

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 October 2024

DOCKET NUMBER: AR20240000711

APPLICANT REQUESTS:

- reconsideration of his previous request for an increase of his Physical Evaluation Board (PEB)-assigned disability rating to 30% or higher resulting in his retirement for physical disability
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- personal statement
- DD Form 2808 (Report of Medical examination)
- medical progress notes, dated 25 September 2023 (3 pages)
- Department of Veterans Affairs (VA) Rating Decision, dated 16 October 2023
- VA benefits decision letter, dated 18 December 2023

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 AR20220003487 on 14 October 2022.
2. The applicant states the 10% rating was incorrect because the doctor made a mistake when filling out the results from the physical exam. The doctor did not use a goniometer and put an approximate range of motion angle. The VA corrected the mistake and assigned 40% instead of 10%. He was also told that he could not list more than one condition for the Medical Evaluation Board (MEB), but he suffered from more conditions while in the service. The conditions are migraines, traumatic brain injury (TBI) (the doctor concluded that migraines were caused by TBI which he sustained after an airborne jump), Crohn's disease, post-traumatic stress disorder (PTSD), anxiety, severe depression, and suicidal ideations that he started to experience when he realized that his career in the military was over. The VA assigned ratings to all conditions.
3. In a personal statement, the applicant further states, in effect:

a. He has all the proof the Board needs to adjudicate his application in his favor. He also asks that other conditions he acquired while in the service be considered. When he was told that he was going to be involuntarily discharged because of medical reasons, his doctor stated he could not list more conditions, because it had to be only one condition for the MEB. His final medical exam also mentions some of the following conditions:

(1) TBI. Doctors determined his migraines started in 2020 and are linked to TBI that was caused by repeated head trauma while in service. The migraines became frequent, intense, and debilitating, occurring sometimes multiple times a week. Now he is going through tests to determine if the TBI was the reason for the hormonal imbalance he currently has, specifically hypothalamus-pituitary-adrenal axis, which could explain many symptoms he is currently experiencing. Migraines were diagnosed in the Army and documented in his medical history.

(2) Crohn's disease. Probably because of all the stress and pain he was going through.

(3) PTSD. He acquired PTSD after a parachute malfunction and later exacerbated by overall time in service. He gets that the persons reading this probably think of him as a pathetic person, and he surely hate seeing himself like that as well, but he would give anything to get better.

b. When the last decision was made, there was an argument: "why didn't the applicant ask to reconsider VA and medical board ratings?" He did not agree with the findings and also it was incredibly complicated. If the persons reading this statement have served in the military, then they probably know what it means to be a lower enlisted Soldier. Since his MEB started, he felt a growing dislike in him because he could not be useful to the unit. He was extremely depressed and in pain. His leadership every day was asking about his MEB status, which sounded like "when are you going to get out?" He has never been so disrespected, hazed, and sometimes humiliated. He never had any problems, he was always on time, and he always did his job right. No one is talking about why so many Soldiers are killing themselves when they have never been in combat. Decreasing morale is probably one of the biggest factors.

c. His unit was under investigation multiple times. A Soldier from his One Station Unit Training, who was his good friend, as well as another Soldier from his unit, killed themselves because of that. Those were the ones he knew personally. Many lower enlisted were on the verge of suicide. No one is talking about noncommissioned officers being jacked up on steroids, spilling their anger (steroid rage) on the lower enlisted. Steroid use is becoming very popular among Soldiers, especially in combat arms units, where physical strength is prioritized over other factors. His mental health worsened

and his physical pain kept getting worse. He was very depressed, and his family broke down.

d. His wife left him, and he was on the brink of suicide. A career in the military was his dream. When he enlisted in the Army, he was extremely happy. He graduated from basic combat and advanced individual training in the top five. He received a Certificate of Achievement for "excellence in armor" and he was sent to airborne school as a reward. He gave a 100% effort thinking that no matter what happens, he would be taken care of. He was ready to go anywhere to defend the interests of his country, but he got injured. During the past year, there was not a single day when he did not think about suicide. He still cannot believe that his application was rejected with all the proof he provided, leaving him in pain and miserably depressed.

e. Since his wife left him, he is having trouble establishing a new relationship. His life went downhill. Also, he does not have the money to hire a lawyer to help him with this case, it is only him, he has no one else. If he were to be medically retired, he would feel safer and a little more confident in tomorrow. It is obviously very important to him, otherwise, he really has nothing else to live for.

