

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 December 2024

DOCKET NUMBER: AR20240003832

APPLICANT REQUESTS: in effect –

- an increase to his Physical Evaluation Board (PEB) disability rating
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 199 (Informal PEB Proceedings)
- Physical Disability Information Report
- Department of Veterans Affairs (VA) Summary of Benefits

FACTS:

1. The applicant did not file within the three-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 indicates that his request is related to a mental health condition. He states, in effect:

a. Serving as the platoon leader in 240th Composite Supply Company required high tempo-expeditious deployment and redeployment support throughout European countries. His unit's mission was to control significant support throughout the theater with bulk fuel, water treatment and retail storage. His unit was in foreign territory outside of America soil. The mind-set was considered operational training/simulating combat as they were participating in North Atlantic Treaty Organization (NATO) operations in Romania. The operational tempo caused a high energy dose of mania. They were up one minute, then they were down, and then they reset. They were simulating war -

shoot, move, and communicate. It was repetitive, rapid convoy operations with real world combat simulation which led to him developing mental delusions-on going, chronic schizoaffective disorder, hallucinations, depressed episodes and his separation from the military.

b. His disability rating should be increased from 50% to 100% (total and permanent), to equal his service-connected disability rating awarded by the VA because his condition is worse than noted in his PEB proceedings. He has been removed from the Temporary Disability Retired List (TDRL).

3. The applicant's record shows he was appointed as a Reserve Commissioned Officer on 1 May 2015.

4. On 8 December 2017, the PEB found the applicant's major depressive disorder with mood congruent psychotic features made him physically unfit and recommended he receive a 50% disability rating. The PEB recommended he be placed on the TDRL with a re-examination during August 2018. The DA Form 199 further shows:

a. The disability did not result from a combat-related injury under the provisions of Title 26, U.S. Code, section 104 or Title 10, U.S. Code, section 10216.

b. The applicant did not have a mental disorder that developed as a result of a highly stressful event that resulted in his release from active duty.

c. The case was adjudicated as part of the Integrated Disability Evaluation System (IDES).

d. The applicant concurred with the findings and recommendation of the PEB and waived a formal hearing.

e. He did not request reconsideration of his VA ratings.

5. On 27 March 2018, the applicant was retired due to temporary (enhanced) disability and placed on the TDRL effective 28 March 2018. His DD Form 214 shows he completed 2 years, 10 months, and 18 days of active service.

6. On 13 July 2020, the PEB found that the applicant's major depressive disorder with mood congruent psychotic features continued to be unfitting. The PEB recommended a disability rating of 70% and that the applicant be retired due to permanent disability. The applicant concurred with the findings and recommendations. He was removed from the TDRL on 20 July 2020.

7. The applicant applied for Combat Related Special Compensation (CRSC) on 27 February 2024. On 6 November 2024, the U.S. Army Human Resources Command denied his request stating that his major depressive disorder with mood congruent psychotic features, pseudo folliculitis barbae with keloid scarring, lumbosacral stain, xerosis cutis could not be verified to be combat-related.

8. The applicant provides his VA summary of benefits which shows he has one or more service-connected disabilities. He is considered to be totally and permanently disabled due solely to his service-connected disabilities.

9. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Applicants do not have a right to a hearing.

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

11. The VA can evaluate a veteran throughout his or her lifetime, awarding and/or adjusting the percentage of disability of a condition based upon that agency's examinations and findings.

12. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an increase in his Physical Evaluation Board (PEB) disability rating.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following:

- The applicant was appointed as a Reserve Commissioned Officer on 1 May 2015. His DD214 showed that he had 3 years, 2 months, and 10 days of prior active service, and he had 2 years, 6 months, and 17 days of foreign service.
- The applicant's Major Depressive Disorder with Mood Congruent Psychotic Features was determined to be unfitting by the PEB on 8 December 2018, and he was placed on the Temporary Disability Retirement List (TDRL) with a 50% disability rating.
- The applicant was placed on the TDRL effective 28 March 2018. His DD Form 214 shows he completed 2 years, 10 months, and 18 days of net active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts his service connected disability is worse than indicated by his Army rated 50%, and he is requesting consideration of a higher rating based on his deployment experiences and his mental health diagnoses. The application included an Informal PEB Proceedings document dated 8 December 2017, which showed that the applicant was found unfit for service and was rated at 50% for Major Depressive Disorder with Mood Congruent Psychotic Features. Additionally, it is noted that the applicant's mental health condition was attributed to personal stressors and did not develop secondary to a highly stressful event that resulted in his release from active duty. A second Informal PEB Proceedings document dated 13 July 2020 showed that the same condition was rated at 70%, and it was again noted that the condition was not a combat related injury or an injury received in the line of duty. A letter from the VA dated 14 February 2024 showed that the applicant is 100% service connected for one or more disabilities and is considered totally and permanently disabled, and a second document dated 23 May 2024 showed that the applicant is considered 100% disabled for Major Depressive Disorder by VA effective 24 May 2021. There was sufficient evidence that the applicant was diagnosed with a psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed a pre-deployment behavioral health screening conducted on 12 December 2012, which indicated no history of mental health symptoms, and an evaluation to qualify for air assault school dated 29 January 2013 that showed no mental health related problems. An ER note dated 5 May 2017 showed that the applicant was referred for an evaluation by his command due to delusional thoughts and paranoia, expressing thoughts and beliefs that others were talking about him and monitoring and photographing him with intent to kill him. He was admitted to the psychiatric inpatient unit and started on an antipsychotic medication. Extensive documentation, including psychological testing, provided evidence of a Psychotic Disorder, and within a couple of months there was discussion of need for an MEB. In August 2017, the applicant discontinued his antipsychotic medication in an effort to avoid the MEB, but his mental health symptoms worsened and an antidepressant and anxiety medication were started. The MEB process was initiated, and the applicant was hospitalized again in November 2017. The applicant initiated mental health care through the VA on 5 April 2018, and he was diagnosed with Major Depressive Disorder with Psychotic Features. The applicant has consistently utilized VA mental health services and his current diagnosis is Schizoaffective Disorder.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that the applicant experienced a psychotic episode while on active duty and was appropriately referred to the PEB where it was determined that he was unfit for

