IN THE CASE OF: [redacted]

BOARD DATE: 30 October 2024

DOCKET NUMBER: AR20240001398

APPLICANT REQUESTS: through Counsel:

a. reevaluation through IDES, resulting in an increase to his physical disability rating through the inclusion of additional unfitting conditions, including but not limited to post-traumatic stress disorder (PTSD) and plantar fasciitis.

b. in effect, adjustment of his creditable service for retired pay to reflect 20 years.

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

- DD Form 149 (Application for Correction of Military Record)
- Counsel's brief
- applicant's self-authored statement
- Medical Record, dated 16 May 2005
- Medical Record, dated 9 June 2005
- Medical Record, dated 13 December 2007
- Progress Notes, dated 25 September 2009
- Department of Veterans Affairs (VA) Disability Benefits Questionnaires (DBQs) for Hypertension, Scars/Disfigurement, Male Reproductive Organ Conditions, Foot Conditions, Including Flatfoot (Pes Planus), Hernias, General Medical, and Hearing Loss and Tinnitus, dated 26-27 May 2021
- VA Medical Opinion DBQs for Hypertension, Hernias, and Hearing Loss and Tinnitus, dated 26-27 May 2021
- Integrated Disability Evaluation System (IDES) Narrative Summary (NARSUM), dated 7 June 2021
- DA From 199 (Informal Physical Evaluation Board (PEB) Proceedings), dated 30 August 2021
- [redacted] therapist's letter, dated 23 February 2022
- wife's statement, dated 6 March 2022
- Office of Soldiers' Counsel memorandum, dated 11 April 2021 (sic 2022)
- Soldiers' PEB Counsel email, dated 13 April 2022
- DA Form 199-2 (U.S. Army Physical Disability Agency (USAPDA) Revised PEB Proceedings), dated 20 April 2022

- Headquarters, USAPDA memorandum, dated 20 April 2022
- printout of VA Disability Ratings, dated 16 November 2022

FACTS:

1. Counsel states:

a. The applicant requests that his records be corrected to add the diagnosis of PTSD as a disqualifying condition of service, which was incurred prior to his separation. He requests evaluation before a medical review board, with a directive to evaluate his PTSD as a condition to add to his military disability retirement.

b. The applicant grew up in [redacted] During his early years, he was actively involved in the Boy Scouts, progressing from Tiger Cubs to Life Scout. However, high school and subsequent community college was marked by a lack of focus, leading him to withdraw from his courses. He worked at Blockbuster video, and it became evident that he was going nowhere fast. It was at that point, that he began seriously considering a career in the Army. He spoke to a recruiter, and decided he wanted to serve his country while gaining valuable skills that could also be applied in civilian life.

c. The applicant served honorably for 19 years and 2 months, both on active duty and as a member of the Army National Guard (ARNG). His primary duties were as an Air Traffic Controller (15Q). Between February and April 2005, he deployed to Afghanistan in support of Operation Enduring Freedom, and was assigned to Forward Operating Base (FOB) Salemo. On 22 April 2005, while deployed, he began having pain in the right groin region. He was sent to [redacted] where he was evaluated on 16 May 2005, and diagnosed with a right inguinal hernia. On 26 May 2005, he underwent surgery to repair the hernia. Three months later, in September of the same year, he continued to experience pain, and was again seen at [redacted]. He reported occasional pain post-surgery during certain activities. He reported pain after carrying loads in the field. He was placed on limited duty with physical restrictions. (See attached medical records from [redacted] dated 6 September 2005).

d. On 13 December 2007, the applicant was again seen for continued right lower quadrant pain. He was told that it could be scar tissue or nerve injury. A computed tomography (CT) scan was ordered, which did not turn up any findings. He had a physical on 25 September 2009, where he reported chronic pain since having his surgery. The right groin pain was attributed to scarring.

e. As there was no real option for pain relief, he continued to live with chronic pain. He didn't receive his first temporary profile until May 2018, when he returned to see a doctor with pain complaints in the right groin area. His first permanent profile was issued 12 January 2020. As he continued to report pain symptoms with activity, that could only

be abated by duty restrictions an rest, the applicant was referred to a medical review board by Dr. [redacted] his treating physician.

f. On 7 June 2021, Dr. [redacted] wrote a NARSUM for IDES. In the NARSUM Dr. [redacted] listed seven conditions identified in the VA Compensation & Pension (C&P) examination. There were multiple evaluations at the VA performed in preparation for the IDES. Relevant DBQ evaluations are attached.

g. Other conditions that met medical retention standards were hypertension, right plantar fasciitis, bilateral changes in hearing thresholds, tinnitus, erectile dysfunction, and a scar in the right groin area After the NARSUM, the only condition not meeting retention standards was the right inguinal hernia repair with post-operative chronic pain syndrome. The applicant's case was hen referred to the Informal PEB, which determined a 10 percent rating to be appropriate for the right hernia condition. The applicant, through counsel, submitted a rebuttal to the IPEB and requested a formal PEB hearing. The main issue at that time was whether he was unfit for duty due to the plantar fasciitis. The Formal PEB concluded with the same result as the Informal PEB, and SFC Fox submitted a formal rebuttal. The applicant again requested a reevaluation of his right plantar fasciitis condition. The PEB found that the condition was not unfitting and affirmed the medical separation with a 10 percent rating. (See PEB Rebuttal Results)

h. After the Formal PEB denied his request for a different rating, he was medically discharged on 15 June 2022. On 26 July 2022, the applicant received a notification letter of his eligibility for 1 tired pay for non-regular service. Before his separation, he was evaluated at the VA, and is currently rated 100 percent disabled for multiple conditions: asthma (30 percent), migraine headaches (30 percent), painful scar, right groin (10 percent), plantar fasciitis, left foot (10 percent), tinnitus (10 percent), status post right inguinal hernia repair (10 percent), PTSD with major depressive disorder, recurrent episode, moderate (70 percent), allergic rhinitis (10 percent) and gastroesophageal reflux disease (GERD) (30 percent). Several of these issues were not listed on the applicant's IDES paperwork, as they were noted and diagnosed by the VA independently. Most notable is his PTSD, which is the basis for this petition before the Board, along with his documented plantar fasciitis.

i. In preparation for his medical board, the applicant was sent to the VA for evaluation of his conditions. Of note, his examination for plantar fasciitis, he was diagnosed with plantar fasciitis of the right foot on 24 May 2021. He noted pain to the right foot when standing for long periods, and an impact that prevents him from running and working out. He further noted that he had difficulty sanding for long periods of time and walking long distances. The treating physician found that there was evidence that the diagnosed condition impacted his ability to perform his occupational tasks. As such, this condition should have been considered service disqualifying. There is a minimum

10 percent rating for plantar fasciitis under VA diagnostic code 5269, regardless of treatment. The applicant should have properly been rated at 10 percent for his diagnosed, service impacting condition of plantar fasciitis.

