

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 September 2024

DOCKET NUMBER: AR20240000480

APPLICANT REQUESTS:

- correction of his DA Form 199-1 (Formal Physical Evaluation Board (PEB) Proceedings) by adding post-traumatic stress disorder (PTSD) as unfitting resulting in a higher disability rating
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Combat Action Badge (CAB) orders
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Department of Veterans Affairs (VA) Electronic Medical Documentation (115 pages)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states his PTSD condition was not addressed during his medical board process. His PTSD was discovered after military service by the VA. His PTSD is a result of several years of military service and his combat experiences in Iraq. He is providing orders for the CAB, which he was awarded for actively engaging or being engaged by the enemy.
3. The applicant enlisted in the Regular Army on 25 May 2006. He had three years of prior active service in the Regular Army.
4. The applicant's record shows he served in Iraq from 16 January 2007 to 29 March 2008 and from 27 November 2009 to 3 December 2010.

5. Orders published on 19 January 2008 awarded him the CAB for actively engaging or being engaged by the enemy on 13 February 2007.

6. The applicant's Medical Evaluation Board (MEB) Proceedings, dated 28 November 2011, do not show he was diagnosed with PTSD.

7. On 6 April 2017, a Formal PEB found the applicant physically unfit for further military service due to right shoulder supraspinatus tendon tear, cervical neck pain, and right foot pain. The PEB recommended a 40% disability rating and the applicant's permanent disability retirement.

8. The PEB determined the applicant's following conditions were not unfitting because the Medical Evaluation Board indicated the conditions met medical fitness standards of Army Regulation 40-501 (Standards of Medical Fitness), did not indicate that any of the conditions prevented him from performing any functional activities, and did not indicate that performance issues, if any, were due to these conditions:

- mild hammertoe deformity of the right second toe, asymptomatic
- bilateral asymptomatic pes planus
- mild ulnar neuropathy at the left elbow
- mild left shoulder arthritis
- small lipomas to the left chest and right bicep
- hypertension
- cartilaginous cyst over the left tibial tuberosity
- migraine including migraine variants
- obstructive sleep apnea

9. The DA Form 199-1 contains the following statements:

a. This case was adjudicated as part of the Integrated Disability Evaluation System (IDES).

b. As documented in the VA memorandum dated 9 February 2017, the VA determined the specific VA Schedule for rating Disabilities (VASRD) code(s) to describe the Soldier's condition(s). The PEB determined the disposition recommendation based on the proposed VA disability rating(s) and in accord with applicable statutes and regulations.

10. On 26 April 2017, the applicant concurred with the PEB's findings and recommendations. He requested reconsideration of his VA ratings.

11. Orders published on 30 August 2017 directed the applicant's permanent disability retirement effective 27 November 2017. The orders show a 40% disability rating.

12. The applicant provided his VA Electronic Medical Documentation showing he was diagnosed with PTSD with a 100% service connection.

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 applicant is applying to the ABCMR requesting a correction to his Physical Evaluation Board (PEB) proceedings by adding the service-connected disability of PTSD. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) The applicant enlisted in the Regular Army on 25 May 2006 after prior service; 2) The applicant deployed to an active combat environment in Iraq (2007-2008 and 2009-2010); 3) The applicant's Medical Evaluation Board (MEB) Proceedings, dated 28 November 2011, do not show he was diagnosed with PTSD; 4) On 6 April 2017, a formal PEB found the applicant physically unfit for further military service due to physical injuries but no mental health conditions were included. The PEB recommended a 40% disability rating; 5) On 26 April 2017, the applicant concurred with the PEB's findings and recommendations; 6) On 30 August 2017, orders directed the applicant's permanent disability retirement effective 27 November 2017.

b. The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) and additional VA medical documentation provided by the applicant were also examined.

c. The applicant states his PTSD condition was not addressed during his medical board process. His reports that he was diagnosed with PTSD by the VA after his discharge, which warrants a referral to IDES and potentially adding PTSD to his military disability rating. There is insufficient evidence the applicant ever reported symptoms of PTSD while on active service. There was evidence in August 2016 the applicant was seen at behavioral health services for physical pain and problems with his leadership. He was diagnosed with Occupational Problems, and he was encouraged to follow-up for therapy. There is insufficient evidence the applicant continued to attend behavioral health treatment. He was determined to be world-wide qualified with no alterations to duty status. The applicant was evaluated by the Warrior in Transition Unit (WTU) social work clinic starting in January 2017. He denied needing behavioral health services, and he was not reporting a significant level of PTSD, Depression, or Anxiety symptoms. He was not diagnosed with a mental health condition, and he was regularly follow-up by

Case Management providers till his discharge. There is insufficient evidence during the applicant's active service he ever engaged in repeated behavioral health treatment for PTSD, required inpatient psychiatric treatment, was placed on a temporary or permeant psychiatric profile, or was found to not meet retention medical standards from a psychiatric perspective.

