

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 December 2024

DOCKET NUMBER: AR20240004654

APPLICANT REQUESTS: physical disability retirement through the Integrated Disability Evaluation System (IDES) in lieu of transfer to the Retired Reserve due to medical disqualification for retention.

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

- DD Form 149 (Application for Correction of Military Record)
- three self-authored letters
- contents list
- DA Form 3647 (Inpatient Treatment Record Cover Sheet), 10 October 1992
- Medical Command (MEDCOM) Form 691-R (Medical Record – Patient Release/Discharge Instructions), 22 June 2006
- DA Form 2823 (Sworn Statement), 12 July 2007
- DA Form 2173 (Statement of Medical Examination and Duty Status), 13 July 2007
- DD Form 214 (Certificate of Release or Discharge from Active Duty) ending 3 September 2007
- Department of Veterans Affairs (VA) letter, 16 May 2008
- DA Form 2173, 14 January 2010
- National Guard Bureau (NGB) memorandum, undated
- DD Form 214, ending 21 April 2010
- five DA Forms 3349 (Physical Profile), 14 April 2012, 11 January 2014, 19 October 2014, 22 January 2015, and 16 September 2015
- DA Form 3349-SG (Physical Profile Record), 7 December 2017
- DD Form 689 (Individual Sick Slip), 27 February 2018
- Joint Force Headquarters Georgia memorandum, 25 November 2018
- NGB Form 22 (National Guard Report of Separation and Record of Service) ending 25 November 2018
- The Adjutant General State of Georgia orders 024-160, 24 January 2019
- NGB Form 23A (Army National Guard (ARNG) Current Annual Statement), 24 January 2019

- DD Form 2656-5 (Reserve Component Survivor Benefit Plan (RCSBP) Election Certificate, 3 February 2020, with supporting documentation including two marriage certificates and two divorce degrees
- email correspondence from U.S. Army Human Resources Command (AHRC) representative, 6 May 2020
- letter from Retirement Services Officer D____ S____, 19 July 2020
- Medical Records Review from M____ G____, Master of Public Health, 25 August 2020
- 204 pages of additional medical records
- Journal Article: Economics and Human Biology
- Journal Article: Arthritis Prevalence and Symptoms Among U.S. Non-Veterans, Veterans, and Veterans Receiving VA Healthcare
- Journal Article: The Role of Iraqi Dust in Inducing Lung Injury in U.S. Soldiers
- Journal Article: Obesity and Osteoarthritis
- Journal Article: Induction of Chronic Migraine Phenotypes in a Rat Model after Environmental Irritant Exposure
- Journal Article: Evaluation of the Pulmonary Toxicity of Ambient Particulate Matter from Camp Victory, Iraq
- Journal Article: Posttraumatic Osteoarthritis Caused by Battlefield Injuries: The Primary Source of Disabilities in Warriors
- Journal Article: Iraq Dust is Respirable, Sharp, Metal-Laden, and Induces Lung Inflammation with Fibrosis in Mice via IL-2 Upregulation and Depletion of Regulatory T Cells

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states:

a. He would like the Board to authorize he be considered by the IDES for disability retirement. During his service with Headquarters Company, 3rd Battalion, 108th Cavalry Regiment, from December 2017 to November 2018, he had constant issues with the full-time staff due to the unit's ramp-up for deployment to Afghanistan. There was no continuity of full-time support personnel during this period. There was practically a new face at every drill and a complete lack of support for the needs of the M-Day Soldier. The entire focus was on the needs of the forward unit. While most of this is understandable, some consideration should have been given for the Soldiers in the rear as well.

b. He sought assistance for his medical issues but, due to the lack of continuity with full-time staff, was unable to obtain help from his unit. As a result, his issues with proper record keeping regarding his profiles and correct counseling about treatment options and even about retirement options, when that became an issue, were all neglected. All of this neglectful treatment is an injustice to himself and he requests the Board's action to correct the issue by having his records examined by the IDES.

c. His service-related medical conditions, which he would like the IDES to consider in review are:

- neck problems (including spinal fusion notes)
- back problems
- knee pain/surgery
- migraines and vertigo
- significant hearing loss
- post-traumatic stress disorder (PTSD) (need diagnosis)
- hernia
- pneumonia and lung scarring (including bronchitis line of duty (LOD))
- wrist ganglion
- sleep apnea
- lung capacity/respiratory problems
- sinusitis

d. He has never been given any sort of simple, easy-to-understand training or counseling when it comes to service benefits or the benefits he has earned for retirement. He has always asked questions about these things, but never received answers that were clear, concise, and comprehensible. For this reason, he does not believe he was able to make an informed decision regarding his retirement options and asks the Board to assist him in reconciling this problem.

e. He would like to explain to the Board the reasons behind the apparent lack of military medical records on file and the abundance of civilian medical records. He has been an 11B (Infantryman) since 1999. As anyone who has ever been in a combat arms unit is aware, there is a certain mentality in such units when it comes to Soldiers "wasting time" by going to see doctors. This is especially true in U.S. Army Reserve (USAR) and ARNG units where training time is quite limited. When a Soldier has a medical issue, unless it is something which is life-threatening, he is discouraged from going to sick call or seeking medical advice. He is told there is not time for "sandbagging" and he should go see a civilian doctor on his own time. You are strongly encouraged to "drive on" and if you don't, then you will find yourself assigned to non-leadership and other less important roles.

f. He has always had more responsibilities while at drill than simply showing up and going out to the field or taking part in home station training. For this reason, he has listened to the usual advice of others at the unit level and not typically gone to see military physicians. He has, however, made extensive use of civilian doctors to compensate for this. