ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 4 June 2025

DOCKET NUMBER: AR20240000865

APPLICANT REQUESTS: placement on the Permanent Disability Retired List (PDRL) in lieu of removal from the Temporary Disability Retired List (TDRL)

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), Member Copy 1, covering the period ending 29 January 1993

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:

a. He was placed on the TDRL and was in this status when he was discharged out of the military. Since then, no one has looked back at his records, which he believes should be upgraded to a permanent status, retiring him from the Army.

b. He has now reached 100 percent total and permanent status with the Department of Veterans Affairs (VA) but believes he should have had a permanent retirement from the Army back before 1993, when he was discharged in a TDRL status.

c. His status was never going to get better, and it hasn’t over the years. He asked to be placed on the PDRL prior to his discharge and was ignored. He should have been medically retired from the Army in 1993, and his injuries are only getting worse.

3. The applicant enlisted in the Regular Army on 1 August 1985.

4. A DA Form 2173 (Statement of Medical Examination and Duty Status) shows the applicant was admitted to Darnall Army Community Hospital on 16 August 1991, after

fracturing his left femur in a motor vehicle accident. This injury was subsequently found to have been incurred in the line of duty (LOD).

5. A multi-paged Medical Evaluation Board (MEB) Narrative Summary (NARSUM), 3 December 1991, has been provided in full to the Board for review, and in pertinent part shows:

a. The applicant's diagnoses were:

- arthrofibrosis of the right knee secondary to right knee dislocation and reconstruction
- fracture of the left femur with early healing
- fracture of the left talus with early healing
- myositis ossificans of the right thigh and knee
- ambulatory deficit secondary to above conditions

b. The recommendations show he was unfit for retention under the provisions of Army Regulation 40-501 (Standards of Medical Fitness).

c. The comments show he had a nearly catastrophic injury to his right knee with a significant injury to his left femur and ankle. He was very early in his rehabilitative course and at that time was doing quite well. His condition was considered unstable at that time. While he was expected to improve, his final ranges of motion and persistent disability could not be ascertained at that time. The board recommended a TDRL status and that he be referred to the Physical Evaluation Board (PEB) for further consideration.

6. A DA Form 3947 (MEB Proceedings) shows an MEB convened on 6 December 1991 and referred him to a PEB for the following conditions:

- arthrofibrosis of the right knee secondary to right knee dislocation and reconstruction
- fracture of the left femur with early healing
- fracture of the left talus with early healing
- myositis ossificans of the right thigh and knee
- ambulatory deficit secondary to above conditions

7. The acronym "PUHLES" 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.

8. A DA Form 3349 (Physical Profile) shows the applicant was given a permanent physical profile with a PULHES of 113111 on 9 December 1991, for the medical condition of post multiple trauma. He was limited in all Army Physical Fitness Test (APFT) events and could not participate in physical training or running.

9. A DA Form 199 (PEB Proceedings) shows:

a. A PEB convened on 8 January 1992, where the applicant was found physically unfit with a recommended combined rating of 30 percent and that his disposition be placement on the TDRL with reexamination in February 1993.

b. His unfitting conditions were:

- fracture of the left femur and left talus with early healing; ambulatory deficient secondary to this and the following condition; rated analogous to malunion of fracture with moderate disability; MEB diagnoses (Dx) 2-5; 20 percent
- arthrofibrosis of right knee secondary to dislocation and reconstruction manifested by myositis ossificans of the right thigh and knee, rated analogous to degenerative joint disease (DJD); MEB Dx 1 and 4; 10 percent

c. He was physically unfit to perform the duties required of his grade and Military Occupational Specialty (MOS); however, his prognosis was good. His current condition was not sufficiently stable for final adjudication.

d. On 11 February 1992, the applicant signed the form indicating he had been advised of the findings and recommendations of the PEB and concurred, waiving a formal hearing of his case.

10. U.S. Army Personnel Command Orders D5-1, 8 January 1993, released the applicant because of physical disability incurred while entitled to basic pay and under conditions which permit his placement on the TDRL effective 30 January 1993, with a 30 percent disability rating.

11. The applicant's DD Form 214 shows he was retired on 29 January 1993, due to physical disability temporary, with corresponding Separation Code SFK. He was credited with 7 years, 5 months, and 29 days of net active service.

