DC-ARNG failed to do what was correct for the SM, and correct his retirement to a Medical Retirement, based on what was submitted previously and recently or bring me back onto Active-Duty status, for a minimum of a year or however long it takes, and allow for the MEB process that should have occurred, but DC-ARNG denied, to occur.

1). He served our nation proudly and would do it all over again or would have served longer if he could have. Sadly, his mind, body and soul just could not keep up with the rigorous demands, that his unit and mission required, due to service-connected injuries. Honestly, it would have been selfish and reckless for him to continue for the sake and of the safety of his fellow Soldiers, and the ability to ensure that every mission, was mission complete (MC), as they all were for his entire dedicated and honorable career, in service of our nation.

2). Traditionally, after a service member served honorably for 20 years there is usually, a retirement process, a federal Meritorious Service Medal (MSM), a state MSM, a Minute Man Statute, an U.S. American flag, are awarded and other certificates. Then a ceremony and or a lunch, which is not for the service member, rather their family in

thanks of their sacrifices for not being home, while in service. He served almost 22 years but nothing like that happened. He was retired on paperwork only in 2016 with no ceremony.

3. The applicant enlisted in the District of Columbia Army National Guard (DCARNG) on 21 March 1994. He held military occupational specialties 67N (Utility Helicopter Repairer), 68B (Aircraft Powerplant Repairer), 67G (Utility Airplane Repairer), and 15T (UH-60 (Blackhawk) Helicopter Repairer).

4. He had several periods of active-duty service:

- 2 June 1994 – 17 October 1994 Active-Duty Training
- 30 May 1997 – 3 October 1997 Active-Duty Training

5. On 19 July 2001, he voluntarily transferred to Georgia Army National Guard (GAARNG).

6. He was ordered to active duty on 28 August 1999. He was honorably released from active duty on 29 July 2001. The applicant provided Orders 205-020, showing he was ordered to Full Time National Guard Duty in Active Guard Reserve status on 30 July 2001. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was ordered to active duty on 30 July 2001 until he was honorably released from active duty on 6 December 2003.

7. He was ordered to active duty on 7 December 2003 in support of Operation Iraqi Freedom. He served in Iraq and Kuwait from 28 March 2004 – 14 February 2005. He was honorably released from active duty on 21 February 2005.

8. He was ordered to active duty in support of Operation Noble Eagle/Enduring Freedom on 22 February 2005 (as corrected by DD Form 215 (Correction to DD Form 214)). The applicant provided Orders 206-032 showing he was transferred from a unit in the GAARNG to a unit in the DCARNG, on 5 June 2006, on the individuals request. He was honorably released from active duty on 10 July 2006.

9. On 17 May 2007, he received a permanent profile for chest wall pain/rib fracture.

10. The applicant had several other periods of active service as follows:

- 1 October 2007 – 6 June 2010 Completion of Required Active Service
- 8 July 2010 – 28 August 2011 Support of Operation Enduring Freedom
- 1 October 2011 – 7 September 2012 Support of Mission Support

11. The applicant provides a Medical Summary, 28 January 2015 (Enclosure 3), which the Command Surgeon provided and recommended that the applicant be placed on a permanent profile 3 or 5 and have a MEB to properly address his medical issues prior to his discharge considering several of his diagnosed medical conditions occurred during wartime deployments. (The entire memorandum for record is available for the Board's review).

12. On 20 April 2015, a Notification of Eligibility for Retired Pay for Non-Regular Service (20-Year Letter) was issued showing he had completed the required years of service and will be eligible for retired pay upon application at age 60.

13. On 6 March 2016, he was transferred to the U.S. Army Reserve (USAR) Control Group (Retired Reserve) IAW National Guard Regulation 600-200 (Enlisted Personnel Management), paragraph 6-36r. His NGB Form 22 (National Guard Report of Separation and Record of Service) shows that he completed 21 years, 11 months, and 16 days of service for retired pay.

14. There is no evidence within his available records which shows that a MEB was convened to refer him to a Physical Evaluation Board.

15. In his previous request (AR20180002006) on 23 July 2019, the Board considered his application under procedures established by the Secretary of the Army and determined that the evidence presented does not demonstrate the existence of a probable error or injustice. The Board denied his request.

16. The applicant provides:

a. VA claims decision, on 22 October 2021, which shows the decision of post-traumatic stress disorder was increased to 70 percent and migraine headaches was increased to 50 percent.

b. VA letter dated 25 October 2021, which shows his combined rating evaluations were at 100 percent effective 30 November 2020.

c. Bio of career and awards [21 pages] (Enclosure 3) to show his achievements and honorable service for over 20 years.

17. By regulation, National Guard Regulation (NGR) 600-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

18. By regulation, AR 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. 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.

19. 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.

20. 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.

21. 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.

## 22. 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 reconsideration of their prior denial of his request for referral to the Disability Evaluation System (DES).

