ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 6 November 2024

DOCKET NUMBER: AR20240003881

APPLICANT REQUESTS: in effect, an increase in his disability rating.

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

- DD Form 149 (Application for Correction of Military Record)
- Orders: 29-242-0005, 30 August 2019
- Orders: 29-242-0005 (A1), 30 August 2019
- North Atlantic Treaty Organization (NATO) Travel Order, 11 October 2019
- Orders: BL-284-0009, 11 October 2019
- Orders: BL-284-0009 (A1), 11 October 2019
- Orders: BL-284-0009 (A2), 29 October 2019
- Orders: 29-242-0005 (A2), 11 March 2020
- Progress Notes, 24 March 2020
- DA Form 2823 (Sworn Statement), (10)
- Memorandum, subject: Discrepancy with Dates on Sworn Statements, 7 April 2020
- Photos (7)
- Orders: 29-242-0005 (A3), 5 June 2020
- DA Form 2173 (Statement of Medical Examination and Duty Status), 8 July 2020
- Orders: MM-0198-00019, 16 July 2020
- Medical Records, August 2020 – September 2020
- Orders: 29-242-0005 (A4), 5 September 2020
- Orders: 29-242-0005 (A5), 8 October 2020
- Orders: NG-0322-00001, 17 November 2020
- Orders: NG-0322-00001A01, 17 November 2020
- DA Form 2173, 19 January 2021
- Orders: NG-1056-00008, 25 February 2021
- DA Form 7652 (Disability Evaluation System (DES) Commander's Performance and Functional Statement), 6 April 2021
- DA Form 4187 (Personnel Action), 6 April 2021
- Orders: MM-1197-00005, 16 July 2021
- Memorandum, subject: Medical Retention Determination Point Evaluation,

19 July 2021
- VA Form 21-0819 (Department of Veterans Affairs (VA) Department of Defense (DoD) Referral to Integrated Disability Evaluation System (IDES)), 6 August 2021
- Advice to Right to Counsel, 10 August 2021
- Email Correspondence, 25 August 2021
- Medical Evaluation Board (MEB) Proceedings, 23 September 2021
- Orders: MM-1197-00005A01, 13 December 2021
- Progress Notes, April 2022 – July 2022
- VA Rating Decision, 13 July 2022
- VA Rating Decision, 19 September 2022
- Orders Number 0004706376.00, 11 May 2023

FACTS:

1. The applicant states, he is requesting a review of the Physical Evaluation Board (PEB)/MEB findings due to injuries sustained while he was still serving in the North Carolina Army National Guard (NCARNG). The VA recognized the head injury that he sustained from the Halon blast and post-traumatic stress disorder (PTSD). These injuries were not considered and not processed during the MEB/PEB. He has supporting documents for the Halon injury as well as documented PTSD. The timeline for the Halon injury was during the deployment from 14 October 2019 to 21 July 2020. The period was during the COVID-19 pandemic and could have had an impact on processes. Having in the line of duty (LOD) for these injuries that were sustained on duty, could have an impact on the MEB/PEB findings. He is currently medically, involuntarily separated from the NCARNG and retired on the permanent disability retired list (PDRL). If corrected, this could change his DoD rating. He had two LODs processed for injuries, and the other two additional LODs were never processed.

2. The applicant provides the following:

a. Orders Number 29-242-0005, issued by the State of North Carolina, Office of the Adjutant General, Raleigh, NC on 30 August 2019, which ordered the applicant to active duty in support of Operation Enduring Freedom (OEF) (Spartan Shield), reporting on 30 August 2019, for 382 days.

b. Orders Number 29-242-0005 (A1), dated 30 August 2019, added an accounting code.

c. Orders Number BL-284-0009, issued by Headquarters, U.S. Army Garrison, Fort Bliss, TX on 11 October 2019, show he was deployed in support of OEF (Spartan Shield) to Camp Buerhing, Kuwait, to proceed on or about 14 October 2019, not to exceed 337 days.

