

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 November 2024

DOCKET NUMBER: AR20240001263

APPLICANT REQUESTS: physical disability retirement in lieu of physical disability separation with severance pay, through an increase to his disability rating from 0 percent to a minimum of 30 percent

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) covering the period ending 21 October 2023
- Department of Veterans Affairs (VA) Rating Decision, dated 11 November 2023
- VA letter, dated 14 November 2023

FACTS:

1. The applicant states his separation type is currently “discharged” due to the proposed rating he received in his Medical Evaluation Board (MEB) for his referred condition brokered at 0 percent. When he received his final ratings from the VA, his MEB referred condition was finalized at 60 percent, which meets the minimum 30 percent threshold to attain the status of retired for this condition. He is requesting for his status to be changed to retired.
2. The applicant enlisted in the Regular Army on 24 October 2016, and was awarded the Military Occupational Specialty (MOS) 19D (Cavalry Scout).
3. The applicant deployed to Iraq from 2 May 2018 through 12 January 2019.
4. The applicant’s DA Form 3349 (Physical Profile), DA Form 7652 (Disability Evaluation System (DES) Commander’s Performance and Functional Statement), Medical Evaluation Board (MEB) Narrative Summary (NARSUM), DA Form 3947 (MEB Proceedings), VA Compensation and Pension (C&P) Exam, and VA Proposed Rating Decision for DES purposes, are not in his available records for review and have not been provided by the applicant.

5. The applicant's DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings) shows:

a. An Informal PEB (IPEB) convened on 25 August 2023, where the applicant was found physically unfit with a recommended rating of 0 percent and that his disposition be separation with severance pay.

b. The applicant's unfitting conditions is history of pulmonary embolism on long-term anticoagulation (MEB diagnosis (Dx) 1); 0 percent. The Soldier sought treatment for chest pain on 20 September 2021, while station at Fort Johnson, LA.

c. Testing revealed a left-sided pulmonary embolism. Following treatment, he was placed on a trial of anticoagulation medication. Anticoagulation medication was restarted in August 2023 and is expected to be indefinite. In accordance with Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), he is unfit because his DA Form 3349, Section 4, functional activity limitations associated with this condition make him unable to reasonably perform required duties. Although the VA Rating Decision lists pulmonary embolism with asthma, COVID-19, status post with residual reactive airway dysfunction and pneumonia together and awarded 0 percent for it, the discussion in the narrative portion of the VA Rating Decision discusses how the rating for the pulmonary embolism was determined. Per the applicant's DA Form 3947, the asthma, COVID-19, status post with residual reactive airway dysfunction, and pneumonia conditions meet retention standards and there is no indication they are unfitting.

d. The IPEB determined the applicant is fit for the conditions listed in MEB Dx 2-21.

e. The applicant signed the form on 29 August 2023, indicating he had been informed of the findings and recommendations of the PEB and did not concur, but waived a formal hearing of his case and did not attach an appeal. He did request reconsideration of his VA disability ratings.

6. Headquarters, Joint Readiness Training Center and Fort Johnson Orders 262-0313, dated 19 September 2023, discharged the applicant due to physical disability with severance pay with a disability rating of 0 percent effective 20 October 2023.

7. The applicant's DD Form 214 shows he was honorably discharged under the provisions of Army Regulation 635-40, due to disability with severance pay, non-combat related, with corresponding separation code JEB, effective 20 October 2023. He was credited with 6 years, 11 months, and 28 days of net active service.