j. On 24 May 2021, during the medical history screening at the VA, the applicant presented with a positive initial screening for PTSD. He reported having nightmares, trying hard not to think about events, and being constantly on guard and easily startled. (See General Medical Health Assessment) As a result, he was referred for evaluation for PTSD. On 3 March 2022, a DBQ was completed regarding PTSD. (See PTSD DBQ,) In this report, [redacted] Ph.D., opined that the applicant's PTSD was service connected, and had symptoms of difficulty in maintaining effective work relationships, difficulty in adapting to stressful circumstances, mild memory loss, sleep impairment, and other conditions. Prior to this, he was seen by the Samaritan Center on his own, and was also diagnosed with PTSD by them on 23 February 2022. (See attached medical record from Samaritan Center)

k. The basis of the applicant's PTSD was centered around his deployment as an air traffic controller on FOB Salerno, Afghanistan in 2004. He served as part of the 3-58th Aviation Regiment. His air traffic control team was attached to the 12th Combat Aviation Brigade. While there, they received frequent rocket attacks. One attack landed on base, and the concussion from the explosion woke him up. He described feeling as if all the breath had been sucked out of him. He continues to have sleep disturbance, waking 2-3 times per night, intrusive thoughts, nightmares, flashbacks, difficulty concentrating and irritability. When triggered, he finds himself remembering traumatic events from deployment, and has a strong physical reaction with his heart pounding, profuse sweating, fear, and a feeling that he cannot breathe. (See attached statement from Samaritan Center).

l. The applicant received his PTSD diagnosis between the Informal PEB and the Formal PEB; however, this was not added to his service disqualifying conditions, even though the VA rated him at 70 percent disabled due to the following documented symptoms:

- anxiety
- chronic sleep impairment
- depressed mood
- difficulty in adapting to a work like setting
- difficulty in adapting to stressful circumstances
- difficulty in adapting to work
- difficulty in establishing and maintaining effective work and social relationships
- disturbances of motivation and mood
- forgetting directions

- forgetting names
- forgetting recent events
- mild memory loss
- occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks (although generally functioning satisfactorily, with routine behavior, self-care, and conversation normal)
- suicidal ideation
- suspiciousness (See attached VA rating dated 16 March 2022)

m. Many of these symptoms directly impacted the applicant's ability to perform his duties, and as a result, were service disqualifying. Dealing with his PTSD diagnosis was difficult for him. As is the situation with many servicemembers, he was in denial about the impact it was having in his life. It wasn't until his wife urged him to get help that he finally considered the effects the PTSD had been having on his life. At this time, he asked his Army lawyer about the possibility of adding it to his disability processing, but was told it was too late. (See attached email from his Medical Evaluation Board (MEB) Counsel) However, after the VA completes its evaluation, all conditions are to be listed on the PEB paperwork, regardless of whether they are service disqualifying or not. The applicant now understands that the complexities of the disability evaluation process and his initial reluctance to acknowledge his severe struggle with PTSD due to its stigma contributed to his failure to verify its inclusion in the IDES process.

n. In March 2022, the applicant's wife, wrote a statement regarding her husband's PTSD. In it, she describes the symptoms that her husband lives with, as well as the difficulty he had in even filling out the PTSD evaluation form. The applicant felt like if he had to actually bring up and talk about all he was feeling, it would only make it worse. However, through the encouragement of his wife, he filled out the paperwork and was evaluated by [redacted]. In her letter, she describes her husband's symptoms.

o. While the PTSD information and diagnosis was done before the Formal PEB, the condition was not added and evaluated during the IDES. The VA rated the applicant 70 percent disabled for his PTSD, effective 30 September 2021. (See attached VA ratings) His Informal PEB was 1 month prior to this, and the Formal PEB not until 2022. However, neither the applicant's counsel nor the government updated the list of unfitting conditions to add PTSD. This was clearly an error, as all conditions are to be listed and processed during the IDES process. After the VA completes its evaluations, all conditions are to be listed on the IDES paperwork, regardless of their determination of impact on duty performance. As the PTSD was not included, it was not given proper e evaluation or consideration during the IDES process and this is an error. As he met criteria for a 70 percent rating , he should have been evaluated at the MEB/PEB level. The diagnostic criteria is as follows, for PTSD:

(1) Total occupational and social impairment, due to such symptoms as: gross impairment in thought processes or communication; persistent delusions or hallucinations grossly inappropriate behavior; persistent danger of hurting self or others; intermittent inability to perform activities of daily living (including maintenance o minimal personal hygiene); disorientation to time or place; memory loss for names of close relatives, own occupation, or own name. 100 percent.

(2) Occupational and social impairment, with deficiencies in most areas, such as work, school, family relations, judgment, thinking, or mood, due to such symptoms as: suicidal ideation; obsessional rituals which interfere with routine activities; speech intermittently illogical, obscure, or irrelevant; near-continuous panic or depression affecting the ability to function independently, appropriately and effectively; impaired impulse control (such as unprovoked irritability with periods of violence); spatial disorientation; neglect of personal appearance and hygiene; difficulty in adapting to stressful circumstances (including work or a work like setting); inability to establish, find, maintain effective relationships. 70 percent.

(3) Occupation and social impairment with reduced reliability and productivity due to such symptoms as: flattened affect; circumstantial, circumlocutory, or stereotyped speech; panic attacks more than once a week; difficulty in understanding complex commands; impairment of short- and long-term memory (e.g., retention of only highly learn d material, forgetting to complete tasks); impaired judgment; impaired abstract thinking; disturbances of motivation and mood; difficulty in establishing and maintaining effective work and social relationships. 50 percent.

(4) Occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks (although generally functioning satisfactorily, with routine behavior, self-care, and conversation normal), due to such symptoms as: depressed mood, anxiety, suspiciousness, panic attacks (weekly or less often), chronic sleep impairment, mild memory loss (such as forgetting names, directions, recent events). 30 percent.

(5) Occupational and social impairment due to mild or transient symptoms which decrease work efficiency and ability to perform occupational tasks only during periods of significant stress, or symptoms controlled by continuous medication. 10 percent.

(6) A mental condition has been formally diagnosed, but symptoms are not severe enough either to interfere with occupational and social functioning or to require continuous medication. 0 percent.

p. As stated above, the applicant received a 70 percent rating for PTSD during the IDES process. This Board has the ability to take the PTSD into consideration when determining the proper rating he should have received at his retirement if the PTSD had

been properly considered. The applicant's wife and the [redacted] all report conditions meeting the criteria for a 70 percent rating during his time in the [redacted] ARNG. His difficulty to adapt to stressful situations impaired judgment, and mood and inability to concentrate certainly affected his ability to serve as an air traffic controller. His commander was not asked to comment on how the PTSD may or may not have impacted his duty performance, as it was not properly referred through IDES channels. However, the applicant, in his personal statement, describes how the PTSD affected his performance of his military duties. He listed several instances of actions taken by him in order to avoid deployment, to include switching units, declining voluntary deployment, and not waiving stabilization.

q. In light of the above and attached evidence, the applicant respectfully requests a new a MEB and PEB to properly evaluate all of his service disqualifying conditions, including plantar fasciitis and PTSD. In addition, he requests that the time needed to convene a new MEB and PEB be credited toward his retirement, as he was separated just shy of his 20 years needed for retirement with only a 10 percent disability rating.

