ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 14 April 2025

DOCKET NUMBER: AR20240000227

APPLICANT REQUESTS: reconsideration of his prior request for physical disability retirement in lieu of honorable administrative discharge due to completion of required active service

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

- DD Form 149 (Application for Correction of Military Record)
- self-authored statements
- Information about the Japanese Encephalitis Vaccine Study, 1992
- Affidavit, 21 December 1994
- Headquarters, U.S. Army Medical Department Activity memorandum, 21 December 1994
- Radiologic Examination Report, 22 December 1994
- Standard Form 93 (Report of Medical History), 28 December 1994
- two Standard Forms 600 (Chronological Record of Medical Care), both 28 December 1994
- Standard Form 88 (Report of Medical Examination), 28 December 1994
- DA Form 3349 (Physical Profile), 28 December 1994
- Patient Lab Inquiry, 29 September – 28 December 1994
- DD Form 214 (Certificate of Release or Discharge from Active Duty) covering the period ending 29 December 1994
- Headquarters, U.S. Army Medical Department Activity letter, 20 January 1995
- Standard Form 600, 8 February 1995
- Patient Lab Inquiry, 28 February 1994 – 28 February 1995
- Office of the Secretary of Defense letter, 29 August 1997
- Department of Veterans Affairs (VA) letter, 26 February 1998
- Office of Personnel Management letter, 19 November 2002
- Appeal to VA Board of Veterans Appeals, 22 September 2003
- Neurology Center of Fairfax, History and Physical Exam, 17 August 2022
- Neurology Center of Fairfax, Patient Chart Report, 18 August 2022

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR1999021805 on 12 August 1999.

2. The applicant states:

a. He received experimental vaccines while in the military and suffered adverse health effects. As a result, he is eligible for disability retirement to ensure his rights under the law as it pertains to disability retirements.

b. He is requesting that the Integrated Disability Evaluation System (IDES) evaluate his disability claim and determine his eligibility for disability retirement through processing by a Physical Evaluation Board (PEB).

c. He was looking forward to retirement from the military. He was a highly decorated Soldier who served in Korea, Panama, and Cora Gold. He was a candidate for Ranger training, which he completed, and was Soldier of the Quarter. He diligently tried to resume his everyday activities before receiving experimental drugs, but his multisymptomatic conditions will not allow him to pursue regular activities without medical complications.

d. He has been afflicted with debilitating multisymptomatic conditions medically documented as:

- chronic sleep apnea
- gall bladder removal
- hyperglycemia
- narcolepsy
- pancreatitis
- relapsing Multiple Sclerosis (MS)
- Whipple procedure, medically known as pancreaticoduodenectomy

e. All of his symptoms presented themselves after he received the Japanese encephalitis vaccine, an experimental vaccine, while on active duty. See the attached information sheet. He was diagnosed with hypoglycemia by Dr. J____ H____ at Walter Reed Army Medical Center (WRAMC) in February 1995. His symptoms are fatigue, confusion, and bizarre or combative behavior.

f. Neuroglycopenia can progress to loss of consciousness, seizures, and death if untreated. He was further diagnosed with insulinoma, a tumor in his pancreas that was removed at the Johns Hopkins Kimmel Cancer Center and left him incapacitated in bed

for 5 years. It is noteworthy to state that he has been hospitalized every month from the day he was discharged from the military up until the Whipple procedure, and is daily incapacitated with debilitating symptoms that limit his ability in multiple areas of life. There is also a medical connection between his hypoglycemia and MS.

g. In 1991, he was stationed at Schofield Barracks, HI, where he received pre-deployment briefings, vaccines, and legal updates for deployment measures implemented in part to the theater of operations for the Gulf War. Possible factors that contributed to his debilitating conditions include experimental vaccines, such as the Japanese encephalitis in 1993, gamma globulin, and pills known as PB. These were administered under a Food and Drug Administration (FDA) investigation with special approval before the Soldiers entered the theater of operations. The applicant oversaw the detail of Soldiers that cleaned and guarded all the equipment, vehicles, and weapons sent back from Kuwait to Schofield Barracks, HI.

