

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 July 2025

DOCKET NUMBER: AR20240002755

APPLICANT REQUESTS: placement on the Temporary Disability Retired List (TDRL).

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

- DD Form 149 (Application for Correction of Military Record)
- Letter from the U.S. Army Physical Disability Agency (USAPDA), dated 22 January 2010

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states that after being medically discharged in 2009, he received a letter from the USAPDA on 22 January 2010 stating that his post-traumatic stress disorder (PTSD) was not properly rated by the Physical Evaluation Board (PEB) and that his rating for PTSD was adjusted from 10% to 50%. Due to medical issues, he did not realize then that he needed to apply to the review board for the adjustment.
3. Following service in the Regular Army, the applicant enlisted in the Army National Guard on 31 August 2000.
4. On 14 April 2009, a PEB found the applicant unfit for further military service due to PTSD with elements of depression (10% disability rating) and lumbosacral strain (10% disability rating). The PEB recommend a combined 20% disability rating and the applicant's separation with severance pay.
5. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged on 21 May 2009 by reason of disability, severance pay, combat related.

6. The applicant provided a letter from the USAPDA, dated 22 January 2010, informing him the following:

a. The purpose of this letter is to provide information regarding the disability rating that you received from the Army and advise you of options you have to receive an increased rating and possibly additional benefits as a result. Our records reflect that you were separated with severance pay with a disability rating of 20% for the conditions of lumbosacral Strain rated at 10% and PTSD rated at 10%. We recently conducted a review of PTSD cases rated in 2009 and determined that your case was not properly rated by the PEB. You should have been given an initial rating of 50% for your PTSD and placed on the TDRL for six months, with a subsequent re-evaluation at that time.

b. Since you have already separated, we no longer have the authority to issue new findings in your case. You do have two options to get your rating changed if you desire. The first is to apply to the Physical Disability Board of Review, a board specifically set up for Soldiers with ratings under 30% who may be eligible for higher ratings. Or you may apply to the ABCMR, which also has the authority to correct your rating.

c. There are some things you should understand if you decide to apply to the PDBR or ABCMR for the higher rating:

(1) If your application is approved, you will no longer be eligible for the severance pay that you received. This pay will be recouped by the Defense Finance and Accounting Service and you will not receive any retirement pay until the entire amount of the severance pay has been paid back. There may be some tax implications associated with this recoupment and you may want to consult with a tax attorney before making your decision.

(2) Your placement on the TDRL will be made retroactive back to the day you separated from the Army. You will be due for a medical reevaluation approximately six months after you receive the orders placing you on the TDRL. If, as a result of the medical reevaluation, it is determined that your condition has stabilized at a level below 30%, you may be separated with severance pay off the TDRL shortly after the reevaluation is completed. If your condition has stabilized at a level 30% or higher, you will be permanently retired for disability. If your condition has not yet stabilized, you will remain on the TDRL and be reevaluated again 18 months later.

(3) If you are placed on the TDRL and it is determined by subsequent reevaluation that your conditions have improved to the extent that you are no longer unfit, you will be found fit and removed from the TDRL. You will be permitted to come back on active duty if you were Regular Army or to rejoin the National Guard. If found fit, however, you will no longer be eligible for retirement benefits and will have forfeited your severance pay.

7. During the processing of this case, an advisory opinion was obtained from the USAPDA Legal Advisor. It states:

a. Background: On 22 May 2009, the applicant was separated with severance pay for his unfitting back (10%) and PTSD (10%) conditions with a combined rating of 20%. At the time of separation, the Integrated Disability Evaluation System (IDES) had not come online. In January 2010, the IDES was rolled out and the USAPDA conducted a review of cases involving PTSD from the previous year (2009). In the applicant's case, the USAPDA identified a rating error with his PTSD condition. His PTSD should have been rated at 50% and he should have been placed on the TDRL. As a result, the USAPDA notified him on 22 January 2010 that he had the option to either maintain the severance pay or opt to file an appeal with the PDBR or with ABCMR so that he could be placed on TDRL with a reexamination within six months' time. The case file is silent as to whether the applicant ever responded to the USAPDA's notification.

b. Analysis: It appears from the applicant's case file that the error initially identified by the USAPDA on 22 January 2010 was never corrected, possibly due to the applicant failing to respond to the notification. Nonetheless, the error remains. Thus, it would be appropriate to retroactively place him on the TDRL and have a reexamination scheduled.

c. Conclusion: The case file presented does support placing the applicant on the TDRL with a reexamination within six months' time. Therefore, the applicant's appeal is legally sufficient.

8. The USAPDA advisory opinion was provided to the applicant and given the opportunity to provide additional comments. No response was received.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation and the facts outlined in the PDA advisory opinion, the Board concluded there was sufficient evidence to place the applicant on the TDRL at a disability rating of 60% pending a reexamination within six months of receiving this board decision.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

1. 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, dated 23 April 2009, by amending the PTSD disability rating from 10% to 50%
- the applicant's DD Form 214 as follows:
 - Separation Code: SEK
 - Narrative Reason for Separation: Disability, Temporary

2. Additionally, the Board recommends the applicant's medical records be forwarded to the USAPDA for further evaluation to determine if permanent disability is warranted.

//SIGNED//

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CHAIRPERSON

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

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. 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 USAPDA is responsible for administering the Army Disability Evaluation System and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in

accordance with Department of Defense Directive 1332.18 and Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation).

a. 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.

b. 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 VA Schedule for Rating Disabilities.

3. Army Regulation 635-40 states the TDRL is used in the nature of a "pending list." It provides a safeguard for the Government against permanently retiring a Soldier who can later fully recover, or nearly recover, from the disability causing him or her to be unfit. Conversely, the TDRL safeguards the Soldier from being permanently retired with a condition that may reasonably be expected to develop into a more serious permanent disability.

4. 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%.

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//