

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 November 2024

DOCKET NUMBER: AR20240003260

APPLICANT REQUESTS: correction of his DA Form 199 (Informal Physical Evaluation Board (IPEB) Proceedings) to show a 50% disability rating resulting in his retirement for physical disability.

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 199
- separation orders
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Department of Veterans Affairs (VA) Rating Decision, dated 10 August 2023
- VA benefits decision letter, dated 11 October 2023

FACTS:

1. The applicant states he was medically separated from the Army due to his feet with a 10% disability rating. The 10% rating was proposed by the VA. However, upon his discharge, the VA rated his feet at 50%. In the rating decision letter, the VA stated that the "decision represents a change to a rating originally assigned as part of the Integrated Disability Evaluation System [IDES]" and "this decision could potentially warrant a change to your military record." Because the VA assigned a 50% rating for his feet, his medical board condition should also be rated at 50%, which would qualify him for a medical retirement.
2. A DD form 2808 (Report of Medical Examination) shows the applicant underwent a medical examination for the purpose of enlistment in the Army on 26 March 2019. Item 35 (Feet) of the form shows he was diagnosed with pes planus, mild, asymptomatic. The form further shows he was found qualified for service.
3. The applicant enlisted in the Regular Army on 11 February 2020.
4. On 17 May 2023, the applicant was found unfit for further military service due to bilateral plantar fasciitis. The PEB indicated the applicant first sought treatment for this condition on 12 May 2020 after experiencing bilateral foot pain for two weeks with no

specific mechanism of injury. The PEB recommended a 10% disability rating and the applicant's separation with severance pay. The PEB found him fit for 21 additional conditions referred by the Medical Evaluation Board (MEB) for fitness determination.

5. On 19 May 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 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 IDES.

b. As documented in the VA memorandum dated 16 May 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. The applicant's DD Form 214 shows he was discharged on 20 August 2023 under the provisions of Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation) by reason of disability, severance pay, non-combat related.

8. The applicant provided A VA Rating Decision, dated 10 August 2023, showing he was granted service-connected disability compensation, effective 21 August 2023, for the following conditions with the corresponding disability rating:

- bilateral pes planus, bilateral plantar fasciitis (also claimed as plantar fasciitis, left, plantar fasciitis right, bilateral flat foot), 50%
- generalized anxiety disorder, unspecified depressive disorder (also claimed as anxiety, depression, insomnia), 30%
- tinnitus, 10%
- allergic rhinitis, 10%
- gastroesophageal reflux disease (GERD) (also claimed as acid reflux), 10%
- right hand tendinitis, fourth digit (ring finger) (dominant) (also claimed as limited range of motion ring finger right), 0%
- hyposmia (also claimed as loss of smell due to COVID), 0%

9. The VA Rating Decision contains the following statements:

a. Service connection for bilateral pes planus, bilateral plantar fasciitis (also claimed as plantar fasciitis, left, plantar fasciitis right, bilateral flat foot) has been granted because this condition, which existed prior to military service, permanently worsened as a result of service. The preservice percentage is normally deducted before assigning any service-connected evaluation less than 100%. Since the preservice percentage is zero, no deduction is necessary.

b. The VA examiner opined the pes planus, right and left foot condition, which clearly and unmistakably existed prior to service, was aggravated beyond its natural progression during service by an in-service injury, event, or illness. Rationale: The Veteran's E-file records were reviewed using DOS: 11 February 2020 to present, as service-member is still serving active duty in United States Army, pending medical evaluation board out-processing for his feet. The Veteran's service record has evidence of (asymptomatic) bilateral pes planus (mild), at enlistment physical in 2019. The Veteran participated in many physical training exercises that caused undue stress to both feet. The Veteran's record has evidence of being seen for foot pain. The nature of military duties requires walking and standing for extended periods of time, which makes foot problems progress. The objective findings on exam today are indicative for the original pes planus that is now symptomatic as well as bilateral plantar fasciitis. The medical record establishes a nexus for aggravation to current pathology.

10. The applicant also provided a VA benefits decision letter, dated 11 October 2023, showing his combined disability rating as 80% for the same conditions and ratings shown on his VA Rating Decision dated 10 August 2023. The benefits decision letter contains the following statement:

This decision represents a change to a rating originally assigned as part of the Integrated Disability Evaluation System. This decision could potentially warrant a change to your military record and/or an adjustment to the disability separation benefits you received from your service department. Each service department operates an agency or board for correction of records. In light of the change in your VA disability rating, it may be to your benefit to request a review of your discharge to the appropriate board.

11. 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.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant's petition, available military records, and the medical review, the Board concurred the Department of Veterans Affairs operate under a different set of laws. The VA may assign higher post-service ratings based on progressive symptoms or broader criteria, including non-duty-related impacts. However, VA determinations are not retroactively applicable to military separation decisions. Based on this, the Board majority determined an increase in the applicant's rating decision at the time of separation was not warranted. The applicant's disability evaluation at the time of separation was conducted in accordance with applicable military regulations and medical evidence then available. The 10% rating was determined based on the condition's severity and impact on duty performance at that time. The Board majority determined the ratings were close in the proximity of time and therefore warranted relief.

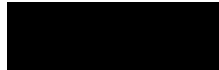
BOARD VOTE:

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. 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 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.

3. Army Regulation 635-40, paragraph 5-17c (Rating of disabilities that have a pre-existing component) states when considering exited prior to service cases involving aggravation by active service, the rating will reflect only the degree of disability over and above the degree existing at the time of entrance into active service, less natural progression occurring during active service. This will apply whether the particular condition was noted at the time of entrance into active service or is determined upon the evidence of record or accepted medical principles to have existed at that time.

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. Title 38, U.S. Code, 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.

7. Title 38, Code of Federal Regulations, Part IV is the VASRD. 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.

8. 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//