

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 September 2024

DOCKET NUMBER: AR20240000896

APPLICANT REQUESTS: medical retirement instead of discharge with severance pay.

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

- DD Form 149 (Application for Correction of Military Record)
- Integrated Disability Evaluation System (IDES) Medical Evaluation Board (MEB) Narrative Summary (NARSUM)
- DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings)

FACTS:

1. The applicant states he was discharged from the Army with a disability rating of 20% making him "medically separated." He is trying to get his Army disability rating increase to 30% to make him "medically retired." The Department of Veterans Affairs (VA) assigned him a 100% service-connected disability rating. The PEB assigned him 10% disability rating for each knee. He was injured during airborne operations. He was told that they did not take his surgery or future conditions into consideration. He is still in need of surgeries and therapy for just his knees. There are other conditions that the military has failed him on, and he knows he could easily receive an additional 10% rating. For example, he suffers from severe post-traumatic stress disorder (PTSD) and anxiety. He was trying to get help the last two years while he was in Hawaii. He was told by one of the therapists "why do you even come back." His behavioral health medical records were not updated 90% of the time, failing him as a Soldier and as a human being.

2. The applicant enlisted in the Regular Army on 23 January 2012. His record shows service in Iraq in support of Operation Inherent Resolve from 16 September 2017 to 7 June 2018.

3. The applicant's IDES MEB NARSUM shows he was diagnosed with bilateral knee conditions which failed to meet retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness). The NARSUM also shows he was diagnosed with 20 additional conditions, including PTSD, which were deemed to meet retention

standards. The NARSUM further shows the applicant claimed 8 additional conditions with no current medical treatment facility diagnosis or VA diagnosis.

4. On 4 May 2023, a PEB found the applicant unfit for further military service due to:

a. Left knee anterior cruciate ligament reconstruction with lateral meniscus debridement, chondroplasty, osteoarthritis, chondromalacia, fibular, lateral collateral ligament partial tear, sprain, popliteus tendon sprain, injury, quadriceps, suprapatellar fat pad impingement and surgical residuals, flexion (10% rating).

b. Right knee anterior cruciate ligament reconstruction with osteochondral autograft transfer y procedure, chondromalacia, fibular, lateral collateral ligament sprain, injury, posterior collateral ligament scarring, injury, medial meniscus tear with para meniscal cyst, quadriceps, suprapatellar fat pad impingement, and surgical residuals (10% rating).

c. Left knee anterior cruciate ligament reconstruction with lateral meniscus debridement, chondroplasty, osteoarthritis, chondromalacia, fibular, lateral collateral ligament partial tear, sprain, popliteus tendon sprain, injury, quadriceps, suprapatellar fat pad impingement and surgical residuals, extension (0% rating).

5. The PEB recommended a combined 20% disability rating and the applicant's separation with severance pay. The PEB found him fit for 27 additional conditions, including PTSD. On 12 May 2023, the applicant 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.

6. The applicant's DA Form 199 contains the following statements:

a. This case was adjudicated as part of the IDES.

b. As documented in the VA memorandum dated 7 April 2023, 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.

7. The applicant's DD Form 214 shows he was discharged on 20 August 2023 under the provisions of Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation) by reason of disability, severance pay, combat related. The DD Form 214 also shows he was credited with 11 years, 6 months, and 28 days of active service.

8. 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.

9. 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 (perms), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The applicant was separated with severance pay with disability rating at 20% and requests medical retirement at 30%. He contends that he is service connected by the VA at 100%. He specifically contends that the need for future surgery and therapy for his knees was not considered; and that his severe PTSD was also not considered.

2. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The applicant enlisted in the Regular Army 23Jan2012. His MOS was 92A, Automated Logistical. The applicant was deployed in Iraq 16Sep2017 to 07Jun2018. He was discharged on 20Aug2023 under the provisions of AR 635-40 for disability, severance pay, combat related.

