

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 September 2024

DOCKET NUMBER: AR20230015024

APPLICANT REQUESTS:

- in effect, physical disability retirement in lieu of physical disability separation with severance pay
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- U.S. Army Installation Management Command Orders 181-1009, 30 June 2022
- U.S. Army Installation Management Command Orders 220-1000, 8 August 2022
- DD Form 214 (Certificate of Release or Discharge from Active Duty) ending 2 November 2022
- 60 pages of Department of Veterans Affairs (VA) medical records, from December 2022 – September 2023

FACTS:

1. The applicant states:

a. His under-rated heart condition at the time of his separation has been treated through the VA and proven to be severe. Since his separation, he has had life-saving surgery and is considered severely disabled by the cardiologist, with significant impacts to his daily life and employment.

b. He wants to be fairly rated and compensated for his service-related condition to assist him in proper care of himself and his family.

2. A DD Form 214 shows the applicant initially enlisted in the Regular Army on 27 May 2003, and was given an uncharacterized administrative discharge on 30 July 2003, due to failure to meet procurement medical fitness standards. He completed 2 months and 4 days of active service.

3. A physical profile is used to classify a Soldier's physical disabilities in terms of six factors, as follows: "P" (Physical capacity or stamina), "U" (Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric) and is abbreviated as PULHES. Each factor has a numerical designation: 1 indicates a high level of fitness, 2 indicates some activity limitations are warranted, 3 reflects significant limitations, and 4 reflects one or more medical conditions of such a severity that performance of military duties must be drastically limited. Physical profile ratings can be either permanent (P) or temporary (T).

4. A DD Form 2808 (Report of Medical Examination) shows:

a. The applicant underwent medical examination on 20 November 2007, for the purpose of Regular Army Enlistment.

b. He was initially found not qualified for service with a PULHES of 331111, with ratings of 3 in the factors P and U, due to the disqualifying conditions of epistaxis (nose bleeds) and recurrent shoulder dislocations but was granted a waiver for enlistment.

5. The applicant again enlisted in the Regular Army on 13 February 2008, and was awarded the Military Occupational Specialty (MOS) 15U (CH-47 Helicopter Repairer).

6. The applicant deployed to Afghanistan during the following three time periods:

- from 22 July 2009 through 24 September 2009
- from 29 June 2010 through 30 August 2010
- from 11 December 2010 through 3 January 2011

7. The applicant's DA Form 3349 (Physical Profile), DA Form 7652 (Disability Evaluation System (DES) Commander's Performance and Functional Statement), Medical Evaluation Board (MEB) Narrative Summary (NARSUM), DA Form 3947 (MEB Proceedings), VA Compensation and Pension (C&P) Exam, and VA Rating Decision are not in his available records for review and have not been provided by the applicant.

8. A DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings) shows:

a. A PEB convened on 16 June 2022, where the applicant was found physically unfit with a recommended rating of 10 percent and that his disposition be separation with severance pay.

b. The applicant's medical condition determined to be unfitting is ventricular tachycardia; ventricular premature depolarization; postural orthostatic tachycardia (MEB diagnoses (Dx) 1-3); 10 percent. He first sought treatment on 5 August 2010, while

deployed to Afghanistan, after experiencing chest pains for 4 weeks. This condition had an insidious onset with no known acute injury or illness. Despite conservative treatment, he continues to experience duty limiting symptoms. He is unfit because the DA Form 3349 functional activities limitations associated with this condition render him unable to reasonably perform required duties.

c. The PEB determined the applicant was fit for MEB Dx 4-24.

d. On 28 June 2022, the applicant signed the form indicating he had been advised of the findings and recommendations of the informal PEB and received a full explanation of the results of the findings and recommendations and legal rights pertaining thereto and concurred, waiving a formal hearing of his case. He also indicated he did not request reconsideration of his VA ratings.

