

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 January 2025

DOCKET NUMBER: AR20240003093

APPLICANT REQUESTS: in effect, correction of his records to show he was retired for physical disability instead of discharged with severance pay.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States) in lieu DD Form 149 (Application for Correction of Military Record)
- DD Form 214 for the period 30 October 2001 to 16 May 2013
- DA Form 2166-8 (Noncommissioned Officer Evaluation Report (NCOER)) for the period March 2003 through February 2004

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 did not provide a reason or argument for his request.
3. The applicant enlisted in the Regular Army on 22 November 1994. He was released from active duty and transferred to the U.S. Army Reserve Control Group (Reinforcement) on 31 March 2001.
4. The applicant reenlisted in the Regular Army on 30 October 2001. His record shows service in Kuwait from 22 November 2001 to 22 March 2002 and in Iraq from 8 March 2004 to 19 March 2008, 5 December 2006 to 26 August 2007, and 14 December 2008 to 4 December 2009.
5. On 4 May 2023, a Physical Evaluation Board (PEB) found the applicant unfit for further military service due to left hip traumatic arthritis. The PEB recommended a 10% disability rating and his separation with entitlement to severance pay. The PEB found him fit for seven additional conditions because the conditions, individually or in

combination, were not associated with profile limitations and did not impact his ability to perform any one of the functional activities. The Medical Evaluation Board (MEB) indicated the conditions met medical retention standards and therefore, the conditions were not unfitting.

6. On 14 February 2013, the applicant concurred with the PEB's findings and recommendations and waived a formal hearing of his case. He did not request reconsideration of his VA ratings.

7. 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) under the 19 December 2011 Policy and Procedure Directive-type Memorandum (DTM) 11-015.

b. The specific Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD) codes to describe the Soldier's condition, and the disability percentage, was determined by the VA and is documented in a VA memorandum dated 1 February 2013. The disposition recommendation was determined by the PEB based on the VA disability rating proposed and applicable statutes and regulations for the Physical Disability Evaluation System.

8. The applicant's DD Form 214 shows he was discharged on 16 May 2013 under the provisions of Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation) by reason of disability, severance pay, non-combat (enhanced). The DD Form 214 also shows he was credited with 17 years, 11 months, and 8 days of active service.

9. The applicant provided his NCOER for the period March 2003 through February 2004. The reason for the applicant's submission of this document in support of his application is unclear.

10. 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 (AHLTA), 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 a change reason for separation only. He states the reason for this change is "Left hip traumatic arthritis."

c. The Record of Proceedings details the applicant's service and the circumstances of the case. His DD 214 for the period of Service under consideration shows he entered the regular Army on 30 October 2001 and was separated with disability severance pay on 16 May 2013 under provisions in chapter 4 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (8 February 2006). His Physical Evaluation Board (PEB) Proceedings (DA Form 199) shows his percentage of disability for his sole unfitting condition of bipolar disorder was 10%.

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 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 17 January 2012, the applicant was referred to the IDES for "Hip Arthritis." The applicant claimed eleven additional conditions on his VA Form 21-0819. A medical evaluation board (MEB) determined his "Left Hip Traumatic Arthritis" failed the medical retention standards of AR 40-501, Standards of Medical Fitness. The MEB determined

seven additional conditions met medical retention standards. On 17 October 2012, the applicant agreed with the MEB findings and recommendation and his case was forwarded to a physical evaluation board (PEB) for adjudication.

h. On 7 February 2013, the applicant's informal PEB determined his "Left Hip Traumatic Arthritis" was the sole unfitting condition for continued military service. They found the seven remaining medical conditions not unfitting for continued military service. The PEB applied the Veterans Benefits Administration (VBA) derived rating of 10% and recommended the applicant be separated with disability severance pay. On 14 February 2013, after being counseled on the PEB's findings and recommendation by his PEB liaison officer, the applicant concurred with the PEB, waived his right to a formal hearing, and declined to request a VBA reconsideration of his disability ratings (VARR).

i. His final NCO Evaluation Report was an annual covering 28 February 2012 thru 27 February 2013 shows he was a successful Soldier. It shows he did not take Army physical fitness test due to his physical profile and met the Army height and weight standards. He "Met Standard" or "Exceed Standard" for all performance, professionalism, attributes, and competencies. His senior rater blocked him with 2's on a scale of 1 to 5 for both overall performance and overall potential and opined:

- " promote to Master Sergeant with peers and consider for advanced NCOES schools
- possesses the self-confidence and knowledge needed to face the toughest leadership challenges
- demonstrated potential for higher levels of responsibility

j. There is no evidence the applicant had condition(s) which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge.

k. JLV shows the applicant has been awarded several VA service-connected disability ratings, including ratings for PTSD and migraine headaches initially effective 17 May 2013, and a rating for a left hip replacement initially effective 10 May 2020. However, the DES only compensates an individual for service incurred medical condition(s) which have been determined to disqualify him or her from further military service and consequently prematurely ends their career. The DES has neither the role nor the authority to compensate service members for anticipated future severity or

potential complications of conditions which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

l. Review of the submitted documentation, ePEB case file, and AHLTA record found no material errors of deficiencies.

m. It is the opinion of the ARBA medical advisor that neither an increase in his military disability rating nor a referral of his case back to the DES is warranted.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was/was not warranted. The Board 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 request, available military records and medical review, the Board concurred with the ARBA medical advisor's opinion that neither an increase in the applicant's military disability rating nor a referral of his case back to the Disability Evaluation System (DES) is justified. The medical opinion further noted that there is no evidence indicating any medical condition prevented the applicant from reasonably performing the duties of his office, grade, rank, or rating prior to discharge

2. The Board noted, the applicant did not provide a substantive argument or rationale to support his request for correction of his records to reflect retirement for physical disability in lieu of discharge with severance pay. The Board found the applicant's service record reflects honorable and extensive service, including multiple deployments to Kuwait and Iraq. However, the Physical Evaluation Board (PEB) convened on 4 May 2023 found him unfit solely due to left hip traumatic arthritis, assigning a 10% disability rating and recommending separation with severance pay. Seven additional medical conditions were reviewed and determined to be fit, as they did not impact his ability to perform required duties. The applicant concurred with the PEB's findings on 14 February 2013 and waived his right to a formal hearing or reconsideration of his VA ratings.

3. The Board acknowledges the applicant's submission of a Noncommissioned Officer Evaluation Report (NCOER) from 2003–2004, its relevance to the current request is unclear and does not provide evidence to support a change in disposition. In light of the

medical opione, the applicant’s concurrence with the PEB, and the absence of compelling evidence or justification, the Board found no basis to amend the applicant’s DD Form 214 to reflect retirement for physical disability. Therefore, the request for relief is denied.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	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.

X //SIGNED//

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 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).

3. 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 his or 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 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 his or her 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 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 his or her office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of his or her 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.

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

a. The IDES is the joint DOD-VA process by which DOD determines whether wounded, ill, or injured service members are fit for continued military service and by which DOD and VA determine appropriate benefits for service members who are separated or retired for a service-connected disability. The IDES features a single set of disability medical examinations appropriate for fitness determination by the Military Departments and a single set of disability ratings provided by VA for appropriate use by both departments. Although the IDES includes medical examinations, IDES processes are administrative in nature and are independent of clinical care and treatment.

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

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

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

6. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//