3. IDES summary

a. The left knee condition began in June 2013. He heard a pop while running 2 weeks prior. He had an exacerbation of pain in September 2014 and in 2019 in Iraq. He underwent left knee ACL reconstruction, lateral meniscus debridement and chondroplasty on 08Dec2021. The right knee condition began 29Mar2014 during a landing after a jump during basketball play. He underwent right knee ACL reconstruction 28Jun2022. Prior to surgery, conservative care included RICE (rest, ice, compression, and elevation), bracing, anti-inflammatories, muscle relaxants, physical therapy/home exercises and profile restrictions.

b. 24Jan2023 Knee DBQ. Right knee ROM showed flexion to 120 degrees (normal 140 degrees) and extension to 10 degrees (normal 0 degrees) with pain exhibited. Left knee ROM showed flexion to 120 degrees and extension to 5 degrees with pain exhibited. Both knees had estimated flexion to 110 degrees after repeated use. Both knees were status post-surgical repair. Muscle strength testing was 5/5, normal (completed during 24Jan2023 Back Condition DBQ). Both knees showed no evidence of recurrent patellar instability; however, the applicant reported that he regularly used a brace for both knees.

c. 10Mar2023 MEB Proceedings. The MEB found that the following two conditions did not meet retention standards: Left knee anterior cruciate ligament reconstruction with lateral meniscus debridement and chondroplasty, osteoarthritis, chondromalacia, fibular/lateral collateral ligament partial tear/sprain, popliteus tendon sprain/injury, quadriceps/suprapatellar fat pad impingement, and surgical residuals (with history of left knee ACL tear, lateral meniscus tear, and osteochondral defect) (additionally diagnosed by the VA as painful anterior knee scars) and Right knee anterior cruciate ligament reconstruction with osteochondral autograft transfer procedure (OATS), chondromalacia, fibular/lateral collateral ligament sprain/injury, posterior collateral ligament scarring/injury, medial meniscus tear with para meniscal cyst, quadriceps/suprapatellar fat pad impingement, and surgical residuals (with history of right knee ACL tear and osteochondral defect) (additionally diagnosed by the VA as painful anterior knee scars). The MEB determined that the PTSD condition did meet retention standards. The applicant concurred with the MEB's findings and did not request an Impartial Medical Review. The case was referred to the PEB.

d. 07Apr2023 VA's DES Proposed Rating. The narrative indicated the right knee was rated at 10% based on limitation of extension of 10 to 14 degrees. The left knee was rated at 10% for painful motion of the knee/limitation of flexion. The left knee was also rated at 0% based on limitation of extension of 5 to 9 degrees. Painful motion and further loss of function due to repetitive motion were considered.

e. The Informal PEB convened 04May2023 found the following conditions unfitting for continued service: Left knee anterior cruciate ligament reconstruction with lateral meniscus debridement and chondroplasty, osteoarthritis, chondromalacia, fibular/lateral collateral ligament partial tear/sprain, popliteus tendon sprain/injury, quadriceps/suprapatellar fat pad impingement, and surgical residuals, flexion at 10%; Right knee anterior cruciate ligament reconstruction with osteochondral autograft transfer procedure, chondromalacia, fibular/lateral collateral ligament sprain/injury, posterior collateral ligament scarring/injury, medial meniscus tear with para meniscal cyst, quadriceps/suprapatellar fat pad impingement, and surgical residuals at 10%; and Left knee anterior cruciate ligament reconstruction with lateral meniscus debridement, and chondroplasty, osteoarthritis, chondromalacia, fibular/lateral collateral ligament partial tear/sprain, popliteus tendon sprain/injury, quadriceps/suprapatellar fat pad impingement, and surgical residuals, extension at 0%. The PEB recommended disposition was separation with severance pay at 20% total. The applicant concurred with the PEB findings and waved a formal hearing of his case. He did not request reconsideration of the VA ratings.