4. The applicant enlisted in the Regular Army on 28 January 2019. His Enlisted Record Brief shows he completed airborne training.

5. On 11 August 2021, a PEB found the applicant unfit for further military service due to lumbosacral degenerative disc disease other than intervertebral disc. The PEB stated the following:

Although the Soldier stated to the Veteran's Affairs Compensation and Pension examiner that the onset of this condition was in 2019 following a parachute jump, which ended with a violent landing due to the non-opening of the parachute, there is insufficient evidence in the Medical Evaluation Board case file to support this assertion. The Soldier first sought treatment for this condition on 13 February 2020 while stationed at Grafenwoehr, Germany after experiencing mid and low back pain for a period of seven months prior to this visit reportedly from a ruck march.

6. The PEB recommended a 10% disability rating and the applicant's separation with severance pay. The PEB found him fit for 21 additional conditions because the MEB indicated the conditions met Army Regulation 40-501 (Standards of Medical Fitness) retention standards, none were listed on the physical profile as preventing the Soldier from performing one or more functional activities, and there was no evidence indicating that performance issues, if any, were due to the conditions.

7. On 17 August 2021, the applicant acknowledged he was advised of the findings and recommendations of the informal PEB and had received a full explanation of the results

of the findings and recommendations and legal rights pertaining thereto. He concurred with the PEB's findings and recommendations and waived a formal hearing of his case. He did not request reconsideration of his VA ratings.

8. The applicant's DA Form 199 (Informal PEB Proceedings) 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 4 June 2021, 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.

9. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably discharged on 15 November 2021 under the provisions of Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation) by reason of disability, severance pay, non-combat related. He completed 2 years, 9 months, and 18 days of active service.

10. The applicant provided VA documents showing he was granted service-connected disability compensation for chronic gastritis, irritable bowel syndrome, Crohn's disease and helicobacter pylori (H pylori) infection and for adjustment disorder with mixed anxiety and depressed mood with TBI with a combined 100% disability rating.

11. During the processing of the applicant's previous case, the Army Review Boards Agency Medical Advisor provided a medical advisory opinion. The Medical Advisor determined there is no evidence of error or injustice pertaining to the applicant's medical separation process and that there is insufficient probative evidence to warrant either an increase in his military disability rating or a referral of his case back to the Army Disability Evaluation System. *The complete medical advisory opinion was provided to the Board for their review and consideration.*

12. The Army rates only conditions determined to be physically unfitting at the time of discharge, which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career. The VA does not have authority or responsibility for determining physical fitness for military service. The VA may compensate the individual for loss of civilian employability.

MEDICAL REVIEW:

1. 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:
2. The applicant is applying to the ABCMR requesting reconsideration of their prior denial of his request for an increase in his military disability rating with a subsequent change in his disability discharge disposition from separated with disability severance pay to permanent retirement for physical disability. He is also requesting that migraine headaches as a claimed residual of a traumatic brain injury, Crohn's disease, and a mental health condition also be determined additional unfitting conditions.
3. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 shows he entered the regular Army on 28 January 2019 and was separated with \$14,698.80 of disability severance pay on 15 November 2021 under provisions in paragraph 4-27c(3) of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (19 January 2017).
4. His request for an increase in his military disability rating was previously denied by the ABCMR on 14 October 2022 (AR20220003487). Rather than repeat their findings here, the board is referred to the record of proceedings. This review will concentrate on the new requests and new evidence submitted by the applicant.
5. 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).
6. 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.

7. 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.

8. On 26 February 2021, the applicant was referred to the IDES for lumbar degenerative disc disease. The applicant claimed twenty-three additional conditions on a separate Application for Disability Compensation and Related Compensation Benefits (VA Form 21-526EZ). This included migraines, constipation and diarrhea, and major depression/anxiety. None of his claimed conditions were related to or consistent with symptoms of a lumbar radiculopathy.

9. A medical evaluation board (MEB) determined his chronic lumbar condition failed the medical retention standards of AR 40-501, Standards of Medical Fitness. The MEB determined twenty-one additional medical conditions met medical retention standards. None of these conditions were related to or consistent with symptoms of a lumbar radiculopathy.

10. The three medical conditions referenced by the applicant on his DD 149 as written in his MEB narrative summary:

Mixed anxiety and depressive disorder: "The SM [Service Member] has no history of recurrent profile for the condition, and the commander reports no impact of the condition on assigned duties. Review of the medical record indicates: The SM denies receiving behavioral health treatment prior to military service. On VA exam, the SM reports developing symptoms of anxiety during military service with loss of concentration, sleep issues and erectile dysfunction

...