h. Concerned with his medical situation because he was unable to stay awake for long periods, his Senator contacted his battalion commander at Fort Belvoir, after which the applicant was advised to sign an affidavit requesting to remain on active duty past his expiration term of service (ETS) to undergo a medical evaluation. The affidavit also states it was in his best interest to seek a disability retirement later and he signed the affidavit indicating he concurred.

i. The problem was a two-fold problem. The Dewitt Army Hospital had no idea what they were medically dealing with, given his prior duty assignments, exposures, and pre-deployment preparation for the Persian Gulf War campaigns, Desert Shield/Desert Storm, while station in Hawaii and he was unable to tell the medical staff due to his memory loss. He was reprimanded multiple times for his debilitating medical symptoms and his unit stopped his medical evaluation, ignoring his medical hold, and escorted him off the installation, processing him out of the military. His ETS physical states he was not fit for separation, and he was never provided a DD Form 214, only receiving a DD Form 215 (Correction to DD Form 214).

j. The affidavit he signed should have ensured his rights under Title 10, U.S. Code, Chapter 61, to disability retirement. Per the law, a member whose condition is not stable may be placed on the Temporary Disability Retired List (TDRL) for up to 5 years, at which point they must be either discharge, retired, or returned to duty. This did not happen in his case and he is seeking a disability retirement. He is also in receipt of a Social Security disability retirement. He has provided numerous documents supporting his contention and has 500 more documents outlining his health challenges.

k. He was diagnosed with narcolepsy, sleep apnea, and pancreatitis, all of which are conditions found to be unfitting for military service and were incurred or aggravated

while he was on active duty; therefore, he should be process through the DES for a determination on his eligibility for disability retirement benefits.

3. After approximately 2 years of prior Reserve component service, the applicant enlisted in the Regular Army on 7 October 1987, and was awarded the Military Occupational Specialty (MOS) 11B (Infantryman).

4. An Affidavit, 21 December 1994, shows the applicant requested retention on active duty in the Army beyond his scheduled date of release for the purpose of completing hospital care and/or PDES.

5. On 21 December 1994, Headquarters, U.S. Army Medical Department Activity requested the applicant's retention on active duty beyond his scheduled ETS for a period of 8 days for completion of medical care. On 21 December 1994, the request was approved to retain him beyond his scheduled ETS of 21 December 1994, for a period of 8 days or until completion of medical treatment processing, whichever was sooner.

6. A Radiologic Examination Report, 22 December 1994, shows an impression of a normal posterior/anterior chest.

7. A Standard Form 93 (Report of Medical History) shows the applicant provided his medical history on 28 December 1994, for the purpose of ETS separation, where he marked yes to multiple conditions, including frequent severe headaches, tooth or gum trouble, skin disease, broken bones, and recurrent back pain.

8. A Standard Form 600, 28 December 1994, shows this medical record is an extension of the Standard Form 93 and lists multiple additional medical issues, to include:

- foot trouble with fungal infection
- statements from his commander regarding excessive sick call appointments
- frequent boils on his face and thigh
- excessive inappropriate sleeping, also while driving in traffic
- referral to Neurology at WRAMC

9. The acronym "PULHES" describes the following six physical factors used in the profiling system to classify medical readiness: "P" (Physical capacity or stamina), "U" (Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric). Physical profile ratings are permanent (P) or temporary (T). A service member's level of functioning under each factor is represented by the following numerical designations: 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.

10. A Standard Form 88 shows the applicant underwent medical examination on 28 December 1994, for the purpose of ETS separation. It shows the applicant was not qualified for separation with a PULHES of T3(temporary rating of 3 in factor P)12111. His disqualifying defect is listed as T3 history of inappropriate sleeping; rule out narcolepsy. He had referrals to Internal Medicine, Neurology, Urology, Infectious Disease, and Podiatry and his ETS was on hold for referral completion.

11. A DA Form 3349 shows the applicant was given a temporary physical profile due to expire in 45 days with a PULHES of T312111 on 28 December 1994, for inappropriate sleeping; rule out narcolepsy; has referral to Neurology; recurrent boils in face/thigh; under care of dermatologist with infectious disease. His ETS was on hold to allow for completion of evaluation by Neurology, Internal Medicine, and Urology.