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His National Guard Report of Separation and Record of Service (NGB Form 22) shows he entered the Army National Guard on 21 March 1994 and was honorably discharged from the District of Columbia Army National Guard (DCARNG) on 6 March 2016 under provisions provided in paragraph 6-36r of NGR 600-200, Enlisted Personnel Management (31 July 2009): Not selected for retention by a

qualitative retention board (See AR 135-205, chapter 2) and the Soldier elects to be reassigned to the USAR Control Group (Reinforcement) or the Retired Reserve. It shows she had 21 years, 11 months, and 16 days for retired pay.

d. This request was previously denied by the ABCMR on 23 July 2019 (AR20180002006). Rather than repeat their findings here, the board is referred to the record of proceedings and medical advisory opinion for that case. This review will concentrate on the new evidence submitted by the applicant.

e. The additional medical evidence submitted with this application includes a 28 January 2015 medical summary from a physician who treated the applicant from 2007-2011. It states the applicant had chronic right-sided chest pain from non-union of a rib fracture sustained in 2004; a left leg deep vein thrombosis (DVT) in 2010; obstructive sleep apnea; PTSD; intermittent headaches with episodes of light sensitivity and left arm paresthesias; and chronic lumbago (low back pain).

f. Also included is a 22 October 2021 VA ratings decision. It, along with a review of his records in JLV shows he has been awarded multiple VA service-connected disability ratings, including ratings for PTSD, migraine headaches, lumbosacral strain, an post-phlebotic syndrome. However, the DES compensates an individual only for 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. That role and authority is granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

g. His final NCOER was an annual with a thru date of 17 June 2014 and it shows he a successful Soldier. His rater marked him a Success in all NCO Values and Responsibilities and middle blocked him as "Fully Capable." His senior rater blocked him with "2"s on a scale of 1 to 5 for both Overall Performance and Overall Potential, opining:

- "relied upon by leadership for his ability to consistently accomplish assigned tasks with above standard results
- assisted in ensuring that his section training was well planned and professionally executed

- his technical proficiency was continually sought after by subordinates and superiors; persistently incorporated his former leadership experiences to improve unit operations”

h. Paragraph 3-1 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (20 March 2012) states:

“The mere presence of an 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 Soldier reasonably may be expected to perform because of their office, grade, rank, or rating.”

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

j. It is the opinion of the ARBA Medical Advisor that a referral of his case to the DES remains unwarranted.

#### 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 petition, available military records and medical review, the Board concurred with the advising official finding that a referral of his case to the DES remains unwarranted. The opine noted insufficient probative evidence the applicant had one or more duty incurred medical condition which failed the medical retention standards. The Board determined there is insufficient evidence to support the applicant's contentions for reconsideration of his previous request for evaluation by the Disability Evaluation System (DES) Medical Evaluation Board (MEB) for a medical retirement. The Board agreed the applicant did not demonstrate and error or injustice. Therefore, the Board found reversal of the previous Board decision is without merit and denied relief.



2. The Board determined 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.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR20180002006 on 23 July 2019.

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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, USC, Section 1201 provides for the physical disability retirement of a member who has either 20 years of service or a disability rating of 30% or greater.

2. Title 10, USC, Section 1203 provides for the physical disability separation of a member who has less than 20 years of service and a disability rating at less than 30%.

3. 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.

a. 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.

b. The VA does not have authority or responsibility for determining physical fitness for military service. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge, to compensate the individual for loss of civilian employability. 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 her 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.

4. National Guard Regulation (NGR) 600-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 6 all involuntary administrative separations require commander to notify Soldiers concerning intent to initiate separation procedures. All Soldiers being involuntarily separated will be afforded a reasonable opportunity to provide a written response for consideration by the separation authority.

b. Paragraph 6-36r Soldiers not selected for retention by a qualitative retention board, chapter 2, AR 135-205 and the Soldier elects to be reassigned to the USAR Control Group (Reinforcement) or the Retired Reserve.

5. Army Regulation (AR) 40-501 (Standards of Medical Fitness), in effect at the time, provided medical fitness standards of sufficient detail to ensure uniformity in medical evaluation of certain enlisted military occupational specialties and officer duty assignments in terms of medical conditions and physical defects which are causes for rejection or medical unfitness for these specialized duties. Chapter 3 (Medical Fitness Standards for Retention and Separation, Including Retirement), states give the various medical conditions and physical defects which may render a Soldier unfit for further military service. Soldiers with conditions listed in this chapter will be evaluated by a medical board and will be referred to a physical evaluation board (PEB).

6. AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation), prescribes policy and implements the requirements of chapter 61 (Retirement or Separation for Physical Disability) of Title 10, U.S. Code (USC). The regulation states:

a. 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. 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.

b. Based upon the requirements of section 1203 of chapter 61, Title 10, USC, states Soldiers, not otherwise eligible for military retirement, with a disability not the result of intentional misconduct or willful neglect, and with less than a 30 percent disability rating, will receive severance pay.

c. The VA Schedule for Rating Disabilities (VASRD) is primarily used as a guide for evaluating disabilities resulting from all types of diseases and injuries encountered as a result of, or incident to, military service. Because of differences between Army and VA applications of rating policies, differences in ratings may result. Unlike the VA, the Army must first determine whether or not a Soldier is fit to reasonably perform the duties of his office, grade, rank, or rating. Once a Soldier is determined to be physically unfit for further military service, percentage ratings are applied to the unfitting conditions from the VASRD. These percentages are applied based on the severity of the condition at the time of separation.

7. Directive-Type Memorandum (DTM) 11-015 explains the Integrated Disability Evaluation System (IDES). It states, the IDES is the joint Department of Defense (DoD) VA process by which the 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.

//NOTHING FOLLOWS//