Current DOD dx is major depressive disorder, single episode, moderate, with possible comorbid personality disorder (cluster B/BPD/traits). A possible bipolar disorder diagnosis has also been explored. The behavioral provider is titrating doses of quetiapine and duloxetine, which has required issuance of a temporary profile. The temporary profile limits carry/fire of an individually assigned weapon and includes geographic assigned limitations. In the past, the SM was assigned 2 temporary profiles for adjustment disorder in April June 2020, totaling 49 days.

Treating providers have recommended no permanent restrictions related to a behavior health condition. The condition remains amenable to conservative care and does not result in permanent work restrictions."

Migraine including migraine variants: "The SM has no history of recurrent profile for the condition, and the commander reports no impact of the condition on assigned duties ...

The SM requested evaluation from his primary care physician March 2021. Triptan for abortive therapy was not recommended and discontinued due to possible interaction with behavioral health medications. A prescription for propranolol was considered, however the SM felt that the headaches were not frequent enough and were getting better and did not express an interest in treatment with propranolol. The SM is not under the care of a specialist for the condition. The condition remains amenable to conservative care and does not result in permanent work restrictions."

Constipation / diarrhea: The VA found no medical basis for a diagnosis.

"The SM has no history of recurrent profile for the condition, and the commander reports no impact of the condition on assigned duties ... No medication is used for control of an intestinal condition. The VA examiner documents no reported symptoms of diarrhea, or alternating diarrhea and constipation. There is no evidence of tumor, weight loss or malnutrition. No diagnostic testing is available for review. Examination of record identifies no functional impact on ability to work. The VA examiner provides no evidence to support a diagnosis of irritable bowel syndrome, and SM reported history or treatment history is not consistent with a diagnosis of irritable bowel syndrome. Symptoms are amenable to conservative care and do not result in permanent duty restriction."

11. On 7 June 2020, the applicant non-concurred with the MEB's decision but declined an independent medical review of his MEB and did not submit a written appeal, so the reason(s) for his non-concurrence is unknown. With nothing to address, the MEB was approved and forwarded to a physical evaluation board (PEB) for adjudication.
12. On 11 August 2021, the applicant's informal PEB determined his "Lumbosacral strain; lumbar degenerative disc disease other than intervertebral disc syndrome" to be the sole unfitting diagnosis for continued Service. They applied the VA derived rating of 10% to his disability and recommended he be separated with disability severance pay.
13. From the VA Disability Evaluation System Proposed Rating dated 4 June 2021:

"Service connection for lumbosacral spine strain with degenerative disc disease (DDD) is proposed as directly related to military service. (38 CFR 3.303, 38 CFR 3.304)

Please note: Initial range of motion (ROM) and observed repetitive use ROM measurements were unable to be tested during your most recent back (thoracolumbar spine) conditions examination because testing was not considered medically appropriate to verify the range of motion as it was potentially at risk of eliciting pain, worsening your condition, or triggering a flare, and you declined due to pain. Therefore, the VA examiner provided an estimated range of motion in degrees for your lumbosacral spine during flare-ups based on a review of all procurable information including your statements during examination, case-specific evidence (to include your medical treatment records), and the examiner's medical expertise.

The VA examiner estimated the range of motion for your lumbosacral spine during flare-ups to be 70 degrees in forward flexion, 20 degrees in extension, 20 degrees in right lateral flexion, 20 degrees in left lateral flexion, 20 degrees right lateral rotation, and 20 degrees in left lateral rotation.

We have assigned a 10 percent evaluation for your lumbosacral spine strain with degenerative disc disease (DDD) based on:

- Combined range of motion of the thoracolumbar spine greater than 120 degrees but not greater than 235 degrees
- Forward flexion of the thoracolumbar spine greater than 60 degrees but not greater than 85 degrees
- Localized tenderness not resulting in abnormal gait or abnormal spinal contour

Additional symptom(s) include:

- Objective evidence of flare-ups

The provisions of 38 CFR §4.40 and §4.45 concerning functional loss due to pain, fatigue, weakness, or lack of endurance, incoordination, and flare-ups, as cited in DeLuca v. Brown and Mitchell v. Shinseki, have been considered and are not warranted.