4. PTSD was service connected by the VA at 70% (VA's DES Proposed Rating dated 07Apr2023).

a. 19May2014 Psychology, Womack AMC. The applicant reported he had a history

of anger problems growing up and indicated he had been kicked out of elementary school. He stated he always had no "filter and said whatever he wanted to say" and had a "really, really short temper mostly when I feel I'm getting disrespected". He reported having received multiple negative counselings for his attitude but denied any Article 15 consequences to date. During childhood, his biologic father was "locked up" throughout middle school and high school. He lived with mother and her boyfriend, a drug dealer and he witnessed related violence as well as domestic violence between them. He also was a victim of sexual abuse by his older male cousin against whom he had to defend himself with a baseball bat. He was self-referred for relationship dissatisfaction and anger issues and (of note), testing was consistent with moderate PTSD symptoms.

b. The applicant participated in anger management group/counseling (2014, 2016/2017), and marriage counseling (2015). He deployed to Iraq in September 2017. He re-engaged in BH treatment in October 2021 for anger issues and trauma (childhood and deployment related). Other issues included stress involving adjusting to a new unit/new place, frustration due to inability to participate in requirements needed for promotion due to his knees, life stressors involving custody issues with ex-wife/marital issues with his current wife/childrearing etc.

c. 21Nov2022 BH Outpatient Desmond Doss Health Clinic. He was beginning participating in CBT (cognitive behavioral therapy)/supportive therapy. He described prior BH treatment as somewhat beneficial at the time but denied ongoing benefit. He endorsed a history of suicide ideation when he was deployed. He denied any current suicide ideation/plan/attempt or violence toward others. He reported auditory hallucinations in the form of screaming voices in his head.

d. 20210622 thru 20220621; 20200708 thru 20210621; and 20190301 thru 20200229 NCO Evaluation Reports showed that the senior rater overall potential for the applicant was deemed 'qualified'.

e. 07Dec2022 BH MEB NARSUM Desmond Doss Health Clinic. He was deemed psychologically fit for full duty. The condition had not required hospitalization; necessitated duty limitations or duty in a protected environment; or interfered with effective duty performance.

f. 16Dec2022 Primary Care Note, Wheeler Aviation Clinic-Schofield. The applicant reported having self-discontinued his only psychotropic medication (venlafaxine) 3 months prior. He believed that the medication had stopped working. He also endorsed that the medicine had initially helped which is consistent with his report that since he stopped taking the medication, he had noticed increased irritability and temper/mood swings, and an overall feeling of being uptight. The provider explained that he had been on 75mg (starting dose) and the plan was to titrate up; however, because the

applicant believed the medicine “stopped working”, the provider prescribed a different medication (sertraline).

g. 06Jan2023 Initial PTSD DBQ Stressors: He was walking a female friend back to her trailer in Bagdad and they found her roommate had shot herself and blown her head off; and his NCO hung himself in July 2018 right after returning from Iraq deployment in the Suicide Watch Room Schofield Barracks. He also reported a history of childhood sexual abuse. He was divorced and in the 3rd year of his second marriage which he described as a “good” marriage. For leisure he played videogames and spent time with his children. The VA examiner opined the occupational and social impairment attributable to PTSD was with deficiencies in most arears, such as work, school, family relations, judgment, thinking and/or mood. It should be noted that the applicant reported auditory hallucinations during the 22Nov2022 visit. Hallucinations/delusions were denied by the applicant and not observed by providers during other BH visits. Per review of BH visits, psychosis was not endorsed by the providers and the applicant was not prescribed an antipsychotic agent. It was noted that ‘persistent delusions or hallucinations’ symptom was not endorsed (listed) by the VA examiner for VA rating purposes for the PTSD condition.

h. 09Jan2023 DES Commander’s Performance and Functional Statement. Command endorsed that the applicant made reasonable decisions, including complex or unfamiliar ones. He had effective work relationships with both supervisors and co-workers. They did not indicate that mental health symptoms interfered with performance of duties.

i. 09May2023 Emergency Medicine Trippler AMC. The applicant felt out of control and about to punch the wall and called EMS because of acute thoughts of suicide in the setting of an argument with his wife over life stressors. In the emergency room, he denied thoughts of suicide or homicide. Emergency room documentation did not indicate that he had received/required any sedation or antianxiety type medication intervention. He endorsed that he felt safe going home and was released. Diagnosis: Acute Stress Reaction. Of note, he had not seen counseling services recently.

j. 09May2023 BH Consultation Trippler AMC. He reported increased arguments With his wife since finding out he would be medically separated from service. He had increasing anxiety regarding related financial stressors and future planning after discharge. Diagnosis: Relationship Distress with Spouse or Intimate Partner; History of PTSD; Assess for Alcohol Disorder. The psychiatrist endorsed that the applicant would benefit from individualized therapy and marital therapy. He was agreeable to medication management and psychotherapy. He was given a referral for outpatient BH.

k. 10May2023 Behavioral Health Outpatient Wheeler Aviation Clinic-Schofield. He

was there for follow up safety check status post emergency room visit. He stated that he was doing well. He found out he was rated 100% by the VA and was very excited about that and about being discharged from the military. From a psychological standpoint, he was deemed fit for full duty. He was able to carry and fire a weapon and he was able to deploy. He was advised and he agreed to continue psychotherapy.