d. Orders Number BL-284-0009 (A1), dated 11 October 2019, added an accounting code.

e. Orders Number BL-284-0009 (A2), dated 29 October 2019, added additional duty location. It shows, Soldier will also perform duty at Saudi Arabia.

f. Orders Number 29-242-0005 (A2), show the period of active duty was changed from 382 days to 412 days.

g. Medical outpatient progress notes, which show the applicant was treated on 24 March 2020 for Halon Exposure. He was evacuated from the range after being treated by the medic for exposure to Halon blast in the Bradley. The applicant told the medic that he was seated on the left side of a patient who sustained majority of the exposure. He stated he was wearing eyepro, so the majority of the substance hit his shades. The applicant stated that it felt like concrete was in his lungs when he breathed. He stated he was having mild ringing in his ears.

h. 10 sworn statements from members of the applicant's unit, which attest to the unintentional discharge of the Bradley Fighting Vehicle Halon System on 24 March 2020.

i. A memorandum dated 7 April 2020, wherein the Investigating Officer of the incident that occurred on 24 March 2020, states three Soldiers, including the applicant, were injured when the Halon system discharged.

j. Orders Number 29-242-0005 (A3), dated 5 June 2020, show the period of active duty was changed from 412 days to 465 days.

k. DA Form 2173 dated 8 July 2020, which shows the applicant injured his right femur on 2 December 2019, in Khurias, Saudi Arabia, while on active duty.

l. Orders Number MM-0198-00019, issued by Headquarters, U.S. Army Medical Command, Fort Sam Houston, TX on 16 July 2020, show the applicant was retained on active duty for the purpose of participating in the Reserve Component Warriors in Transition Medical Retention Processing Program for completion of a medical evaluation, for 60 days, reporting on 21 July 2020.

m. Medical records from August 2020 through September 2020, which show the applicant was treated for migraines. The headaches started around mid-May 2020 and began to get worse towards the end of his deployment in June 2020. He also had a reported medical history of tinnitus, right hearing loss. He was seen in audiology for an audiological evaluation. He reported in May 2020 that an explosion set off by his right ear, which caused significant tinnitus and decreased hearing.

n. Orders Number 29-242-0005 (A5), dated 5 October 2020, show the period of active duty was changed from 465 days to 326 days.

o. Orders Number NG-0322-00001, issued by the ARNG, Arlington, VA, on 17 November 2020, show he was ordered to active duty for the purpose of participating in the Reserve Component Managed Care – Mobilization (RCMC-M) for managed medical care, for 31 days. His report date was 17 November 2020.

p. Orders Number NG-0322-00001A01, dated 17 November 2020, show an amended report date from 17 November 2020 to 13 November 2020.

q. DA Form 2173 shows the applicant injured his back and hip on 12 March 2020, while serving on active duty in Saudi Arabia.

r. Orders Number NG-1056-00008, issued by the ARNG on 25 February 2021, show he was ordered to active duty to participate in the RCMC-M for managed care, for 141 days, with a report date on 25 February 2021.

s. DA Form 7652 dated 6 April 2021, wherein the applicant's commander noted he was assigned to a Warrior Transition Unit or other medical type of hold unit. His commander also noted that he believed the applicant's condition(s) prevented him from serving in his primary military occupational specialty (MOS) in future assignments. His commander stated the applicant could not pick up over 10 pounds, wear combat boots, a Kevlar, wear an interceptor body armor (IBA), or carry his individual assigned weapon. Due to his medical condition, he could not be assigned to a deployable billet.

t. Orders Number MM-1197-00005, issued by Headquarters, U.S. Army Medical Command, Fort Sam Houston, TX on 16 July 2021, ordered the applicant to active duty to participate in the Reserve Component Disability Evaluation System and related medical appointments, for a period of 179 days, with a report date of 16 July 2021.

