

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 November 2024

DOCKET NUMBER: AR20240002550

APPLICANT REQUESTS: in effect, correction of his records to show he was retired due to service-incurred medical disabilities instead of discharged with severance pay.

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

- DD Form 149 (Application for Correction of Military Record)
- medical record (97 pages)

FACTS:

1. The applicant states he suffered a stroke while in training. He was assigned a 10% disability rating for something that will affect him for the rest of his life.
2. The applicant enlisted in the Army National Guard (ARNG) on 26 May 2016.
3. On 24 October 2023, a Physical Evaluation Board (PEB) found the applicant unfit for further military service due to status-post cerebral infarction, communication deficit disorder, and residual aphasia. The PEB indicated the following:

The National Guard Soldier while on orders first sought treatment for this condition while in MOS [military occupational specialty] reclassification training at Goodfellow Air Force Base, Texas 14 September 2021 after suffering a stroke. Soldier has persistent symptoms despite treatment to include occupational therapy, physical rehabilitation medicine, speech therapy, Lovenox for deep vein thrombosis prevention and aspirin.

4. The PEB recommended a 10% disability rating and the applicant's separation with severance pay. The PEB found him fit for 6 additional conditions referred by the Medical Evaluation Board (MEB) for fitness determination.
5. On 3 November 2023, the applicant acknowledged he was advised of the findings and recommendations of the PEB and had received a full explanation of the results of the findings and recommendations and legal rights pertaining thereto. He concurred

with the PEB's findings and recommendations and waived a formal hearing of his case. He did not request reconsideration of his Department of Veterans Affairs (VA) ratings.

6. The applicant's DA Form 199 (Informal PEB Proceedings) contains the following statements:

a. This case was adjudicated as part of the Integrated Disability Evaluation System (IDES).

b. As documented in the VA memorandum dated 3 October 2023, the VA determined the specific VA Schedule for Rating Disabilities (VASRD) code(s) to describe the Soldier's condition(s). The PEB determined the disposition recommendation based on the proposed VA disability rating(s) and in accord with applicable statutes and regulations.

7. Orders issued on 8 November 2023 by the U.S. Army Physical Disability Agency directed the applicant's discharge from the ARNG effective 8 December 2023 under the provisions of Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation). The order show he was authorized disability severance pay and a percentage of disability of 10%.

8. The applicant provided a 97-page medical record with a report criterion from 14 September 2021 to 6 July 2023.

9. 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.

c. The Record of Proceedings details the applicant's service and the circumstances of the case. Orders published by the United States Army Physical Disability Agency on

08 November 2023 show he was and separated with disability severance pay effective 8 December 2023 for a 10% disability rating.

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 11 May 2023, the applicant was referred to the IDES for "Cerebrovascular aneurysm (Cerebral infarction)." The applicant claimed ten additional conditions on a separate Application for Disability Compensation and Related Compensation Benefits (VA Form 21-526EZ). A medical evaluation board (MEB) determined three conditions related to his cerebral infarction failed the medical retention standards of AR 40-501, Standards of Medical Fitness: "Status-post cerebral infarction," "Communication deficit disorder," and Residual aphasia." Aphasia is defined as "The loss of ability to understand or express speech, caused by brain damage." The MEB determined six additional medical conditions met medical retention standards.

h. On 24 August 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.

i. The applicant's informal PEB found these related conditions to be his sole unfitting condition for continued military service, listing his disability as "Status-post cerebral infraction; communication deficit disorder; residual aphasia." While this was a correct phrasing, the applicant had three separate ratings for this condition and so should have had three disabilities. From his VA IDES Ratings Code Sheet (Uploaded into ACTS):

8046-8205 - STATUS POST CEREBRAL INFRACTION WITH COMMUNICATION DEFICIT DISORDER AND APHASIA (CRANIAL NERVE V)

[Integrated Disability Evaluation System (IDES)/PEB Referred]

Service Connected, Gulf War, Incurred

Static Disability

10% from 05/12/2023

8046-8207 - STATUS POST CEREBRAL INFRACTION WITH COMMUNICATION DEFICIT DISORDER AND APHASIA (CRANIAL NERVE VII)

[Integrated Disability Evaluation System (IDES)/PEB Referred]

Service Connected, Gulf War, Incurred

Static Disability

10% from 05/12/2023

8046-8209 STATUS POST CEREBRAL INFRACTION WITH COMMUNICATION DEFICIT DISORDER AND APHASIA (CRANIAL NERVE IX)

[Integrated Disability Evaluation System (IDES)/PEB Referred]

Service Connected, Gulf War, Incurred

Static Disability

10% from 05/12/2023

j. Each of these cranial nerves is involved in the ability speak. From the Cleveland Clinic's website (<https://my.clevelandclinic.org/health/body/21998-cranial-nerves>) :

Trigeminal nerve (CN V): Providing sensations in your eyes, most of your face and inside your mouth. It also allows you to chew food.

Facial nerve (CN VII): Controlling several facial muscles to make facial expressions and providing the sense of taste in part of your tongue.