12. A U.S. Army PEB memorandum, 19 February 1993, shows the applicant's case was adjudicated by this PEB on 8 January 1992, with a recommended disposition of

placement on the TDRL with a reexamination during February 1993. The PEB agreed to change his TDRL reexamination date to 1 June 1993, in order to keep him on the TDRL the required minimum of 4 months.

13. The applicant's TDRL reexamination documents are not in his available records for review.

14. A U.S. Total Army Personnel Command memorandum, 7 October 1993, transmitted to the applicant the separation documents pertaining to his removal from the TDRL. He was further advised that he would receive no further Army retired payments after the effective date.

15. U.S. Total Army Personnel Command Orders D192-5, 7 October 1993, removed the applicant from the TDRL effective 7 October 1993, because of permanent physical disability with a disability rating of 20 percent and entitlement to severance pay.

16. 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.

MEDICAL REVIEW:

1. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The applicant requests permanent medical disability retirement status. In essence, he contends that he should have been permanently retired when he was removed from TDRL instead of being separated with severance pay.

2. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The applicant was a member of the USAR and entered active duty on 01Aug1985. His MOS was 76C, Equipment & Parts Specialist. He was stationed in Southwest Asia 19901007 to 19910413. He was discharged under provisions of AR 635-40 para 4-24b(2) due to temporary physical disability. He was placed on TDRL effective 30Jan1993. He was permanently discharged from service effective 07Oct1993. His service was characterized as Honorable.

3. DES proceedings

a. The Statement of Medical Examination and Duty Status (DA Form

2173) indicated that while driving a vehicle, the applicant was involved in an accident in Temple, TX on 16Aug1991 and sustained a left femur fracture.

b. The NARSUM, finalized on 03Dec1991, indicated that he had also sustained a left talus (ankle) fracture during the accident. He underwent surgical repair of the left femur (thigh) fracture on 17Aug1991; and surgical repair/reconstruction of the left talar (or talus) fracture and right knee ligamentous soft tissues on 23Aug1991. Recovery was complicated by the development of significant contracture and myositis ossificans around the right knee with resultant severe limitation of motion. His right knee ROM improved after undergoing a manipulation procedure on 04Oct1991. At the time of the MEB exam, he reported residual pain in the left femur, left ankle and right knee. During the exam, a limp was noted on both sides. He could not run or participate in physical training.

c. 06Dec1991 MEB Proceedings (DA Form 3947). The MEB listed the following conditions as not meeting retention standards: Arthrofibrosis of the Right Knee, secondary to right knee dislocation and reconstruction; Fracture of the Left Femur with early healing; Fracture of the Left Talus with early healing; Myositis Ossificans of the Right Thigh and Knee; and Ambulatory Deficit secondary to the above conditions.

d. 09Dec1991 Physical Profile. The permanent L3 profile for Post Multiple Trauma prohibited running, physical training and all APFT events. He was further advised to walk at own pace and distance. A medical board was pending.

e. 22Dec1991 Commander's Statement. Command endorsed that the applicant's performance had been excellent.

f. 08Jan1992 PEB Proceedings (DA Form 199). The PEB found that the following conditions were unfitting for continued service: Fracture of the left femur and left talus with early healing and with secondary ambulatory deficit rated together at 20% under code 5255-5273; and Arthrofibrosis of the right knee secondary to dislocation and reconstruction manifested by myositis ossificans of the right thigh and knee, rated analogous to DJD at 10% under code 5003. The conditions were not sufficiently stable for permanent rating. Therefore, the PEB recommended placement on the Temporary Disability Retirement List (TDRL) with combined total rating at 30%. Re-examination was recommended during 01Feb1993. The applicant concurred and waived a formal hearing of his case.

4. Shortly after placement on TDRL, the 03Mar1992 VA Rating Decision showed a combined rating for Fracture of the Left Femur and Left Talus; and Arthrofibrosis of Right Knee Secondary to Dislocation and Reconstruction Manifested by Myositis Ossificans of the Right Thigh and Knee at 20% under 5255-5273. *This rating is compared to the 30% rating assessed by the PEB convened in January 1992*.