d. A review of JLV provided evidence the applicant engaged with the VA in November 2016 for Compensation and Pension (C&P) evaluation, but he did not report any symptoms of PTSD. After his discharge in December 2017, he was initially diagnosed by the VA with PTSD related to his combat deployments. In March 2018, the applicant completed his initial C&P evaluation for PTSD, and he was confirmed to be experiencing service-connected PTSD (70%SC), which was later increased to 100% in 2019.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that the applicant has been diagnosed with service-connected PTSD by the VA. However, there was evidence the applicant was performing sufficiently from a psychiatric perspective while on active service. In addition, there is insufficient evidence the applicant ever attended behavioral health treatment consistently beyond one session, was ever placed on a psychiatric profile while on active service, required inpatient psychiatric treatment, or was found to not meet retention medical standards IAW AR 40-501 from a psychiatric perspective. Therefore, there is insufficient evidence the applicant was medically unfit as a result of PTSD at the time of his PEB assessment. Thus, there is insufficient evidence his case warrants a referral to IDES at this time.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.
2. The Board concurred with the conclusion of the ARBA Behavioral Health Advisor that the evidence does not show the applicant was exhibiting symptoms of PTSD that affected his ability to perform his duties prior to his retirement. Based on a preponderance of the evidence, the Board determined there was no evidentiary basis for the PEB to find him unfit for PTSD.

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.

3/4/2025

 XCHAIRPERSON


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, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. 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 Disability Evaluation System (DES) and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with Department of Defense (DOD) Directive 1332.18

and Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation)

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

a. The disability evaluation assessment process involves two distinct stages: the MEB and PEB. The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise 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 a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition.

b. Service members whose medical condition did not exist prior to service who are determined to be unfit for duty due to disability are either separated from the military or are permanently retired, depending on the severity of the disability. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

c. The mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of their office, grade, rank, or rating.

d. The percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Ratings are assigned from the VASRD. The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting or ratable condition is one which renders the Soldier unable to perform the duties of their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty.

e. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

4. Directive-type Memorandum (DTM) 11-015, dated 19 December 2011, explains the IDES. It states:

- a. The IDES is the joint DOD-VA process by which DOD determines whether wounded, ill, or injured service members are fit for continued military service and by which DOD and VA determine appropriate benefits for service members who are separated or retired for a service-connected disability. The IDES features a single set of disability medical examinations appropriate for fitness determination by the Military Departments and a single set of disability ratings provided by VA for appropriate use by both departments. Although the IDES includes medical examinations, IDES processes are administrative in nature and are independent of clinical care and treatment.
- b. Unless otherwise stated in this DTM, DOD will follow the existing policies and procedures requirements promulgated in DODI 1332.18 and the Under Secretary of Defense for Personnel and Readiness memoranda. All newly initiated, duty-related physical disability cases from the Departments of the Army, Air Force, and Navy at operating IDES sites will be processed in accordance with this DTM and follow the process described in this DTM unless the Military Department concerned approves the exclusion of the service member due to special circumstances.
- c. IDES medical examinations will include a general medical examination and any other applicable medical examinations performed to VA Compensation and Pension standards. Collectively, the examinations will be sufficient to assess the member's referred and claimed condition(s) and assist VA in ratings determinations and assist military departments with unfit determinations.
- d. Upon separation from military service for medical disability and consistent with the Board for Correction of Military Records (BCMR) procedures of the military department concerned, the former service member may request correction of his or her military records through his or her respective military department BCMR if new information regarding his or her service or condition during service is made available that may result in a different disposition. For example, a veteran appeals VA's disability rating of an unfitting condition based on a portion of their service treatment record that was missing during the IDES process. If the VA changes the disability rating for the unfitting condition based on a portion of their service treatment record that was missing during the IDES process and the change to the disability rating may result in a different disposition, the service member may request correction of their military records through their respective Military Department BCMR.
- e. If, after separation from service and attaining veteran status, the former service member desires to appeal a determination from the rating decision, the veteran has one year from the date of mailing of notice of the VA decision to submit a written notice of disagreement with the decision to the VA regional office of jurisdiction.

5. Title 38, U.S. Code, Sections 1110 and 1131, permit the VA to award compensation for disabilities which were incurred in or aggravated by active military service. However, an award of a VA rating does not establish an error or injustice on the part of the Army.
6. Title 38, Code of Federal Regulations, Part IV is the VASRD. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge. As a result, the VA, operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform his duties. Unlike the Army, the VA can evaluate a veteran throughout their lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.
7. Army Regulation 15-185 (ABCMR) provides Department of the Army policy, criteria, and administrative instructions regarding an applicant's request for the correction of a military record. Paragraph 2-11 states applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.
8. 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//