service due to a Major Depressive Disorder with Psychotic Features. He was reevaluated as part of the TDRL process, and his rating was increased from 50% to 70%. The applicant asserts that his VA service connected rating of 100% disabled effective in 2021 substantiates consideration of a higher PEB rating. However, the DES compensates an individual only for service incurred medical 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. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws. Therefore, referral to the DES to consider a higher rating is not supported.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? NA; request is for increased PEB disability rating

(2) Did the condition exist or experience occur during military service? NA; request is for increased PEB disability rating

(3) Does the condition or experience actually excuse or mitigate the discharge? NA; request is for increased PEB disability rating

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 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 he was reevaluated as part of the Temporary Disability Retired List (TDRL) process and his rating was increased from 50 percent to 70 percent.

a. The evidence shows an informal Physical Evaluation Board (PEB) convened on 8 December 2017 and determined one medical condition was unfitting for continued military service; major depressive disorder with mood congruent psychotic features. The PEB then applied the Department of Veterans Affairs Schedule for Rating Disabilities

(VASRD) derived rating of 50 percent to this condition. After being counseled on the informal PEB findings, he waived his right to a formal hearing.

b. The Board noted the applicant's contention the VA increased his service-connected disability rating for his condition(s) to a higher rating and the Army should do the same. However, the awarding of a higher VA rating does not establish prior error or injustice. A military disability rating is intended to compensate an individual for interruption of a military career after it has been determined that the individual suffers from an impairment that disqualifies him or her from further military service. The rating derived from the VASRD reflects the disability at the point in time the VA examinations were completed. The military's Disability Evaluation System (DES) does not compensate service members for anticipated future severity or potential complications of conditions incurred during or permanently aggravated by their military service. The VA has those roles and authorities according to their laws. Therefore, the Board found no error or injustice in his military disability rating. The Board determined an increase in his military disability rating was not warranted.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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.

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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 38, U.S. Code, permits the Veterans Administration (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 error or injustice in the Army not separating the individual for physical unfitness. An Army disability rating is intended to compensate an individual for interruption of a military career after it has been determined that the individual suffers from an impairment that disqualifies him or her from further military service.

3. Army Regulations (AR) 635-40, Personnel Separations-Physical Evaluation for Retention, Retirement, or Separation, establishes the Physical Disability Evaluation System (DES) and sets forth the policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his or her office, grade, rank, or rating. It states that after establishing the fact that a Soldier is unfit because of a physical disability, and that the Soldier is entitled to benefits, the Physical Evaluation Board (PEB) must decide the percentage rating for each unfitting disability. The Veteran Administration Schedule of Rating Disabilities (VASRD), as modified in the regulation, is used to establish this rating. This regulation states:

a. Integrated Disability Evaluation System is (a) A single set of disability medical examinations that may assist the DES in identifying conditions that may render the Soldier unfit. (b) A single set of disability ratings provided by VA for use by both departments. The DES applies these ratings to the conditions it determines to be unfitting and compensable. The Soldier receives preliminary ratings for their VA compensation before the Soldier is separated or retired for disability.

b. Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in service.

c. The mere presence of impairment does not of itself justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the member

reasonably may be expected to perform because of his or her office, rank, grade, or rating.

d. Rating disabilities which are neither unfitting nor contribute to the physical unfitness of a Soldier is prohibited.

e. 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.

f. 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.

4. Title 38, U.S. Code section 1110, General - Basic Entitlement: 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.

5. Title 38, U.S. Code, section 1131, Peacetime Disability Compensation - Basic Entitlement: 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 other than 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.

6. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, 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 grounds.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. 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.

7. Title 10, U.S. Code, section 1556 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.

8. AR 15-185, Boards, Commissions, and Committees-ABCMR prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR will decide cases on the evidence of record. It is not an investigative body. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//