2. The applicant states:

a. He is compelled to share his journey, particularly during his medical retirement process, as he seeks to convey the full scope of challenges he faced due to injuries sustained on active duty. His experiences with PTSD are central to this narrative, embodying a journey of self-discovery and healing profoundly shaped by his military service. He hopes that by candidly presenting his story, the Board can gain insight into the complexities of his situation and reconsider his retirement type while accounting for all his conditions.

b. His military service was characterized by unwavering commitment and dedication to duty. Unfortunately, it was curtailed due to injuries sustained on active duty, both physical and psychological, which not only compromised his ability to continue serving, but also led to a challenging medical retirement process, including the realization that he had not initially listed all his conditions. Navigating the complexities of a medical retirement, coupled with his initial reluctance to a knowledge his severe struggles with PTSD due to its stigma, contributed to these oversights.

c. As part of the medical retirement process, he received counseling, during which the severity of his PTSD became apparent. Despite this, he was advised against adding additional conditions due to the stage of the process. This counsel, while given in the context of the situation, underscores the difficulties in addressing mental health concerns within the military bureaucracy.

d. His PTSD stems from the harrowing experiences during his service in Afghanistan, where rocket attacks and the tragic loss of friends in a helicopter crash

deeply impacted his mental wellbeing. The toll of witnessing such traumatic events has been a significant contributor to the challenges he has faced both during his military service and in the subsequent years. It is important to note that his struggles with PTSD persist: nightmares, flashbacks, thoughts of suicide, and an overwhelming discomfort outside of his house continue to be daily battles. These ongoing challenges further highlight the profound impact of his military service on his mental health and underscore the urgency of a thorough reconsideration by the Board.

e. There is no doubt in his mind that he would not be able to deploy. The mere thought of being back in a similar situation is crippling. The psychological toll that the prospect of deployment takes on him is immense, affecting not only his daily life, causing him to not sleep and increasing his blood pressure and anxiety, but also rendering the idea of returning to a similar environment an insurmountable challenge.

f. The burden of PTSD not only affected his overall well-being, but also presented substantial challenges in fulfilling his military duties. While attending weekend drills remained manageable, the prospect o deployment or being away from home became overwhelming obstacles. Skirting deployment by not waiving stabilization during his transition from active duty to the ARNG, declining a partial unit voluntary deployment, and even eventually changing units were all decisions he made to avoid further deployment, in an attempt to navigate these challenges.

g. Dealing with the cumulative impact of physical injuries and PTSD led him to adopt unhealthy coping mechanisms. The turning point in his journey came when his wife, recognizing signs that he couldn't see for himself, insisted he seek treatment. It was through her encouragement that he took the crucial step of engaging in counseling, providing a foundation for understanding and addressing his struggles.

h. As he reflects on his journey, he is compelled to request the Board to reconsider my retirement type. He believes that a comprehensive review of his case, taking into account all of his conditions and the ongoing nature of his struggles with PTSD, will provide a more accurate representation of the challenges he faced during his military service. This reconsideration is not only critical for his personal well-being but also aligns with the principle of ensuring justice and fairness in the evaluation of military retirements.

i. The transition to civilian life posed its own set of challenges, but the resilience developed through these experiences has been instrumental. Integrating the lessons learned from ongoing talk therapy, and his experiences with reprocessing trauma through eye movement desensitization and reprocessing (EMDR), he is actively working to build a stable and fulfilling post-military existence. His experiences fuel a commitment to mental health advocacy. He is dedicated to breaking down the barriers that prevent individuals from seeking help and challenging the stigmas associated with PTSD. By

sharing his story, he hopes to contribute to a more compassionate and understanding society, particularly within the veteran community.

j. In conclusion, his journey reflects the intricate interplay of physical and mental health challenges during his military service. Through seeking help, building a support network, and embracing the lessons learned, he is navigating a path toward healing and growth. It is his sincere hope that the Board considers his request for a thorough reevaluation, taking into account the totality of his conditions and his ongoing struggles with PTSD, and allows for a fair and just resolution to his case.

3. The applicant enlisted in the Regular Army on 22 May 2003, and was awarded the Military Occupational Specialty (MOS) 15Q (Air Traffic Control Operator).

4. The applicant deployed to Afghanistan from 22 February 2005 through 22 April 2005.

5. The applicant provided three Medical Records dating from his period of Regular Army service which show:

a. A Medical Record, dated 15 May 2005, shows the applicant was seen at General Surgery Clinic on the date of the form with a primary diagnosis of inguinal hernia on the right. He had noticed a right groin bulge after returning from deployment, noted after a bad coughing spell in Afghanistan. He was scheduled for surgery on 26 June 2005.

b. A Medical Record, dated 9 June 2005, shows the applicant was seen at Primary Care clinic with a primary diagnosis of folliculitis for mole removal.

c. A Medical Record, dated 13 December 2007, shows the applicant was seen at Lyster Army Community Hospital (ACH), Fort Rucker, AL, Aviation Medicine Clinic with a primary diagnosis of abdomen tenderness for status post (s/p) hernia surgery/abdomen pain for 2 weeks. He had seen several providers for continued right lower quadrant pain after hernia surgery 2 years ago and sates he was told it could be scar tissue or nerve injury, but wanted a second opinion. A CT scan was ordered and he was given a temporary physical profile for not sit-ups and no push-ups.

6. U.S. Army Installation Management Command Orders 009-0500, dated 9 January 2009, reassigned the applicant to the Fort Rucker, AL, transition point for transition processing effective 20 May 2009, with release from active duty effective 20 May 2009 and reassignment to the U.S. Army Reserve (USAR) Control Group (Reinforcement) for completion of his service obligation which ended on 17 March 2011.

7. A DA Form 5691-R (Request for Reserve Component Assignment Orders), dated 9 March 2009, shows the applicant voluntarily requested assignment orders to a unit in the ARNG in conjunction with enlistment in the ARNG.

8. U.S. Army Installation Management Command Orders 068-0501, dated 9 March 2009, amended above Orders 009-0500 to show the applicant's reassignment to a unit in the ARNG after release from active duty in lieu of reassignment to the USAR Control Group (Reinforcement).

8. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably released from active duty on 20 May 2009, due to completion of required active service with corresponding separation code MBK, and transferred to a unit in the ARNG. He was credited with 5 years, 11 months, and 29 days of net active service.

9. Progress Notes, dated 25 September 2009, show the applicant was seen at the VA Clinic to establish care in their clinic and underwent examination on that date. He did not have any acute complaints, but had some chronic complaints of right groin pain since right inguinal herniorrhaphy several years prior. He also indicated right foot pain and a history of hypertension.

10. The applicant's National Guard Bureau (NGB) Form 23A (ARNG Current Annual Statement) shows he entered ARNG Active Guard Reserve (AGR) service under Title 32, U.S. Code, and State Controlled and ARNG Active Duty for Operational Support (ADOS) under title 32 U.S. Code effective 8 April 2010, and remained in that status through 31 October 2015. On 1 November 2015, he reverted to his prior status as an ARNG unit member.