u. A memorandum dated 19 July 2021, which shows the applicant was recommended for the MEB due to the following disqualifying medical condition: hip injury/pain (right), osteonecrosis, right femur. The LOD was approved on 15 June 2021. His DA Form 3349 (Physical Profile) was validated and provided.

v. An Advice to Right to Counsel, dated 10 August 2021, which shows the Physical Evaluation Board Liaison Officer (PEBLO) advised the applicant that he had the right to seek legal counsel upon referral to the MEB, and shows he received his initial counseling from the PEBLO.

w. Email correspondence dated 25 August 2021, which shows the Medical Noncommissioned Officer (NCO), provided the applicant with two finalized LODs and

stated it appeared that he had two additional LODs pending. The NCO informed the applicant that he would send up a request for information on the two LODs that were pending.

x. DA Form 3947 shows on 23 September 2021, an MEB convened to evaluate the applicant. The Board recommended the applicant be referred to a PEB.

(1) After consideration of the case file, the Board found the following diagnosed medical conditions did not meet Army Regulation (AR) 40-501 (Standards of Medical Fitness) retention standard:

- lumbosacral strain
- spinal stenosis
- herniated disc, lumbar spine
- right hip avascular necrosis

(2) The Board found the following diagnosed medical conditions did meet AR 40-501 retention standard:

- bilateral lower extremity radiculopathy
- left hip tumor
- PTSD with panic attacks
- major depressive disorder, single episode
- generalized anxiety disorder
- traumatic brain injury (TBI)
- migraine headaches, including migraine variants
- erectile dysfunction

(3) On 28 September 2021, the applicant concurred with the Board's decision, did not request an Impartial Medical Review (IMR), and did not wish to submit a written rebuttal.

y. Medical progress notes from April 2022 to July 2022, which show the applicant was referred to mental health for evaluation and treatment of anxiety and depression.

z. VA rating decision, dated 12 July 2022, which shows he was service connected for the following conditions:

- PTSD with anxiety, and major depressive disorder, generalized anxiety. disorder, and residuals of TBI, evaluated at 30 percent.
- Irritable bowel syndrome with chronic diarrhea, evaluated at 30 percent.
- Migraines, including migraine variants, evaluated at 30 percent.

- Lumbosacral strain with herniated disc and spinal stenosis, evaluated at 20 percent.
- Flexion limitation, left hip tumor, evaluated at 10 percent.
- Flexion limitation, right hip avascular necrosis, evaluated at 10 percent.
- Left lower extremity sciatic radiculopathy, evaluated at 10 percent.
- Right lower extremity sciatic radiculopathy, evaluated at 10 percent.
- Tinnitus, evaluated at 10 percent.
- Erectile disfunction, evaluated at 10 percent.
- Extension limitation, left hip tumor, evaluated at 0 percent.
- Extension limitation, right hip avascular necrosis, evaluated at 0 percent.
- Right ear hearing loss, evaluated at 0 percent.
- Thigh limitation, left hip tumor, evaluated at 0 percent.
- Thigh limitation, right hip avascular necrosis, evaluated at 0 percent.

aa. VA rating decision dated 19 September 2022, which shows the applicant's evaluation of migraine headache disorder, which was 30 percent disabling, increased to 50 percent. His combined rating evaluation is 100 percent.

3. A review of the applicant's service record shows:

a. He enlisted in the ARNG on 25 February 2010.

b. He was ordered to active duty in support of OEF (Spartan Shield), with a report date of 30 August 2019.

c. On 18 September 2020, he was released from active duty. His DD Form 214 shows in block 18 (Remarks):

- Service in Kuwait: 14 October 2019 – 21 November 2019
- Service in Saudi Arabia: 21 November 2019 – 26 February 2020
- Service in Kuwait: 26 February 2020 – 7 July 2020

d. DA Form 199 (Informal PEB Proceedings), shows on 10 January 2022, an informal PEB convened to consider the applicant's physical condition. The PEB found the applicant unfit and recommended a rating of 30 percent, and that his disposition be permanent disability retirement.