8. The applicant's VA Rating Decision, dated 11 November 2023, shows the VA granted the applicant a service-connected disability rating effective 22 October 2023, for the following conditions:

- asthma with pulmonary embolism, and COVID-19, status post with residual reactive airway dysfunction, pneumonia, 60 percent
- irritable bowel syndrome (IBS) with gastroesophageal reflux disease (GERD), 30 percent
- scars, face, 30 percent
- migraines, 30 percent
- adjustment disorder with mixed anxious and depress mood, chronic, insomnia disorder, 30 percent
- left shoulder impingement syndrome, rotator cuff tendonitis (non-dominant), 20 percent
- right shoulder impingement syndrome, rotator cuff tendonitis (dominant), 20 percent
- lumbosacral spine strain, thoracic spine strain, 20 percent
- cervical spine strain, 20 percent
- left hip trochanteric pain syndrome, limitation of flexion, 10 percent
- right hip trochanteric pain syndrome, limitation of flexion, 10 percent
- right knee patellofemoral pain syndrome, 10 percent
- left knee patellofemoral pain syndrome, 10 percent
- bilateral shin splints, 10 percent
- right ankle deltoid ligament sprain, 10 percent
- left ankle deltoid ligament sprain, 10 percent
- bilateral pes planus, plantar fasciitis, 10 percent
- tinnitus, 10 percent
- scar, back, 10 percent
- acne, 10 percent
- left lower extremity radiculopathy, sciatic nerve, 10 percent
- right hip trochanteric pain syndrome, limitation of extension, 0 percent
- left hip trochanteric pain syndrome, limitation of extension, 0 percent
- left hip trochanteric pain syndrome, thigh impairment, 0 percent
- right hip trochanteric pain syndrome, thigh impairment, 0 percent
- hypertension, 0 percent
- erectile dysfunction, 0 percent
- scars, left lower extremity, 0 percent
- scar, right hip, 0 percent
- scars, left upper extremity, 0 percent
- scars, right hand, 0 percent
- tinea pedis, 0 percent
- pilar cyst, scalp, 0 percent

9. A VA letter, dated 14 November 2023, informed the applicant of the above VA Rating decision, detailing the ratings and approved service-connected conditions.

10. Title 38, CFR, Part IV is the VA's schedule for rating disabilities. 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 his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

11. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an increase in his military disability rating with a subsequent change in his separation disability disposition from separated with disability severance pay to permanently retired for physical disability. He states in part:

"When I received my final ratings from the VA my referred condition from my MEB was finalized at 60% which meets the minimum 30% threshold to attain the status of retired from the referred condition in a MEB. I am requesting for my status to be changed to retired."

c. The Record of Proceedings details the applicant's service and the circumstances of the case. His DD 214 shows he entered the Regular Army on 24 October 2016 and was honorably discharged with \$51,966.60 of disability severance pay on 21 October 2023 under provisions provided in chapter 4 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (19 January 2017).

d. 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 limiting 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).

e. Soldiers then receive one set of VA Disability Benefits Questionnaires (DBQ – aka 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.

f. 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.

g. On 4 May 2023, the applicant was referred to the IDES for "History of Pulmonary Embolism on Long-Term Anticoagulation Therapy." The applicant claimed twenty additional conditions on a separate Statement in Support of Claim (VA Form 21-4138). A medical evaluation board (MEB) determined the referred condition failed the medical retention standards of AR 40-501, Standards of Medical Fitness. They determined twenty additional medical conditions met medical retention standards.

h. On 24 July 2023, the applicant concurred with the MEB's decision, declined the opportunities to request an impartial medical review and/or submit a written appeal, and his case was then forwarded to a physical evaluation board (PEB) for adjudication. The applicant's informal PEB found his "History of pulmonary embolism on long-term anticoagulation" to be his sole unfitting condition for continued military service and that the remaining twenty conditions were no unfitting for continued military serviced. They applied the VA derived disability rating of 0% and recommended the applicant be separated with disability severance pay.

i. From his 21 August 2023 IDES VA Ratings Decision:

“Your pulmonary vascular disease warrants a non-compensable evaluation based on: • Asymptomatic, following resolution of pulmonary thromboembolism

Ratings under diagnostic codes 6600 through 6817 and 6822 through 684 7 may not be combined with each other. In such cases, as in yours, a single rating will be assigned under the diagnostic code that reflects the predominant disability with elevation to the next higher evaluation where the severity of the overall disability warrants such elevation. {38 CFR §4.96}

We have assigned a non-compensable evaluation for your pulmonary vascular disease based on:

- Asymptomatic, following resolution of pulmonary thromboembolism

j. On 29 August 2023, after being counseled on the Board’s findings and recommendation by his PEB liaison officer, he non-concurred with the PEB but both waived his right to formal hearing and declined to submit a written appeal. He did request a VA reconsideration of his rating (VARR).

k. The VA maintained the non-compensable, i.e., 0% rating, stating in part:

“It is proposed to continue the evaluation of pulmonary embolism [PE] with asthma, COVID-19, status-post with residual reactive airway dysfunction, pneumonia (also claimed as history of pulmonary embolism on long term anticoagulation therapy) as 0 percent disabling. (38 CFR 3.321, 38 CFR 4.1)

Request for reconsideration dated and received 8-30-23 asks for a 60% evaluation for pulmonary embolism with asthma, COVID-19 status post residual reactive airway, pneumonia based on need for long term anti-coagulation treatment and risk of repeated PE events. Treatment record notes resolution of pain on Apixaban. He does have at least 2 risk factors for developing a repeat clot. He is amendable to treating with anticoagulation to prevent repeat venous thromboembolism. No additional PE have been noted.

Review of VA exam notes pulmonary embolism, asymptomatic following resolution of pulmonary thromboembolism.

The overall evidence supports the 0% evaluation assigned based on pulmonary embolism, asymptomatic following resolution of pulmonary thromboembolism. In order to qualify as a chronic PE, there has to be evidence of more than one PE that

requires anticoagulant therapy. The fact that there is increased risk of PE is not considered evidence of a chronic PE.

We have assigned a 0 percent evaluation for your pulmonary embolism with asthma, COVID-19, status post with residual reactive airway dysfunction, pneumonia based on: • Asymptomatic, following resolution of pulmonary thromboembolism”

l. With no change in his disability rating and no appeal to address, his case approved Secretary of the Army on 14 September 2023.

m. JLV shows he has been awarded multiple VA service-connected disability ratings, including ratings for asthma, facial scars, migraine headaches, and irritable colon. He has no ratings related to his military disability.

n. 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.

o. It is the opinion of the ARBA medical advisor that neither an increase in his military disability rating nor a referral of his case back to the DES is 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 shows the applicant was referred to the disability system for “History of Pulmonary Embolism on Long-Term Anticoagulation Therapy.” He also claimed twenty additional conditions. An MEB determined the referred condition failed the medical retention standards of AR 40-501, Standards of Medical Fitness while the additional twenty conditions medical conditions met medical retention standards. An informal PEB found his “History of pulmonary embolism on long-term anticoagulation” to be his sole unfitting condition for continued military service and that the remaining twenty conditions were no unfitting for continued military serviced. The informal PEB





REFERENCES:

1. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRBs) and Boards for Correction of Military/Naval Records (BCM/NRs) when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), sexual assault, or sexual harassment. Boards are to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based, in whole or in part, on those conditions or experiences.

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 physical disability evaluation system (DES) and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 (Discharge Review Board (DRB) Procedures and Standards) and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in a Medical Evaluation Board (MEB); when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an Military Occupational Specialty (MOS) Medical Retention Board (MMRB); and/or they are command-referred for a fitness-for-duty medical examination.

b. The disability evaluation assessment process involves two distinct stages: the MEB and Physical Evaluation Board (PEB). The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the severity of the disability and length of military service. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

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

3. Army Regulation 635-40 establishes the Army Disability Evaluation System and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

a. Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in military service.

b. Soldiers who sustain or aggravate physically-unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

- 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.
- The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

c. The percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Ratings are assigned from the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD). The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting, or ratable condition, is one which renders the Soldier unable to perform the duties of their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. Only the unfitting conditions or defects and those which contribute to unfitness will be considered

in arriving at the rated degree of incapacity warranting retirement or separation for disability.

4. Title 10, U.S. Code (USC), 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%. Title 10, USC, 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%.

5. Title 38, USC, 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.

6. Title 38, USC, 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. Also Title 10, USC, 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//