5. The TDRL re-examination that was re-scheduled for 01Jun1993 was not found.

6. The 07Jul1993 VA Rating Decision indicated that the applicant failed to show up for his VA C&P examination; therefore, service connection was established and non-compensable ratings were assigned by the VA to his claimed conditions in order to protect his claim as follows:

- Arthrofibrosis of the Right Knee Secondary to Right Knee Dislocation and Reconstruction at 0% under code 5299-5257
- Status Post Fracture of Left Femur at 0% under code 5255
- Status Post Fracture of Left Ankle at 0% under code 5299-5271
- Total combined rating was 0% effective 30Jan1993

7. One month later, while still in service, the applicant underwent a 06Aug1993 Compensation and Pension Exam VAMC. He endorsed being in good health and he was not taking any medication. He reported the development of shin splints while in service which had resolved. He also reported a 2-week hospital stay for right hand wound infection (on knuckle) after having punched someone in the face while stationed in Korea in 1989 (with residual stiffness). And finally, he reported a 3-month hospital stay after the 1991 car accident at Fort Hood discussed above. *It was a severe accident: The impact of the collision threw the engine back onto the applicant (18Apr1994 C&P Feet Exam)*. Pertinent findings from the August 1993 C&P Exam:

- Hips. Right hip movements/ROM were normal. Left hip flexion was to 140 degrees (normal 125 degrees); and extension was full. External rotation was to 60 degrees (normal) but internal rotation was 0 degrees (normal 40 degrees).
- Knees. There was swelling present in the right knee with decreased ROM: There was flexion was to 100 degrees (normal 140 degrees); and extension was full. There was no right knee instability. The left knee exam was normal.
- Ankle. Left ankle plantar flexion was to 35 degrees (normal 45 degrees); and dorsiflexion was to 10 degrees (normal 20 degrees). There was normal ankle eversion and inversion.
- Right Hand. He had struck someone in the face with his right hand in September 1989, sustaining a laceration from a tooth. Right-hand digits had normal flexion, and extension ranges for all digits and no tenderness over the scar.
- Imaging completed on 06Aug1993 of the left femur, right knee, left talus demonstrated normal healing and alignment and no significant degenerative change or other worrisome signs. There were multiple scars (surgical and traumatic); however, none were tender or unstable.

8. The military record indicated that the applicant was removed from TDRL and permanently discharged from service effective 07Oct1993 with total disability at 20%. The PEB document indicating the rating for each unfitting condition was not found.

9. 06May1994 VA C&P Exam. The applicant walked without a limp and without an assistive device. In addition, he was able to walk on his toes and heels.

10. Two years after discharge from service, the 05Jan1995 VA Rating Decision, showed the following VA ratings, effective 30Jan1993 (the date placed on TDRL), based on the 06Aug1993 and May1994 VA C&P Exams:

- Status Post Right Knee Anterior Cruciate Ligament Repair 10% under 5257.
- Status Post Fracture Left Femur 10% under 5255
- Status Post Fracture Lateral Malleolus Left Ankle 10% under 5271
- Total combined rating was 30%

11. Behavioral Health Condition: PTSD

a. 14Mar1996 Mental Disorders Compensation and Pension Exam VAMC. The applicant was discharged from service approximately 3 years prior. He was working fulltime at the post office. He denied psychiatric problems and deferred psychiatric help. His only complaint was that he did not sleep as well as he did prior to being in the military. Diagnosis: No psychiatric impairment.

b. 06Oct2011 Initial PTSD DBQ VAMC. The applicant endorsed onset of PTSD symptoms while in service; however, he did not seek treatment until 2010. The BH examiner endorsed that the applicant had ongoing characteristic PTSD symptoms meeting DSM IV criteria. The applicant reported the following combat stressors: He witnessed a fellow soldier being crushed as he was caught between 2 heavy military trucks; and he traveled through the highway of death in Kuwait and saw Iraqi military killed by aerial bombing. There was no history of substance abuse, mania, suicide ideation/attempts, violence or psychiatric hospitalization. At the time of the DBQ exam, he was married, he had become a college graduate and was employed full time. He was also going to the gym 3-4 times per week (22Oct2002 Primary Care History and Physical VAMC).