(1) The following medical conditions were determined to be unfitting:

- Lumbosacral strain; spinal stenosis; herniated disc, lumbar spine, with a rating of 20 percent.

- Right hip avascular necrosis (VA rated as flexion limitation, right hip avascular necrosis), with a 10 percent rating.
- Right hip avascular necrosis (VA rated as extension limitation, right hip avascular), with a 0 percent rating.
- Right hip avascular necrosis (VA rated as thigh limitation, right hip avascular necrosis), with a 0 percent rating).

(2) The ratings were combined in accordance with the VA Schedule for Rating Disabilities (VASRD).

(3) On 11 January 2022, the applicant was counseled on the findings and recommendations of the formal PEB. He concurred with the findings, waived a formal hearing of his case, and did not request reconsideration of his VA ratings.

(4) On 11 January 2022, the U.S. Army Physical Disability Agency (USAPDA) approved the findings and recommendations of the PEB.

e. Orders Number 166-0001, issued by Joint Force Headquarters, Raleigh, NC on 15 June 2022, shows effective 23 February 2022 he was released from assignment and duty because of physical disability incurred while entitled to basic pay and under conditions that permit his placement on the Temporary Disability Retired List (TDRL). He was placed on the retirement list, effective 24 February 2022 and transferred to the U.S. Army Reserve Control Group (Retired).

f. On 23 February 2022, he was honorably retired by reason of disability, combat related. His DD Form 214 shows in:

- Block 4a (Grade, Rate or Rank): Sergeant (SGT)
- Block 4b (Pay Grade): E-5
- Block 18 (Remarks): Ordered to active duty in support of participating in the RCMC-M for medical care.

g. Orders Number 0004706379.00, issued by the NCARNG on 11 May 2023, show effective 24 February 2022 the applicant was assigned to the PDRL.

4. 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 Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The applicant requests review of the PEB/MEB findings due to injuries sustained while serving in the North Carolina National Guard. He specifically mentioned

a head injury sustained from a halon blast and PTSD. He contends that these injuries were not considered and not processed during the MEB/PEB. He states that his MEB/PEB processing could have been impacted by the COVID-19 pandemic.

2. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The applicant enlisted in the ARNG on 25Feb2010. He was on active orders 20190830 to 20200918. His MOS was 91B Wheeled Vehicle Mechanic. He deployed to Kuwait 20191014 to 20191121; Saudi Arabia 20191121 to 2020026; and Kuwait 20200226 to 20200707. He was released from active service 18Sep2020 due to completion of required active service. On 23Feb2022, he was honorably retired by reason of combat related disability. He was processed through IDES (Integrated Disability Evaluation System) and was found unfitting to continue to serve in the military due to his lumbar condition and right hip condition. He was awarded 30% total rating with disposition permanent disability retirement.

3. During the IDES proceedings, the 23Sep2021 MEB reviewed the PTSD with Panic Attacks; Major Depressive Disorder, Single Episode; and Generalized Anxiety Disorder conditions and determined that they all met retention standards of AR 40-501. The MEB also reviewed the TBI condition and Migraine Headaches, Including Migraine Variants which began after the TBI condition and determined that these conditions also met retention standards of AR 40-501. The applicant concurred with the MEB decision and did not request an Independent Medical Review or submit a written rebuttal.