11. Multiple VA DBQs and corresponding medical opinions where provided for Hypertension, Scars/Disfigurement, Male Reproductive Organ Conditions, Foot Conditions, Including Flatfoot (Pes Planus), Hernias, General Medical, and Hearing Loss and Tinnitus, all dated 26 - 27 May 2021, and reflective of examinations the applicant underwent for those conditions between 24 – 27 May 2021, have been provided in full to the Board for review. In pertinent part, those DBQs show:

a. The Foot Conditions, Including Flatfoot (Pes Planus) DBQ, signed by Master of Science in Nursing (MSN) on 26 May 2021, reflects examination the applicant underwent on 24 May 2021. It shows his diagnosis for plantar fasciitis of the right foot, with foot pain and functional loss of the foot due to that condition, impacting his ability to perform occupational tasks.

b. The General Medical – Separation Health Assessment DBQ, signed by MSN on 26 May 2021, reflects examination the applicant underwent on 24 May

2021. It shows in the PTSD screen the applicant marked “yes” to having nightmares or thinking about traumatic events in the past month, trying hard not to think about the event or avoid situations reminiscent of the event, and being constantly on guard. He had little interest in doing things several days in the past 2 weeks; he did not feel down or depressed at all. He was not at all a suicide risk. Referral for mental health transition assistance shows the applicant was not referred to a transition assistance program because he did not consent.

12. The applicant’s DA Form 3349 (Physical Profile), DA Form 7652 (Disability Evaluation System (DES) Commander’s Performance and Functional Statement), DA Form 3947 (MEB Proceedings), VA C&P Exam, VA Proposed Rating Decision for DES purposes, and VA Rating Decision are not in his available records for review and have not been provided by the applicant.

13. An IDES NARSUM, dated 7 June 2021, shows:

a. After thorough review of the applicant’s VA C&P examinations, the following conditions were identified:

(1) The applicant’s diagnosis failing the retention standards of Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, is listed as right inguinal hernia repair with post-operative chronic pain syndrome, which was incurred while entitled to base pay.

(2) The following diagnoses were determined to meet retention standards:

- hypertension
- right plantar fasciitis
- bilateral significant changes in hearing thresholds in service
- tinnitus
- erectile dysfunction
- scar, right groin

b. The applicant’s PULHES is 311111, with a rating of 3 in factor P.

c. His hernia condition, per the applicant’s commander, causes him to have difficulties completing tasks and duties to standard. He is able to complete his MOS duties, but unable to perform basic soldiering requirements, like the APTF and wearing personal protective equipment.

d. With regard to his right plantar fasciitis, in September 2009, he reported chronic pain in the right foot with no acute injury documented. In 2005, there was a normal x-ray for his right foot with no associated clinical history documented. His treatment included

rest and wearing of shoe inserts which he purchased privately and was no longer using in 2009. The medical record is subsequently silent for additional issues with this condition.

14. A DA Form 199 shows:

a. An Informal PEB convened on 30 August 2021, while the applicant was in an ARNG drilling member status and he was found physically unfit with a recommended rating of 10 percent and that his disposition be separation with severance pay.

b. The applicant's medical condition determined to be unfitting is right inguinal hernia repair with postoperative chronic pain syndrome (MEB diagnosis (Dx) 1); 10 percent. He first sought treatment for this condition on 16 May 2005, while stationed at Landstuhl, Germany on active duty. He is unfit because his DA Form 3349 functional activity limitations associated with this condition make him unable to reasonably perform his required duties.

c. His medical conditions determined not to be unfitting are MEB Dx 2-7. The combined effect was considered in the fitness determination for conditions referred by the MEB.

d. Section VI: Instructions and Advisory Statements shows the Selected Reserve Soldier with at least 15 and less than 20 years of qualifying service who would otherwise be qualified for non-regular retirement may waive separation with or without severance pay to request early qualification for retired pay.

e. On 29 September 2021, the applicant signed the form indicating he had been advised of the findings and recommendations of the Informal PEB and did not concur, demanding a formal hearing and attaching his written appeal. He requested personal appearance and regularly appointment counsel for the formal hearing. He further indicated he did not request reconsideration of his VA ratings and he elected transfer to the Retired Reserve in lieu of being separation for disability with entitlement to disability severance pay, due to having at least 15 but less than 20 years of creditable service.

15. A physical profile is used to classify a Soldier's physical disabilities. PULHES is the acronym used in the Military Physical Profile Serial System to classify a Soldier's physical abilities in terms of six factors, as follows: "P" (Physical capacity or stamina), "U" (Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric) and is abbreviated as PULHES. Each factor has a numerical designation: 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. Physical profile ratings can be either permanent (P) or temporary (T).

16. A review of the U.S. Army Human Resources Command (AHRC) Soldier Management System (SMS) shows the applicant's PULHES was 311111 effective December 2021, with significant limitations in factor P and no limitations in any other factors, including factor S.

17. A [redacted] therapist's letter, dated 23 February 2022, which has been provided in full to the Board for review, shows in pertinent part shows the applicant was seen at the [redacted] on 1 February 2022 and 8 February 2022 for evaluation and treatment of his symptoms, where he scored high on the PCL-5 Checklist for symptoms of PTSD, including nightmares, low energy, intrusive thoughts, flashbacks, difficulty concentrating, and irritability. It was the therapists opinion that it is more likely than not that his PTSD is related to his experiences while I the Army and the major traumas that occurred during his deployment to Afghanistan.

18. A multi-paged statement from the applicant's wife, dated 6 March 2022, which has been provided in full to the Board for review, details her descriptions of her husband's PTSD symptoms, including hyper-vigilance, poor memory, and lack of internal motivation, as well as his disproportionate reaction to situations that frustrate him, and his feeling that it would sometimes be easier if he weren't there. She encouraged her husband to seek help through counseling and hopes his symptoms become more manageable.

19. An Office of Soldiers' Counsel memorandum to the PEB, dated 11 April 2022, shows the applicant appealed the decision reached by the PEB and requested reconsideration on the grounds that there is sufficient evidence to warrant returning the case to the MEB to evaluate his bilateral plantar fasciitis. The applicant contends the chronic pain in his feet restrict him from performing multiple functional activities. He was examined by the podiatrist on 7 March 2022, who concluded this condition prevents him from being able to wear body armor and load bearing equipment and move 40 pounds 100 yards while wearing a helmet, weapon, body armor, and equipment.

20. Email correspondence between the applicant and his PEB Counsel, dated 3 April 2022, shows:

a. The applicant asked his Counsel if he could add PTSD to his PEB appeal.

b. His Counsel responded that he already filed the appeal, which was due on Monday and the applicant did not raise the issue of his PTSD at the reconvened hearing, so without compelling new evidence, there is no chance that raising it now would work.

c. The only way that kind of last minute Hail Mary could work would be if he could get issued a P3 profile for PTSD submitted and approved by the MEB at Fort Gordon. In that event, they could supplement the appeal with that new evidence.

d. The applicant was advised he needed to turn in the DA Form 199-1 with the Soldier's Election portion completed, checking that he did not concur and that his appeal was attached. He was advised to check the portion that he elected transfer to the Retired Reserve in lieu of being separated for disability with entitlement to disability retired pay, based on having at least 15 but less than 20 years of creditable service.

21. A DA Form 199-2 shows:

a. On 20 April 2022, the USAPDA administratively corrected the findings of the applicant's Informal PEB Proceedings conducted on 21 March 2022. This administrative correction did not change his disposition, reduce the disability rating assigned to an unfitting condition, take away a favorable administrative determination in Section VI, change or delete a diagnosis rendered by the MEB, or remove a diagnosis listed under another unfitting condition.

b. The Formal PEB found the applicant was physically unfit with a recommended rating of 10 percent and that his disposition be separation with severance pay.

c. The applicant's medical condition determined to be unfitting is right inguinal hernia repair with postoperative chronic pain syndrome (MEB Dx 1); 10 percent.

d. His medical conditions determined not to be unfitting are MEB Dx 2-7. The combined effect was considered in the fitness determination for conditions referred by the MEB.

e. Section VII: Instructions and Advisory Statements shows during formal proceedings, the PEB reevaluated all available medical and performance records, to include sworn testimony and exhibits provided by the applicant. This is an administrative correction to the previously issued DA Form 199, to correct Section VII to update the formal write up.

f. The applicant contended in the Formal PEB that his right inguinal hernia repair with post-operative chronic pain syndrome (MEB Dx 1) should not be unfitting and his plantar fasciitis (MEB Dx 3) should be found unfitting. Based on the preponderance of the evidence, the PEB determined his right inguinal hernia repair with post-operative chronic pain syndrome (MEB Dx 1) is unfitting and the plantar fasciitis (MEB Dx 3) is not unfitting.

g. Although he testified the hernia condition does not prevent his ability to perform the duties of his MOS, his current physical profile records still lists physical limitations preventing him from wearing a helmet, body armor, load bearing equipment, and move greater than 40 pounds while wearing protective gear up to 100 yards without worsening his condition. In addition, the Commander's Statement indicates the condition prevents the applicant from performing basic military functions to include deploying to an austere environment. Therefore, the formal board finds this condition unfitting.

h. The formal board further found the applicant's plantar fasciitis to be not unfitting. He testified he began to experience bilateral foot pain in 2005, due to the rigors of service. He treats this condition by using foot step insoles and taking over-the-counter medication when needed. Although he stated he continues to experience debilitating foot pain, the condition has not warrente3d a permanent profile, nor had he not undergone surgeries for this condition and there is no objective medical evidence his foot contusions affect the primary duties of his MOS.

22. A USAPDA memorandum, dated 20 April 2022, shows:

a. They informed the applicant's PEB Counsel they noted the applicant's disagreements with the Formal PEB findings and reviewed the entire case wherein he non-concurs, contending he is unfit for plantar fasciitis and his case should be returned to the MEB for evaluation of this conditions.

b. Regarding the claimed condition of right plantar fasciitis, the case file indicates that the applicant was seen for right foot pain of atraumatic origin in January 2005. The pain was reportedly aggravated by running and was eased with rest. Posture and gait were normal, and active range of motion was normal as were right foot x-rays. Very dull tenderness to palpation was noted over the second metatarsal head, and a diagnosis of right foot metatarsalgia was made. The case file indicates that this condition was treated, and it resolved. The MEB NARSUM states he was again evaluated for chronic right foot pain without documented acute injury in September 2009. He wa treated conservatively, and there were no subsequent medical encounters for this condition. The VA C&P Foot conditions DBQ diagnosed plantar fasciitis of the right foot manifested by pain when standing for long periods or walking long distance. The VA noted pain on manipulation of the right foot without swelling, characteristic callouses, or the presence of extreme tenderness of the plantar surfaces. There is no history of surgical treatment, and he treats the condition with a shoe insert. Functional impact for the right plantar fasciitis was described as "difficulty standing and walking long distances." However, the examiner noted no evidence of pain due to passive or active motion, weight-bearing , non-weight-bearing, or on rest/non-movement.

The Formal PEB found the condition of right plantar fasciitis to be not unfitting. The condition of left plantar fasciitis was not claimed, was not diagnosed in the VA C&P Foot Conditions DBQ, and was not listed in the MEB Proceedings.

c. They reviewed the applicant's appeal with exhibits and determined the preponderance of evidence supports the PEB finding that the condition of right plantar fasciitis is not unfitting and find insufficient evidence to request MEB reevaluation. The UPSAPDA conclusion is that this case was properly adjudicated by the Formal PEB, which correctly applied the rules that govern the DES in making its determination. The findings and recommendation of the Formal PEB are supported by a preponderance of the evidence and are therefore affirmed. The issues raised in his 11 April 2022 were adequately addressed by the PEB in its formal board proceedings and they concur with the findings.

23. A USAPDA memorandum addressed to The Adjutant General [REDACTED], dated 22 April 2022, advised of the applicant's entitlement to transfer to the Retired Reserve (15 Year Letter). It shows the PEB determine the applicant is unfit and will be transferred to the Retired Reserve. Pursuant to the authority contained in Title 10 U.S. Code, the applicant is entitled to apply for retirement benefits upon reaching age 60. Soldiers will be processed for discharge from their prospective component headquarters with transfer to the Retired Reserve, effective no later than 30 days from the date of this memorandum.

24. [REDACTED] ARNG Orders 0001891683.00, dated 27 June 2022, transferred the applicant to the retired reserve effective 22 May 2022, with assignment loss code reason CF (Placement on Permanent Disability Retired List).

25. The applicant's NGB Form 23A, dated 28 June 2022, shows the applicant completed19 years, 2 months, and 5 days of creditable service retirement pay.

26. [REDACTED] Military Forces memorandum, dated 26 June 2022, notified the applicant of his eligibility for retired pay for non-regular service at 15 years. It shows he completed at least 15 years, but fewer than 20 years for qualifying service and would be eligible for retired pay upon his application at age 60, as he completed at least 15 but fewer than 20 qualifying years of service and no longer met the qualifications for membership in the Selected Reserve solely because he was unfit due to a physical disability, which was not the result of intentional misconduct, willful neglect or failure to comply with standards.

27. A printout of what is presumed to be the applicant's VA disability ratings, although his name does not appear on the form, printed on 16 November 2022, shows his combined service-connected disability rating is 90 percent for the following conditions:

- asthma, 30 percent, effective 3 June 2022
- allergic rhinitis, 0 percent effective 4 April 2022
- migraine including migraine variants, 30 percent effective 4 April 2022
- erectile dysfunction, 0 percent effective 30 September 2021
- painful scar, right groin, 10 percent effective 30 September 2021
- scar, right groin, 0 percent effective 30 September 2021
- plantar fasciitis, left foot, 10 percent effective 30 September 2021
- PTSD with major depressive disorder, recurrent episode, moderate, 70 percent effective 30 September 2021
- hypertension, 0 percent effective 15 April 2021
- tinnitus, 10 percent effective 15 April 2021
- status post right inguinal hernia repair, 10 percent effective 15 April 2021

28. 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.

29. 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.

30. 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.

31. 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 electronic Physical Evaluation Board (ePEB), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The applicant is represented by counsel. He has several requests. This review will focus on the applicant’s requests for a new MEB and PEB to evaluate all conditions he believes are disqualifying including but not limited to PTSD and Plantar Fasciitis.

2. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The applicant entered active service on 22May2003. His MOS was 15Q Air Traffic Control Operator. He was stationed in Germany 20031207 to 20061210, and he was deployed in Afghanistan from 20050222 to 20050422. He was released after completion of required active service 20May2009, not by reason of disability. He immediately enlisted in the Army National Guard. He was discharged through the Integrated Disability Evaluation System (IDES) with resultant disposition separation with severance pay. He was transferred to the retired reserve effective 22May2022.

3. IDES Process (summary)
Right inguinal hernia symptoms were first noted 22Apr2005 after a bad coughing spell while in Afghanistan. The applicant underwent surgical repair without complications in May 2005 at Landstuhl RMC. The applicant successfully joined the Austin police force in 2016 (12Jul2016 [REDACTED] Clinic note). In March 2018, he began being seen for occasional right inguinal pain sometimes triggered by heavy lifting or intercourse (01Mar2018 [REDACTED] Clinic). The beginning impact on military performance was noted due to the applicant's request for a letter to excuse him from upcoming drill during this visit. Two years later, the 12Jan2020 Physical Profile Record (DA Form 3349) permanently prohibited multiple Section 4, Block 24 functional activity limitations. The 07Jun2021 MEB (DA Form 3947) determined that Right Inguinal Hernia Repair with Post Operative Chronic Pain Syndrome was the sole condition which did not meet medical retention standards. The Informal PEB (DA Form 199) convened 30Aug2021, found that Right Inguinal Hernia Repair with Post Operative Chronic Pain Syndrome was the sole unfitting condition. A 10% rating under code 7338 was applied per 29Jun2021 VA Rating Decision. The recommended disposition was separation with severance pay. The applicant non-concurred and requested a formal hearing of his case. The finding of unfitness for the Right Inguinal Hernia Repair with Post Operative Chronic Pain Syndrome was ultimately unchanged by the Formal PEB (DA Form 199-1) convened 09Feb2022 and by the Formal PEB reconvened 21Mar2022. And finally, the finding of unfitness for the Right Inguinal Hernia Repair with Post Operative Chronic Pain Syndrome was upheld when reviewed during the 20Apr2022 US Army Physical Disability Agency (USAPDA) Revised PEB Proceedings (DA Form 199-2).

4. Bilateral Foot conditions: Plantar Fasciitis and Pes Planus

a. A right foot film was normal on 09Feb2005. It was obtained for a report of pain for 3 months localized over the distal head of the right 2nd metatarsal.

b. The next visit for right foot pain was during the intake on 25Sep2009 by primary care to establish care at the VA. At the time he reported intermittent right foot pain and inflammation (metatarsalgia) in the ball of his foot (or forefoot) localized proximal to the 2nd toe of the right foot. The pain improved with decreased running and use of

prescription shoe inserts obtained through the private sector (and now worn out). Examination of the right foot was nontender and there was no swelling or increased warmth. Anti-shock inserts were ordered, and the applicant was advised to notify the provider if they did not help. There were no follow up visits. Podiatry was not consulted. The next record for right foot pain was during IDES processing, twelve years later.

c. 24May2021 Foot Conditions DBQ. Although Plantar Fasciitis was not claimed as a disabling condition by the applicant (VA Form 21-526EZ) for the IDES proceedings, the VA completed this exam. The examiner noted diagnosis Right Plantar Fasciitis. The applicant indicated that the condition began in 2003-2004 in the right foot due to running excessively. Treatment at the time included rest, inserts, and ibuprofen. Currently, he reported pain in the right foot with prolonged standing. He also reported pain on use and with manipulation of the right foot. The exam did not indicate that there was swelling with use. He did not have characteristic calluses. He did not have extreme tenderness of the plantar surfaces of his feet. There was no objective evidence of marked deformity of his feet and no marked pronation of one or both feet. Pronation is the inward turning of the foot when walking. There was no decreased longitudinal arch height of the feet with weight-bearing. There was no inward bowing of the Achilles' tendon. There had been no foot surgical procedures. There was no evidence of foot pain with passive or active motion, weight-bearing or at rest. Left side foot symptoms were not documented. A left side foot condition was not diagnosed.

d. The 07Jun2021 MEB reviewed the Right Plantar Fasciitis condition and determined that the condition met retention standards. The 30Aug2021 Informal PEB found that the condition was not unfitting for continued service. The USAPDA reviewed the Bilateral Plantar Fasciitis condition on 20Apr2022 and concurred with the findings of the PEB that the condition was not unfitting. The USAPDA also denied the applicant's request to return his case to the MEB for its evaluation of the Bilateral Plantar Fasciitis condition, indicating they found insufficient evidence to warrant MEB re-evaluation.

e. 09Nov2021 Foot Conditions DBQ. The applicant reported foot pain since 2003 for which he took Ibuprofen as needed. He had a constant daily ache. He also reported weekly flare-ups that were alleviated with over-the-counter (OTC) ibuprofen. The VA examiner diagnosed Plantar Fasciitis, Bilateral; and Pes Planus. Pain was present during the physical exam (during active and passive motion and weight bearing and non-weight bearing); and the pain contributed to functional loss. There was objective evidence of marked deformity of his feet; however, there was no marked pronation of one or both feet.

f. On 07Mar2022, the applicant was seen at the Blue Bonnet Foot and Ankle Institute for treatment of bilateral foot pain of a few years' duration. The bilateral foot examination revealed pain to palpation along the medial band of the plantar fascia; flat feet; inability to dorsiflex past 10 degrees (normal 20 degrees); and normal arterial

pulses and capillary refill in both feet. Muscle strength was normal. There was no gait dysfunction and no joint, muscle, or joint malalignment. The podiatrist diagnosed Foot Pain, Bilateral. They noted pes planus, plantar fasciitis, and ankle equinus (limited upward bending of the ankle) abnormalities. Treatment included use of accommodative foot gear— footstep orthotics were prescribed. Ibuprofen and stretching exercises were also prescribed. Army Physical Disability Evaluation Process Medical Information Questionnaire completed by the podiatrist indicated that bilateral conditions Plantar Fasciitis and Pes Planovalgus (flexible flat feet) warranted multiple temporary functional activity limitations which included but was not limited to: He could not evade direct and indirect fire; wear body armor that weighed between 25-40 lbs for 12 hours, etc. He also could not run 2 miles. He could perform the alternate walk; swim; and bicycle events. The podiatrist noted that the restrictions were temporary, and the estimated date of recovery question could not be answered without evaluation later. Surgery was not recommended during this visit. A follow up treatment visit was not found.

g. On 21Mar2022, he was dispensed prescription footstep insoles.

h. The 21Mar2022 (reconvened) Formal PEB found that the Right Plantar Fasciitis and Left Plantar Fasciitis conditions were not unfitting.

i. 22Mar2022 Foot Condition DBQ. The applicant reported foot pain since 2005. The prior pain over the distal head of the right 2nd metatarsal was acute only and was resolved. Currently, the applicant reported persistent gnawing soreness with stiffness and tightness across the bilateral plantar region with movement and weight bearing. The average pain was 3-8/10. The applicant did not endorse having flare-ups of pain impacting function. Current treatment included OTC ibuprofen and shoe insoles. Treatment also included rest and home stretching exercises. Treatment was slightly effective. The condition was managed by an outside podiatrist. The VA examiner endorsed that the condition impacted the ability to perform tasks requiring standing, walking, lifting, sitting etc. They also endorsed that the foot condition did not chronically compromise weight bearing and it did not require arch supports, custom orthotic inserts, or shoe modifications. The examiner diagnosed Right and Left Plantar Fasciitis. The severity was assessed as ‘mild’. When referred into IDES, the applicant had right foot complaints. Right Foot Plantar Fasciitis was the referred condition for the VA. The VA examiner affirmed Right Foot Plantar Fasciitis. Pes Planus was not diagnosed during this assessment; therefore, certain portions of the foot exam were not captured, for example whether ‘marked pronation of one or both feet’ was present.

j. 24Aug2022 Foot Conditions DBQ. During this exam, the applicant reported bilateral foot pain from ruck marching with heavy gear and being on his feet beginning in 2004 in Germany. He indicated that he had self-treated with inserts. Current pain was 2/10. He also had shooting pain up to 7/10 with flare ups. His current treatment included inserts from podiatry and OTC pain meds which helped alleviate his

symptoms. He had pain on use of his feet and with manipulation of his feet. There was no swelling or characteristic callouses and he did not have extreme tenderness of the plantar surface. There was no objective evidence of marked deformity of his feet and no marked pronation of one or both feet. The VA examiner diagnosed bilateral conditions Plantar Fasciitis and Pes Planus.

k. Summary/Opinion.
Concerning retention standards and the applicant's bilateral foot conditions, in accordance with AR 40-501 the following do not meet retention standards and should be referred for MEB when the listed criteria are present: Pes planus, when symptomatic, moderately severe, with pronation on weight-bearing which prevents the wearing of military footwear, or when associated with vascular changes (chapter 3-22b(2)); Plantar fasciitis that is refractory to medical or surgical treatment, or prevents the wearing of military footwear (chapter 3-22b(5)); and Joint ROM (range of motion) that does not equal or exceed dorsiflexion to 10 degrees or plantar flexion to 10 degrees (chapter 3-22d(3). The applicant endorsed bilateral foot pain condition(s) since the early 2000's. Despite this, he passed the most recent APFT on 09Feb2020. The applicant underwent multiple VA disability examinations (24May2021, 09Nov2021, 22Mar2022 and 24Aug2022) with some differences in documentation as noted above; however, it should be stated that a DBQ examination is a review and assessment of medical evidence concerning a condition— it is <u>not</u> a treatment visit. Since the comparatively remote September 2009 visit, the 07Mar2022 podiatry visit was the sole recent treatment visit available for review for the ARBA Medical Reviewer. A follow up treatment visit was not found. The 07Mar2022 podiatry visit showed initiation of conservative first-line treatment for the applicant's bilateral foot condition with prescription inserts/insoles. The accommodative devices were not custom made. The foot conditions had not required special pain management, for example injections or narcotic use. The condition had not required surgical consultation. Of special note, the end ROM limit for dorsiflexion was within retention standards at 10 degrees; there was no marked pronation of one or both feet; and there was no permanent restriction prohibiting use of military footwear. There were no permanent level 3 functional activity limitations that were attributable to the bilateral foot condition(s). Based on records available for review, the bilateral foot conditions Plantar Fasciitis and Pes Planus, did not fail medical retention standards.

5. Other Medical conditions. In addition to the right inguinal and bilateral foot conditions reviewed above; Hypertension, Bilateral Significant Changes Hearing Thresholds, Tinnitus, Erectile Dysfunction and Right Groin Scar conditions were reviewed during the 07Jun2021 MEB Proceedings. The applicant contends that several conditions rated by the VA were not listed on his IDES paperwork. They were diagnosed and then rated by the VA. The conditions are briefly reviewed below with the VA ratings noted.

a. Gastroesophageal Reflux rated at 30% effective 30Sep2021. The condition was stable on Protonix and with diet modification (08Nov2022 Primary Care Physician Note, VAMC).

b. Migraine Headaches rated at 30% effective 04Apr2022. March and June 2018, the applicant reported rare headaches. They were left frontal and behind the eye. They were a little light sensitive but not sound sensitive. He had tried Excedrin Migraine. Migraines were well controlled with rizatriptan (08Nov2022 Primary Care Physician Note, VAMC). The condition had not required neurology consultation.

c. Allergic Rhinitis rated at 0% effective 04Apr2022. Allergic Rhinitis is also referred to as hay fever, and seasonal allergies. On 17May2016 the applicant was seen for upper respiratory symptoms which started the week prior: Sore throat, runny nose, and discomfort in the front of his forehead. He was diagnosed with Nasal Congestion. The sore throat was thought to be due to postnasal drip and nasal congestion. He was taking Flonase and Sudafed in the morning with some relief.

d. Asthma, Bronchial 30% effective 03Jun2022. There was one visit 02May2008 for complaint of an incident of shortness of breath and chest pains a few months prior. He did not seek treatment for that incident. In March 2018, the applicant reported shortness of breath with extreme exertion. On 15Aug2022, Pulmonary Function Testing showed slightly increased airway resistance, and decreased conductance which was consistent with mild obstruction. Response to bronchodilators was not tested.

e. Summary/Opinion
The ARBA Medical Reviewer made the following observations concerning the conditions listed above in paragraph 5: During the 01Dec2017 PHA (Periodic Health Assessment), of pertinence, the applicant denied frequent headaches, asthma, hay fever, and ulcers. At the time of the 14Nov2020 PHA, the applicant had a permanent L3 for inguinal hernia with post-op chronic pain syndrome and he was undergoing a MEB. Of pertinence, he denied asthma, hay fever, stomach problems (including ulcer and reflux), and recurring headaches/migraines. No foot symptoms were reported. During the 08Nov2022 Primary Care Physician Note VAMC visit, the provider noted the migraines were stable— the applicant was to continue rizatriptan (Maxalt) as needed. The GERD was stable on pantoprazole (Protonix), and he was to continue GERD diet modification. There were no Physical Profile Record (DA Form 3349) Section 4, Block 24 permanent functional activity limitations attributable to these conditions. Based on records available for review, there was insufficient evidence to support that Bronchial Asthma, Migraine Headaches, Gastroesophageal Reflux or Allergic Rhinitis, failed medical retention standards of AR 40-501 chapter 3 at the time of discharge from service.

6. PTSD was not claimed as a disabling condition by the applicant (VA Form 21-526EZ) for the IDES Proceedings.

a. 25Sep2009 Combat Veteran Psychosocial Assessment. He was employed full time. He reported having been in combat in Afghanistan. He was currently going through a difficult divorce with children involved; however, he declined referral for supportive services. PTSD, Depression, and MST screenings were negative.

b. 01Dec2017 Deployment Mental Health Assessment. No BH (behavioral health) symptoms were endorsed. Screenings for PTSD, Depression, Excess Alcohol Use, Suicide Risk Violence/Harm Risk were all negative. It was noted that the applicant was taking melatonin, a supplement for sleep.

c. 01Dec2017 PHA and 14Nov2020 PHA. No BH symptoms were reported, and PTSD, Depression, and Substance Abuse screenings were all negative.

d. NCO Evaluation Report covering the period from 20190319 thru 20200317 revealed he ‘exceeded standard’ for overall performance and senior rater for overall potential was rated ‘highly qualified’.

e. 08Feb2021 DES Commander’s Performance and Functional Statement (DA Form 7652) indicated that the applicant made reasonable decisions, including complex or unfamiliar ones; and he had effective work relationships with both supervisors and co-workers.

f. 24May2021 General Medical-Separation Health Assessment DBQ. PTSD symptoms reported: Nightmares, avoidance, constantly on guard, watchful or easily startled. The PTSD Screen was positive. A BH referral was offered; however, the applicant declined a referral at the time.