Glossopharyngeal nerve (CN IX): Providing taste sensations to part of your tongue and controlling muscles for swallowing. It also has parasympathetic nerve fibers that play a role in blood pressure regulation and saliva (spit) production.

k. Some of the requirements for effective speech is to know where your tongue is within our mouth (CN V), controlling the facial muscles around your mouth which allows you to form sounds (CN VII), and the ability to control the muscles of the throat (CN IX).

l. The PEB found the twenty-three remaining medical conditions not unfitting for continued service. They only applied the Veterans Benefits Administration (VBA) derived rating of 10% and recommended the applicant be separated with disability severance pay.

m. The PEB made an error in not applying all three disability ratings from the his VA ratings. This would have given the applicant a combined military disability rating of 30% and resulted in a recommendation that he be permanently retired for physical disability. (10% combined with 10% = 19% combined with 10% = 27% which rounds to 30%)

n. It is the opinion of the ARBA medical advisor that the applicant's combined military disability rating should be increased to 30% and his separation disability disposition be changed to permanently retired for physical disability effective 8 December 2023.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was 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 Cerebrovascular aneurysm (Cerebral infarction). A medical evaluation board (MEB) determined three conditions related to his cerebral infarction failed the medical retention standards of AR 40-501, Standards of Medical Fitness: "Status-post cerebral infarction," "Communication deficit disorder," and "Residual aphasia." An informal PEB found these related conditions to be his sole unfitting condition for continued military service, listing his disability as "Status-post cerebral infarction; communication deficit disorder; residual aphasia." While this was a correct phrasing, the applicant had three separate ratings for this condition and so should have had three disabilities. The PEB applied the Veterans Benefits Administration (VBA) derived rating of 10% and recommended the applicant be separated with disability severance pay.

b. The Board reviewed and agreed with the medical reviewer's determination that the PEB made an error in not applying all three disability ratings from his VA ratings. This would have given the applicant a combined military disability rating of 30% and resulted in a recommendation that he be permanently retired for physical disability. (10% combined with 10% = 19% combined with 10% = 27% which rounds to 30%). Therefore, the Board determined the applicant's combined military disability rating should be increased to 30% and his separation disability disposition be changed to permanently retired for physical disability effective 8 December 2023.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by:

- Amending the applicant's DA Form 199 to show three conditions were found unfitting (10% each) at a combined rating of 30% and his disposition as permanent disability retirement

- Status Post Cerebral Infraction with Communication Deficit Disorder and Aphasia (Cranial Nerve V)), 10%
- Status Post Cerebral Infraction with Communication Deficit Disorder and Aphasia (Cranial Nerve VII)), 10%
- Status Post Cerebral Infraction with Communication Deficit Disorder and Aphasia (Cranial Nerve IX)), 10%
- Amending the applicant's discharge orders and DD Form 214 to reflect permanent disability retirement at a combined rating of 30% (vice severance pay at 10%)
- If married at the time of separation, providing the applicant an opportunity to enroll (or decline participation) in the Survivor Benefit Plan

[REDACTED]

[REDACTED]

[REDACTED]

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

REFERENCES:

1. Title 10, U.S. Code, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army Disability Evaluation System (DES) and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with Department of Defense (DOD) Directive 1332.18 and Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation).

2. Army Regulation 635-40 establishes the Army DES and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating.

a. The disability evaluation assessment process involves two distinct stages: the MEB and PEB. The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise their ability to return to full duty based

on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition.

b. Service members whose medical condition did not exist prior to service who are determined to be unfit for duty due to disability are either separated from the military or are permanently retired, depending on the severity of the disability. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

c. The mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of their office, grade, rank, or rating.

d. The percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Ratings are assigned from the VASRD. The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting or ratable condition is one which renders the Soldier unable to perform the duties of their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty.

e. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

3. Title 10, U.S. Code, section 1201, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30% percent. Title 10, U.S. Code, section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating of less than 30%.

4. Directive-type Memorandum (DTM) 11-015, dated 19 December 2011, explains the IDDES. It states:

a. The IDDES is the joint DOD-VA process by which DOD determines whether wounded, ill, or injured service members are fit for continued military service and by which DOD and VA determine appropriate benefits for service members who are

separated or retired for a service-connected disability. The IDES features a single set of disability medical examinations appropriate for fitness determination by the Military Departments and a single set of disability ratings provided by VA for appropriate use by both departments. Although the IDES includes medical examinations, IDES processes are administrative in nature and are independent of clinical care and treatment.

b. Unless otherwise stated in this DTM, DOD will follow the existing policies and procedures requirements promulgated in DODI 1332.18 and the Under Secretary of Defense for Personnel and Readiness memoranda. All newly initiated, duty-related physical disability cases from the Departments of the Army, Air Force, and Navy at operating IDES sites will be processed in accordance with this DTM and follow the process described in this DTM unless the Military Department concerned approves the exclusion of the service member due to special circumstances.

c. IDES medical examinations will include a general medical examination and any other applicable medical examinations performed to VA Compensation and Pension standards. Collectively, the examinations will be sufficient to assess the member's referred and claimed condition(s) and assist VA in ratings determinations and assist military departments with unfit determinations.

d. Upon separation from military service for medical disability and consistent with the Board for Correction of Military Records (BCMR) procedures of the military department concerned, the former service member may request correction of his or her military records through his or her respective military department BCMR if new information regarding his or her service or condition during service is made available that may result in a different disposition. For example, a veteran appeals VA's disability rating of an unfitting condition based on a portion of their service treatment record that was missing during the IDES process. If the VA changes the disability rating for the unfitting condition based on a portion of their service treatment record that was missing during the IDES process and the change to the disability rating may result in a different disposition, the service member may request correction of their military records through their respective Military Department BCMR.

e. If, after separation from service and attaining veteran status, the former service member desires to appeal a determination from the rating decision, the veteran has one year from the date of mailing of notice of the VA decision to submit a written notice of disagreement with the decision to the VA regional office of jurisdiction.

5. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as

authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//