5. Summary/Opinion

a. Despite knee issues before surgery, he continued to pass APFTs (16Jan2020 and 17Feb2021). He passed a third APFT in August 2021 with score 300 (per 20Dec2022 Enlisted Record Brief). After left and right knee surgeries, he had residual knee pain. The PEB determined the right and left knee conditions were unfitting due to physical profile functional activity limitations attributed to these conditions, which made him unable to reasonably perform required duties. The case was adjudicated as part of IDES therefore the ratings were determined by the VA rating authority. Per review of applicable VASRD principles and the 07Apr2023 VA's DES Proposed Rating narrative, no error in rating was found. It should be stated that the Army applies a onetime disability rating, and a rating is applied only to those conditions which have been found unfitting for continued service. The rating is based on the severity of the condition at the time of discharge. The VA under separate regulations may adjust future ratings based on changes in the condition severity over time.

b. Concerning the applicant's PTSD condition, the ARBA Medical Reviewer made the following observations: In the 2 years prior to discharge, the applicant was sporadically engaged with BH services (CBT/supportive therapy). It is important to note that prior to his Iraq deployment in September 2017, his BH symptoms had required multiple encounters with BH services as manifested by anger management counseling (2014, 2016/2017), and marriage counseling (2015). He had a lifelong history of anger issues and conflict with others which while in the military, had resulted in multiple counselings. His PTSD screens were positive although he was not diagnosed with PTSD prior to his deployment. He reported a remote history of suicide ideation while deployed and a more recent brief episode on 09May2023. At the time of discharge, there was no report of ongoing suicide ideation, suicide attempts or violence toward others. The applicant had experienced auditory hallucinations but was not diagnosed with psychosis. There was no report/observed mania. The PTSD condition had not required duty limitations or protected work environment; Command did not endorse that there were any mental health symptoms which impaired performance of duty; the condition had not required frequent emergency room visits, extended, or prolonged absence from work or hospitalization. Near the time of discharge, the PTSD condition was evaluated by different BH specialists including a licensed clinical social worker (10May2023), a psychiatrist (08May2023), and a doctor of psychology (07Dec2022) and all concurred the applicant was psychologically fully fit for duty. His 10Mar2023 permanent physical profile showed S1. Based on the records available for review, the

evidence was insufficient to support that the PTSD condition failed medical retention standards of AR 40-501, chapter 3. Referral for further medical discharge processing 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 applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. The evidence of record shows an informal physical evaluation board (IPEB) found the applicant's medical conditions of left knee and right knee unfitting. The IPEB recommended a combined 20% disability rating and the applicant's separation with severance pay. The IPEB considered multiple other conditions but found him fit for 27 additional conditions, including PTSD. The applicant concurred with the IPEB's findings and recommendations and waived a formal hearing of his case. He did not request reconsideration of his VA ratings. Since his disability rating was less than 30%, he received severance pay. The Board found no error or injustice in his disability separation processing, and he provides no evidence of an error or an injustice.

b. Also regarding the PTSD condition, the Board reviewed and agreed with the medical reviewer's finding that near the time of the applicant's separation, the PTSD condition was evaluated by different behavioral health specialists including a licensed clinical social worker, a psychiatrist, and a doctor of psychology and all concurred the applicant was psychologically fully fit for duty. Therefore, the Board agreed that based on the records available for review, the evidence was insufficient to support that the PTSD condition failed medical retention standards of AR 40-501, chapter 3, and thus his referral for further medical discharge processing is not warranted.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system 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.

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.

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.

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%.

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. Section 1556 of Title 10, U.S. Code, 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 ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//