9. Headquarters, U.S. Army Installation Management Command Orders 181-1009, dated 30 June 2022, discharged the applicant effective 27 September 2022, with disability severance pay in pay grade E-6 based on 14 years, 9 months, and 19 days of service, and a disability rating of 10 percent.

10. Headquarters, U.S. Army Installation Management Command Orders 220-1000, dated 8 August 2022, amended above discharge orders to reflect the applicant's separation date as 2 November 2022, and his disability severance pay in pay grade E-6 based on 14 years, 10 months, and 24 days of service.

11. He was honorably discharged on 2 November 2022, under the provisions of Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) due to disability with severance pay, combat-related, with corresponding separation code JEA and a reentry code of 3. He completed 14 years, 8 months, and 20 days of active service.

12. The applicant provided 60 pages of VA medical records, dated between December 2022 and September 2023, which have been provided in full to the Board for review and in pertinent part show his diagnosis and treatment by VA cardiologists for tachycardia, hypertensive disorder, and palpitations during those time frames.

13. 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.

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 (AHLTA), 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 the military disability rating for his unfitting cardiac conditions and that his disability discharge disposition be changed from separated with severance pay to permanent retirement for physical disability. He states:

"Under rated heart condition at the time of separation has been treated through the VA and proven severe. Since separation, have had lifesaving surgery and is considered severely disabled by cardiologist with significant impact to daily live and employment."

c. The Record of Proceedings details the applicant's service and the circumstances of the case. His DD 214 shows he entered the regular Army on 13 February 2008 and was honorably discharged with \$128,952.00 of disability severance pay on 2 November 2022 under provisions provided in chapter 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 16 June 2022, the applicant's informal PEB found his Ventricular tachycardia; ventricular premature depolarization; postural tachycardia" to be the sole unfitting for continued military service. They found the twenty remaining medical conditions not unfitting for continued service. The PEB applied the Veterans Benefits Administration (VBA) derived rating of 10% and recommended the applicant be separated with disability severance pay. On 28 June 2022, after being counseled by his PEB liaison officer on the Board's findings and recommendation, the applicant concurred with the PEB, waived his right to a formal hearing, and declined to request a VA reconsideration of the rating (VARR) for his disability.

h. Submitted medical documentation includes a several cardiology encounters. The most recent (7 September 2023) shows he continues to have cardiac arrhythmias despite a slow pathway ablative procedure (an ablation procedure using catheters and radiofrequency energy). At that time, he was placed on an additional medication and directed to follow-up in 6 months.

i. JLV shows the rating for his for supraventricular arrhythmias remains at 10%. Even had the rating been increased, the awarding of a higher VA rating does not establish prior error or injustice. A 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.

j. The rating derived from the VA Schedule for Rating Disabilities reflects the disability at the point in time the VA exams were completed, or as in this case, his VARR was completed. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions incurred during or permanently aggravated by their military service. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

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

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive 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 that the applicant's Department of Veterans Affairs rating determinations are based on the roles and authorities granted by Congress to the Department of Veterans Affairs and executed under a different set of laws. Based on this, the Board determined an increase in the applicant's rating decision at the time of separation was not appropriate and referral of his case to the Disability Evaluation System (DES) is not warranted.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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 U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system (DES) and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 (Discharge Review Board (DRB) Procedures and Standards) 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 (Standards of Medical Fitness), chapter 3, as evidenced in a Medical Evaluation Board (MEB); when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an Military Occupational Specialty (MOS) Medical Retention Board (MMRB); 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 Physical Evaluation Board (PEB). The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise their 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 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 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.

a. 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 military service.

b. Soldiers who sustain or aggravate physically-unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

(1) The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

(2) The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

c. 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 Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD). The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting, or ratable condition, is one which renders the Soldier unable to perform the duties of their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty. 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 percent.

4. Title 38, U.S. Code, section 1110 (General – Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

5. Title 38, U.S. Code, section 1131 (Peacetime Disability Compensation – Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during 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.

6. 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.

7. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. Paragraph 2-11 states applicants do not have a right to a formal hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

/NOTHING FOLLOWS//