g. 23Feb2022 written correspondence from a PhD level staff therapist at Samaritan Center indicated that the applicant had been evaluated there on 01Feb2022 and 08Feb2022. They noted that the applicant reported many symptoms characteristic of PTSD: Hyper-alertness, sleep disturbance, nightmares, intrusive thoughts, flashbacks, decreased concentration, and irritability. The applicant’s affect was depressed, and he tended to have a negative world outlook. It was noted that while employed with the Austin Police Department, he patrolled a high crime area. He also reported the following military stressors: Exposure to frequent rocket attacks while deployed with one in particular landing on base; and loss of two men in his unit to a helicopter crash. He had reexperiencing symptoms. The therapist recommended service-connection for the PTSD condition due to traumas experienced while deployed in Afghanistan.

h. 03Mar2022 Initial PTSD DBQ. The applicant was married while in service and divorced a year after discharge. He had friends in his unit. He remained close to his family. He liked to cook, and he would run to relieve stress. The month prior he stated that he had too much to drink and shared with his wife he was experiencing active suicide ideation (shooting himself). His wife then encouraged him to seek help. At the time of the evaluation, he denied suicide ideation. He was working full time as a police officer and got along with co-workers and superiors. The BH examiner diagnosed Major Depressive Disorder (MDD) and PTSD. His symptoms that were consistent with MDD were sad mood, sleep issues, poor energy, lack of motivation, low sex drive and anhedonia. PTSD stressors included: Multiple rocket exposures, one in particular occurred when he was sleeping that hit so close he experienced dizziness; a second event involved hearing about the loss of soldiers from a different unit due to a helicopter crash. They opined that the level of occupational and social impairment attributable to this condition was 'with occasional decrease in work efficiency and ability to perform occupational tasks although generally functioning satisfactorily with normal routine behavior, self-care and conversation' (30% disability rating level).

i. In her 06Mar2022 letter of support, the applicant's wife described his suicide ideation one evening after a holiday party.

j. 10May2022 Nursing Initial Evaluation Note. In the addendum, the PTSD, Depression, Alcohol, and Suicide screenings were positive. The applicant reported that he had a civilian BH provider and was going to therapy every week on Mondays. These outside weekly treatment records were not in the submitted case file. The applicant reported that the civilian provider was aware of his suicidal thoughts. He did not want to be seen or referred to BH on that day.

k. 08Nov2022 Primary Care Physician Note VAMC. Concerning the BH conditions: There was no alcohol abuse and no drug abuse. He denied nightmares, suicidal ideations/intentions.

l. Summary/Opinion
According to records, the applicant sought treatment for his PTSD condition in February 2022, after the MEB proceedings were completed and just a few months before his discharge. The most recent notes while still in service indicated that he was engaged in weekly therapy. Per available records, the condition had not required psychotropic medication, consultation with a psychiatrist, psychiatric hospitalization, or work hours/environment accommodation. The condition was not associated with psychosis, mania, or suicide attempts. Command did not note any performance deficits related to mental health symptoms and in fact noted that he exceed standards and was highly qualified. There were no Physical Profile Record (DA Form 3349) Section 4, Block 24

permanent functional activity limitations attributable to PTSD condition. Based on records available for review, evidence was insufficient to support that the PTSD condition failed medical retention standards of AR 40-501 chapter 3.

BOARD DISCUSSION:

1. 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 through counsel 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. Upon review of the applicant’s petition, available military records, and medical evaluation, the Board concurred with the advising opinion, finding insufficient evidence to support that the applicant’s post-traumatic stress disorder (PTSD) failed to meet medical retention standards under AR 40-501. Additionally, the advisory opinion noted that there was no sufficient evidence to indicate that the applicant’s other conditions—Bronchial Asthma, Migraine Headaches, Gastroesophageal Reflux, or Allergic Rhinitis—failed to meet retention criteria.

2. The Board reviewed the applicant’s Medical Evaluation Board (MEB) and Physical Evaluation Board (PEB) findings and determined that they did not support a request for reevaluation. The preponderance of evidence confirmed the PEB’s determination that right plantar fasciitis was not an unfitting condition. Furthermore, UPSAPDA concluded that the applicant’s case was properly adjudicated by the Formal PEB, which correctly applied regulatory guidance governing the Disability Evaluation System (DES). While the Board acknowledged the applicant’s appeal, it found that neither the applicant nor counsel provided sufficient evidence to justify reevaluation through the Integrated Disability Evaluation System (IDES) for an increased physical disability rating due to additional unfitting conditions, including PTSD and plantar fasciitis. Furthermore, after review, the Board determined that an adjustment of the applicant’s creditable service for retired pay to reflect 20 years was not warranted based on the evidence presented. Based on the findings and recommendations of the formal PEB and the advisory opinion, the Board denied relief.

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.

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. 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. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NRs) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal

sentence. BCM/NRs may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds. This guidance does not mandate relief, but rather provides standards and principles to guide BCM/NRs in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

3. 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 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; 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.

4. 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. The Surgeon General of the Army will establish and interpret medical standards for retaining or medically separating Soldiers. The objectives are to maintain and effective and fit military organization with maximum use of available manpower; provide benefits to eligible Soldiers whose military service is terminated because of a service-connected disability provide prompt disability evaluation processing ensuring the rights and interests of the Government and Soldier are protected; and establish the Military Occupational Specialty Administrative Retention Review (MAR2) as an Army pre-Disability Evaluation System (DES) evaluation process for Soldiers who require a permanent 3 (P3) or P4 physical profile for a medical condition that meets the medical retention standards of Army Regulation 40-501.

c. 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.

d. The DES begins for a Soldier when either of the events below occurs:

(1) The Soldier is issued a permanent profile approved in accordance with the provisions of Army Regulation 40-501 and the profile contains a numerical designator of P3/P4 in any of the serial profile factors for a condition that appears not to meet medical retention standards in Accordance with Army Regulation 40-501. Within (but not later than) 1 year of diagnosis, the Soldier must be assigned a P3/P4 profile to refer the Soldier to the DES.

(2) The Soldier is referred to the DES as the outcome of MAR2 evaluation.

e. 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.

5. 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 percent.

6. Army Regulation 140-10 (Assignments, Attachments, Details, and Transfers), provides policy and procedures for assigning, attaching, removing, and transferring USAR Soldiers. Chapter 6 (Transfer to and from the Retired Reserve) states assignment to the Retired Reserve is authorized, with the exception of enlisted Soldiers subject tin involuntary separation. Eligible Soldiers may be allowed to transfer to the Retired Reserve if the following applies:

a. They are entitled to receive retired pay from the U.S. Armed Forces because of prior military service or disability.

b. They have 20 qualifying years of service for retired pay at age 60 and are eligible to receive the notification of eligibility (NOE) of Retired Pay at age 60 (20-year Letter).

c. They are medically disqualified for retention in an active status, not as a result of their own misconduct, and have completed at least 15 qualifying years of service, but less than 20 qualifying years of service for retired pay, and are eligible to receive the Notice of Eligibility (NOE) for Retired Pay at Age 60 (15-Year Letter). The 15-Year NOE pertains only to members of the Selected Reserve and that loss of qualification to continue in the Selected Reserve must be solely due to medical disqualification.

d. They have completed a total of 20 years of active service in the U.S. Armed Forces.

7. 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.

8. 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.

9. 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//