A higher evaluation of 20 percent is not warranted for arthritis or other disease unless the evidence shows:

- X-ray evidence of involvement of two or more major joints or two or more minor joint groups, with occasional incapacitating exacerbations. (38 CFR 4.71a)

Additionally, a higher evaluation of 20 percent is not warranted for diseases and injuries of the thoracolumbar spine unless the evidence shows:

- Combined range of motion of the thoracolumbar spine not greater than 120 degrees; or,
- Forward flexion of the thoracolumbar spine greater than 30 degrees but not greater than 60 degrees; or,
- Muscle spasm or guarding severe enough to result in an abnormal gait or abnormal spinal contour such as scoliosis, reversed lordosis, or abnormal kyphosis. (38 CFR 4.71a)"

14. On 17 August 2021, after being counseled on the Board's findings and recommendation by his PEB liaison officer (PEBLO), the applicant concurred with the PEB's findings and recommendation, waived his right to a formal hearing, and declined the opportunity to have the VA reconsider his disability rating.
15. Submitted documentation contains a 19 July 2021 evaluation by a physical medicine physician. The ROM results are incomplete with the provider only documenting 2 of 6 lumbar motions; 30 degrees of forward flexion and 10 degrees of extension. These do not appear to have been performed with a goniometer, a device used to measure joint ROM. Her assessment was the applicant had "Chronic axial low back pain with intermittent right LS radiculopathy secondary to L4-S1 spondylosis." Spondylosis is the medical term applied to osteoarthritis of the spine, and the term is often used more generally for degenerative changes of the spine.
16. While radiculopathy was mentioned in AHLTA, there is no evidence it was a significant issue at the time of his DES processing: It was neither claimed by the applicant or among the 23 conditions listed on his MEB findings.
17. The applicant has submitted a civilian medical document from 25 September 2023 showing he has been diagnosed with chronic migraine, TBI, and PTSD. His migraine headaches which he asserts are a residual of a TBI and his mental health condition were addressed by his MEB and adjudicated by his PEB.
18. There is insufficient probative evidence the applicant had any additional duty incurred medical conditions which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge. Furthermore, there is no evidence that any additional medical conditions prevented the

applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge.

19. Submitted documentation and review of his records in JLV shows he has numerous VA service-connected disability ratings, including ratings for chronic adjustment disorder, migraine headaches, and colitis. However, the DES only compensates an individual for 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; or which did not cause or contribute to the termination of their military career. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

20. It is the opinion of the ARBA medical advisor there is insufficient probative evidence to warrant either an increase in his military disability rating or a referral of his case back to the DES.

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 Medical Advisor that the evidence does not show that, prior to his discharge, the applicant had any conditions other than lumbar degenerative disc disease that did not meet retention standards and may have been a basis for a higher disability rating. Based on a preponderance of the evidence, the Board determined the applicant's discharge for disability with severance pay was not in error or unjust.

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 that the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20220003487 on 14 October 2022.

3/31/2025


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. Public Law 95-397, enacted 30 September 1978, established the RCSBP. The RCSBP provided a way for those who qualified for Non-regular (Reserve Component) retirement but were not yet age 60 to provide an annuity for their survivors should they die before reaching age 60. Three options are available: (A) elect to decline enrollment and choose at age 60 whether to start SBP participation, (B) elect that a beneficiary

receive an annuity if they die before age 60 but delay payment of it until the date of the member's 60th birthday, and (C) elect that a beneficiary receive an annuity immediately upon their death if before age 60. Once a member elects either Option B or C in any category of coverage, that election is irrevocable. Option B and C participants do not make a new SBP election at age 60. They cannot cancel SBP participation or change options they had in the RCSBP. RCSBP coverage automatically converts to SBP coverage upon retirement.

3. Title 10, U.S. Code, section 1448(a)(5), provides that a person who is not married and has no dependent child upon becoming eligible to participate in the Survivor Benefit Plan (SBP) but who later marries or acquires a dependent child may elect to participate in the SBP. Such an election must be written, signed by the person making the election, and received by the Secretary concerned within 1 year after the date on which that person marries or acquires that dependent child. The Defense Finance and Accounting Service interprets the first part of Title 10, U.S. Code, section 1448(a)(5), to mean "who is not married or has no dependent child."

4. The National Defense Authorization Act for Fiscal Year 2023 included an SBP open season. The SBP open season began on 23 December 2022 and ended on 1 January 2024. Retirees who were not enrolled in SBP could enroll during the open season, and retirees who were already enrolled in SBP could permanently discontinue their SBP coverage.

//NOTHING FOLLOWS//