12. A Standard Form 600, 28 December 1994, shows the applicant was placed on a 454 day hold to allow for neurological evaluation of his tendency to fall asleep anywhere, at any time. He had a referral to Neurology and several other referrals; to Urology for evaluation of decreased liquids and chronic mild URI; to Dermatology and Infectious Disease for chronic infected cysts of face and thighs.

13. WRAMC Patient Lab Inquiry, covering the period 29 September 1994 – 28 December 1994, has been provided in full to the Board for review.

14. The applicant's DD Form 214 shows he was honorably discharged on 29 December 1994, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 4, due to completion of required active service, with corresponding Separation Code JBK. He completed7 years, 2 months, and 23 days of net active service this period.

15. A Headquarters, U.S. Army Medical Department Activity memorandum to the applicant's Member of Congress, 20 January 1995, replied to an inquiry on the applicant's behalf concerning his request for retention beyond his ETS until the causes and treatment of his current condition were determined. It shows in pertinent part:

a. The applicant presented himself to the medical staff at DeWitt Army Community Hospital, Fort Belvoir, on 1 December 1994, complaining of excessive daytime somnolence, after which the applicant was referred to a neurologist. After neurological examination, no underlying abnormalities were found.

b. He was then referred for evaluation at Johns Hopkins University Sleep Center and all results and examinations were determined to be completely normal. He was

then referred to Community Mental Health at DeWitt Army Community Hospital for psychiatric evaluation on 16 December 1994, where he had previously been seen on two occasions and was psychiatrically cleared with the recommendation to attend stress management service which he declined on both occasions.

c. He was reevaluated by a clinical psychologist on 16 December 1994, regarding his complaints of stuttering and falling asleep and was again psychiatrically cleared. As a courtesy, he was temporarily extended on active duty until 19 December 1994, in order for him to receive stress management services on 28 December 1994, but he again failed to utilize the services.

d. His request for further retention past his set release date from the Army until the causes of his current condition could be determined was not medically supported; however, since he was entitled to 120 days of medical care at a medical treatment facility, he might obtain a second opinion.

16. An Office of the Secretary of Defense letter to the VA, Director of Compensation and Pension Service, 29 August 1997, shows the applicant contacted their office regarding difficulties he was having obtaining VA medical care, having been informed his discharge was illegal. It was requested the applicant's status be evaluated to establish his eligibility for VA benefits, as he has a valid DD Form 214 with a separation date of 28 December 1994.

17. A VA letter to the applicant, 26 February 1998, informed the applicant that his status as a veteran was verified and that he has basic eligibility for VA benefits, based on his honorable service from 7 October 1987 through 29 December 1994.

18. The applicant previously applied to the ABCMR in September 1998, requesting physical disability retirement in lieu of honorable administrative discharge due to completion of required active service. On 12 August 1999, the Board denied his request, determining the evidence did not demonstrate the existence of a probable error or injustice.

19. An Office of Personnel Management letter to the applicant, 19 November 2002, shows his application for disability retirement was approved.

20. The applicant provided a 28-page Appeal to the Board of Veterans Appeals, which has been provided in full to the Board for review, and in pertinent part shows his request for VA reconsideration of his claim for increased service-connected disability ratings for his narcolepsy, deep seated scars, and inclusion cysts, all of which were individually rated at 10 percent, and initial service-connected ratings for tension headaches and sleep apnea.

21. A Neurology Cetner of Fairfax, History and Physical Exam, 17 August 2022, and Patient Chart Report, 18 August 2022, have been provided in full to the Board and reflect the active problems MS, numbness, and vitamin D deficiency.

22. 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.