4. There were no service treatment records for the applicant's BH (behavioral health) condition which included PTSD; Major Depressive Disorder (MDD), Single Episode; and Generalized Anxiety Disorder (GAD). The medical evidence for the BH condition was found in surveillance and evaluation visits, there were no treatment visits specifically for BH symptoms while the applicant was in active service. Of note, the VA rated the PTSD, MDD, and GAD condition with the Residuals of TBI condition combined at 70% (03Nov2021 DES Proposed Rating).

a. 02Sep2019 Pre-Deployment Health Assessment (DD Form 2795). PTSD and Depression screenings were negative. No BH symptoms were reported.

b. 08Jul2020 Post Deployment Health Assessment (DD Form 2796). The applicant endorsed (of pertinence) that the following 'bothered him a little': Feeling tired or having low energy and trouble sleeping. The PTSD and Depression screenings were negative. A BH referral was not requested by the applicant and the provider did not deem one was warranted.

c. 14Jul2021 Carolina Cardiology Sleep and Obesity Center. The applicant was evaluated for sleep apnea. He endorsed having panic attacks associated with shortness of breath, palpitations, dizziness and feeling lightheaded. He denied

syncope. The milder attacks occurred 2 times a day and the more severe ones occurred 4 times a week. He also endorsed suffering from anxiety and depression that was currently self-controlled. He denied PTSD.

d. 23Aug2021 Initial PTSD DBQ. The VA examiner endorsed the following DSM-5 mental health diagnoses: PTSD with Panic Attacks; MDD, Single Episode; and GAD. The PTSD symptoms (in part) were listed as: Recurrent and intrusive distressing memories of the traumatic event(s); avoidance of distressing memories, thoughts, or feelings about or closely associated with the traumatic event(s); persistent and exaggerated negative beliefs/expectations; irritable behavior and angry outbursts; hypervigilance; and sleep disturbance. PTSD stressors were listed as: While in Khurais, Saudi Arabia, and charged with guarding the Aramco oil fields, Iranian drones flew overhead daily which caused constant worry they may contain explosives; a 2-liter Pepsi bottle with attached wires and cell phone, was thrown at the gate while he was on guard duty around 25Dec2019; and during work on a Bradley the halon canister exploded with the halon and debris spread around the tank the impact of which felt as if he had been hit in the back of the head with a bat. In addition to characteristic PTSD symptoms, the applicant developed symptoms consistent with MDD and GAD after the halon explosion. The MDD condition was manifested as depressed mood, markedly diminished interest, increased appetite, fatigue or decreased energy, insomnia, and excessive guilt. He stated that he felt worthless and stopped going to work. For GAD, the condition was manifested as restlessness, easily fatigued, irritability, muscle tension and sleep disturbance. His fear increased with each incident. The VA examiner indicated that there was significant overlap between the sign/symptoms of PTSD, MDD, and GAD such that they were unable to differentiate which symptoms were caused by each. In addition, they were unable to differentiate the amount of impairment attributable to PTSD, MDD, GAD, and TBI without undue speculation. They opined that the level of social and occupational impairment caused by PTSD, MDD, GAD and TBI was ‘with reduced reliability and productivity’ (50% disability rating level). The halon canister explosion incident occurred while he was working in the field, while on crutches from a prior injury (to back and hip). He reported being unable to work because of his injuries. He reported that he last worked in 2019. His social life involved his wife and family only. He was married in July 2014, and he stated that "she is phenomenal".

e. 07Apr2022 Community Care Consult Note. The applicant was referred to mental health services for evaluation and treatment of anxiety/depression.

f. 26Apr2022 the applicant called the VA Crisis line reporting suicidal thoughts.

5. TBI and Migraine Headaches, Including Migraine Variants. Of note, the VA rated the Migraine Headaches, Including Migraine Variants condition at 30 percent (03Nov2021 DES Proposed Rating) for ‘characteristic prostrating attacks occurring on an average once a month over last several months’. In response to the applicant’s request for an

informal review of the condition, the 19Sep2022 Decision Review Officer Decision increased the rating to 50% effective 24Feb2022 for 'very frequent, completely prostrating and prolonged attacks productive of severe economic inadaptability'.

a. 22Apr2008 Report of Medical History (for enlistment). The applicant reported a mild concussion with loss of consciousness (LOC) from an ATV accident. He was hospitalized one night.