12. Conclusion/Opinion

a. In January 1995 (effective 30Jan1993), the VA gave a 10% rating to each of the 3 conditions: Right knee, left femur and left ankle according to laws governing their agency. By comparison, the Army only rates conditions that have been found unfitting (by the PEB) to continue in service. The PEB originally rated the left femur and left ankle conditions together assessing that they were not separately unfitting. While on TDRL both the left femur and left ankle conditions improved. The left mild abductor weakness in the thigh was not noted during the August 1993 exam. Left ankle dorsiflexion improved slightly from 30 degrees to 35 degrees and extension increased markedly from -5 to 10 degrees. The right knee flexion also improved from 80 degrees

to 100 degrees. Documented ROMs for each of the 3 conditions, left femur, left ankle and right knee, all met retention standards of AR 40-501 chapter 3. There was no documentation that the joints had any reduction in strength or stability in the August 1993 exam. After service, the applicant was able to maintain employment as a postal worker for over 18 years, a job generally considered to rely heavily on ambulation.

b. Again, the PEB document was not found which would designate which conditions continued to be unfitting or if any of the conditions previously found unfitting were no longer unfitting. Based on evidence available for review, there was insufficient evidence to support that the applicant had other conditions including a mental health condition, which failed medical retention standards of AR 40-501 chapter 3 at the time of discharge. In addition, evidence was insufficient to support that the left femur and left ankle conditions should now warrant being considered separately unfitting and therefore should receive separate ratings; or that conditions that were previously found unfitting, warranted a higher rating at the time of discharge. Further medical discharge processing for medical retirement is not warranted

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 and standard review based on law, policy and regulation. The Board carefully reviewed the medical advisory opinion and all evidence of record. The Board concurs with the medical advisory that the evidence does not demonstrate the applicant failed medical retention standards under AR 40-501, Chapter 3, for any mental health condition at the time of discharge. The Board finds insufficient evidence to support that these conditions should be considered separately unfitting. Accordingly, no basis exists to assign separate disability ratings. The Board determined that the ratings assigned at the time of discharge were appropriate given the severity documented. Therefore, the Board denied relief.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	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.

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, 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. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation) 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 Physical Evaluation Board (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.

d. The Temporary Disability Retired List (TDRL) is used in the nature of a “pending list.” It provides a safeguard for the Government against permanently retiring a Soldier who can later fully recover, or nearly recover, from the disability causing him/her to be unfit. Conversely, the TDRL safeguards the Soldier from being permanently retired with a condition that may reasonably be expected to develop into a more serious permanent disability.

e. Requirements for placement on the TDRL are the same as for permanent retirement. The Soldier must be unfit to perform the duties of his/her office, grade, rank, or rating at the time of the evaluation. The disability must be rated at a minimum of 30 percent or the Soldier must have 20 years of service. In addition, the condition must be determined to be temporary or unstable.

f. Soldiers will be placed on the TDRL when they would be qualified for permanent disability retirement and the preponderance of evidence indicates one or more conditions will change within the next 5 years so as to result in a change in rating or a finding of fit. The Army Disability Evaluation System will re-evaluate each Soldier placed on the TDRL at least once every 18 months. Evaluation may be sooner. Once the PEB finds each condition is stable upon evaluation, the PEB will assign a final rating that includes the ratings for the disabilities determined to be permanent and stable when the Soldier was placed on the TDRL or during preceding TDRL adjudications.

g. A final determination of the case of each Soldier on the TDRL will be made at the latest upon the expiration of 5 years after the date when the Soldier was placed on the TDRL. If, at the time of that determination the physical disability for which the Soldier was placed on the TDRL still exists, it will be considered to be permanent and stable. Placement on the TDRL confers no right to remain on the TDRL for the entire 5-year period.

h. If upon reexamination, Soldiers whose disabilities have stabilized and who are not determined fit for duty and meeting medical retention standards for the conditions for which they were placed on the TDRL will be removed from the TDRL and placed on the PDRL if the physical disability rating remains 30 percent or greater. If upon reexamination, the Solider is found unfit for duty and not meeting medical retention standards but the stabilized physical disability percentage is rated at below 30 percent, the Soldier will be removed from the TDRL and separated with severance pay if the Soldier has less than 20 years of active Federal service.

3. 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.

4. 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.

5. 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//