23. 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 reconsideration of their previous denial of his request for a referral to the Disability Evaluation System (DES).

c. The Record of Proceedings and the prior ROP detail the applicant's military service and the circumstances of the case. His DD 214 shows he entered the regular Army on 7 October 1987 and was honorably discharged on 29 December 1994 after having completed his required active service under provisions provided in chapter 4 of AR 635-200, Active Duty Enlisted Administrative Separations (26 May 1989).

d. This request was previously denied by the ABCMR on 12 August 1999 (AR1999021805). Rather than repeat their findings here, the board is referred to the record of proceedings for that case. This review will concentrate on the new evidence submitted by the applicant.

e. Because of the period of Service under consideration, there are no encounters in AHLTA or documents in iPERMS.

f. Addressing the applicant's 5 factors for consideration on page 6 of the supporting documentation:

1. The applicant may indeed be eligible for benefits from the VA. The VA presumptively service connects conditions related to a period of Service in a given geographic region and/or exposures which has been linked to environmental

contaminants / factors associated the with the potential to develop one or more associated conditions.

Vietnam with possible exposure to agent orange is the best-known example of this policy. While there is typically no direct cause and effect for a given individuals development of a covered presumptive medical condition as required for an affirmative line of duty determination, giving this benefit to the Veteran with a period of service in one of these regions provides health care and other benefits to Veterans with diseases which may be due to such service incurred exposures.

In contrast, the Military Departments require a direct link between the applicant's service and the medical condition.

2. This advisor is not aware of any program allowing a service member to "seek a disability retirement in the future and was subsequently discharged." 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.

3. The applicant's medical separation medical examination did not determine he was unfit, only that his sleep condition was undergoing evaluation. Paragraph 3-30-k of AR 40-501, Standards of Medical Fitness (1 July 1987), states narcolepsy only fails medical retention standards "when attacks are not controlled by medication."

At the time of his separation, the applicant was on a temporary physical profile but had neither been diagnosed with nor treated for narcolepsy.

4. There is no evidence the applicant's sleep apnea, pancreatitis, multiple sclerosis, or gall bladder removal were issues prior to his separation.

5. These hospitalizations and surgeries took place after his discharge from the Army.

g. He notes that he has been under the care of multiple providers since his discharge up to the present day. This is post-service care covered by the VA.

h. In a 20 January 1995 letter from the Commander to DeWitt Army Community Hospital to a US Senator (page 45 of the supporting documentation), the commander noted:

1. In December 1994, the applicant was evaluated at John Hopkins University Sleep Center and all results and examination were completely normal.

2. He was evaluated three times by mental health, the last on 16 December 1994. He was psychiatrically cleared after all three evaluations.

3. His request to be retained past his set release date until the causes of his current condition could not be medically supported by facts of the case, including the recent John Hopkins evaluation.

4. He was entitled to 120 days of medical care at any medical treatment facility.

i. There are no duty limiting permanent physical profiles and there is insufficient probative evidence the applicant had a permanent service incurred medical condition failed the medical retention standards of chapter 3 of AR 40-501 at the time of his discharge. Thus, there was no cause for referral to the Disability Evaluation System.

j. JLV shows he has been awarded multiple VA service-connected disability ratings, including ratings for narcolepsy (1998), sleep apnea (2002), and migraine headaches (2000). However, the DES only compensates an individual for permanent service incurred medical condition(s) which have been determined to disqualify him or her from further military service and consequently prematurely ends their career. 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. 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 there is insufficient probative evidence to warrant a referral of his case to the DES.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant’s petition, available military records, and the medical review, the Board concurred with the advising official finding is insufficient probative evidence to warrant a referral of his case to the DES. The applicant has been awarded

multiple VA service-connected disability ratings, including ratings for narcolepsy, sleep apnea, and migraine headaches. However, the DES only compensates an individual for permanent service incurred medical condition(s) which have been determined to disqualify him or her from further military service and consequently prematurely ends their career. 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. Based on this, the Board determined there was no error or injustice and denied relief.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XX	XX	XX	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 amendment of the ABCMR decision rendered in Docket Number AR1999021805 on 12 August 1999.

[redacted]

X //SIGNED//

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 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 his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the severity of the disability and length of military service. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

c. The mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of his or her office, grade, rank, or rating. Reasonable performance of the preponderance of duties will invariably result in a finding of fitness for continued duty. A Soldier is physically unfit when a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

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.

//NOTHING FOLLOWS//