b. 24Mar2020 BRNG TMC Theatre Note. The applicant was evacuated from the range after being treated by the medic for exposure to a halon canister blast. He told the medic that he was seated on the left side of another soldier who sustained the majority of the exposure. He was wearing eye protection and endorsed that the much of the substance/debris hit the shades. He had trouble breathing, and he had mild ringing in his ears. He denied headache, dizziness, vertigo, lightheadedness, LOC, memory lapses or memory loss. The ear exam revealed non bulging, non erythematous tympanic membranes bilaterally. Tympanic membrane perforation was not documented. Lungs sounds were clear, and respiration rhythm and depth were normal. The physical exam did not show neurologic, motor, or sensory abnormalities. A concussion or TBI was not diagnosed.

c. 08Jul2020 Post Deployment Health Assessment (DD Form 2796). The applicant endorsed (of pertinence) that the following 'bothered him a little': Headaches, feeling tired or having low energy and trouble sleeping. He did not endorse memory problems. He did endorse hearing trouble and balance issues. Concussion exposure and environmental exposure concerns were also negative.

d. 25Aug2020 SJ Case Management Admin. The applicant's wife called stating he was having migraines since mid-May. A return call to the applicant revealed that the headaches increased from 1-2 headaches per month to 3-4 per month since July.

e. 01Sep2020 at 4th Medical Group, OMRS Primary Care. The applicant reported headaches for the past 3 months with increased frequency. The provider assessed that his symptoms were consistent with migraine headaches. There were no focal neurologic deficits on examination. He was currently taking Gabapentin for pain control (for back and hip). Gabapentin was increased to 600mg nightly for headache prophylaxis. He was also prescribed Maxalt 5mg as needed at headache onset. He was to follow up in 3-4 weeks if symptoms persisted or worsened.

f. 05Nov2020 Case Management Admin. He presented requesting medication refills. He requested a year refill on the Maxalt, which he stated was working really well.

g. 14Jul2021 Carolina Cardiology Sleep and Obesity Center. The applicant stated

that he suffered from headaches, and he had experienced one concussion. The sleep specialist physician assessed that the applicant's headache description was consistent with migraine type symptoms, likely from underlying sleep apnea syndrome. He was advised that sleep apnea as well as insomnia increase the risk of migraines and other types of headaches. He reported that rizatriptan (Maxalt) worked for his headaches if taken at headache onset.

h. 23Aug2021 Initial Evaluation of Residuals of TBI DBQ exam. During this exam, the VA examiner diagnosed TBI due to the March 2020 halon exposure. The applicant reported the turret was damaged with a rough point on the cage that "ripped" the tank's halon fire extinguisher canister causing an explosion of the halon canister. He reports the right side of his head was 6-12 inches away from the canister. He reported that the blast caused him to fall backwards to the ground. He stated that "it felt like I had been hit in the back of the head with a bat". He reported brief LOC. He complained of mild memory loss, attention, concentration, or executive functions; however, there was no objective evidence on testing. The Montreal Cognitive Assessment (MoCA) test was normal (28/30). The examiner noted the following neurobehavioral symptoms: Mildly impaired judgment; impulsivity; unpredictability; decreased motivation; moodiness; and problems with written and spoken communication. Ongoing TBI residuals were listed as hearing deficit, headaches, tinnitus, and neurocognitive/neurobehavioral effects.

i. 30Aug2021 Headaches DBQ. The applicant reported that the condition began in March 2020 when a Bradley turret ripped a halon bottle and caused it to explode near his head. The headaches were on the right side: Pain was constant, and it was accompanied by nausea, vomiting and sensitivity to light and sound. They completely debilitated him: He reported that he could not drive a car, hold a conversation, or walk without covering his eyes. The examiner assessed that the applicant had 'characteristic prostrating migraine attacks once monthly', lasting less than a day. He did not have 'very prostrating and prolonged attacks of migraine/non-migraine pain productive of severe economic inadaptability'. He was prescribed rizatriptan (Maxalt) which helped if he took it at headache onset.

j. 20Dec2021 OMRS Primary Care. The applicant reported headaches 2-3 times per month lasting a few hours. The frequency had changed to a couple of headaches per week. He reported light and sound sensitivity. He reported good response to Maxalt taken at headache onset. He was also taking Gabapentin 600mg up to twice daily for pain relief which was helpful in reducing the headache severity and chronicity.

6. Summary/Opinion. The ARBA Medical Reviewer concurs with the MEB determination that PTSD, MDD, GAD, TBI and Migraine and Migraine Variants did not fail medical retention standards and also concurs with the PEB finding that they are not unfitting for continued service based on the following observations:

a. In the NCO Evaluation Report covering the period from 20190624 thru 20200623, it was noted that he did not complete the APFT due to injury; however, he "accomplished all duties with great accuracy and timeliness" and he was noted for "accomplishing all tasks with superior results". His overall potential was rated as 'highly qualified'. The 06Apr2021 DES Commander's Performance and Functional Statement (DA Form 7652) endorsed that he made reasonable decisions, including complex or unfamiliar ones; and he had effective relationships with both supervisors and co-workers. Moreover, the MEB proceedings were reviewed and approved by a psychiatrist who endorsed that the applicant's BH condition and TBI met retention standards of AR 40-501.

b. While in military service, the applicant denied suicide ideation. There was no history of substance abuse, psychosis, or mania. He had not received treatment for the BH condition to include PTSD, MDD and GAD including medication, therapy, or hospitalization. For the headache condition, he reported good efficacy with use of Maxalt used at the onset of the headache as an abortive agent and Gabapentin (for prophylaxis) decreased the frequency and severity of the headaches. In addition, the condition had not required consultation with neurology in accordance with AR 40-501 chapter 3-31*g* and had not failed adequate conservative treatment per chapter 3-31*k*.

c. Despite the 02Nov2021 VA DES Proposed Rating evaluating the PTSD, MDD, GAD with TBI at 70%; and the headache condition currently rated at 50%, these conditions had not required accommodation in the work environment, or the work hours. They had not required recurrent emergency room visits or hospitalization. The TBI condition had not required rehab efforts. The PTSD, MDD, GAD with TBI conditions had not required permanent Physical Profile Record (DA Form 3349) Section 4 block 24 functional activity limitations or Section 6 APFT event restrictions. In addition, command had not noted any issues attributable to these conditions. Based on records available for review, there was insufficient evidence to support that the PTSD, MDD, GAD, TBI or Migraine Headaches condition failed medical retention standards of AR 40-501. Referral for further medical disability discharge processing is not 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 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 petition, available military records and the medical review, the Board concurred with the advising official finding insufficient evidence to support that the PTSD, MDD, GAD, TBI or Migraine Headaches condition failed medical retention standards. The opine noted that further medical disability

discharge processing is not warranted. The Board found based on the medical opine, there is insufficient evidence to support the applicant's contentions for an increase in his disability rating. Therefore, the Board denied relief.

2. The Board determined DES compensates an individual only for service incurred condition(s) which have been determined to disqualify him or her from further military service. 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.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
[redacted]	[redacted]	[redacted]	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.

[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, United States 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 (PDES) and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 and AR 635-40 (Disability 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 an MEB; when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an 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 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.

2. 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.

3. Army Regulation 40-501 (Standards of Medical Fitness) governs medical fitness standards for enlistment, induction, appointment (including officer procurement programs), retention, and separation (including retirement). The Department of Veterans Affairs Schedule for Rating Disabilities (VASRD) is used by the Army and the VA as part of the process of adjudicating disability claims. It is a guide for evaluating the severity of disabilities resulting from all types of diseases and injuries encountered as a result of or incident to military service. This degree of severity is expressed as a percentage rating which determines the amount of monthly compensation.

4. 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards 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.

b. 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.

5. Section 1556 of Title 10, United States 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//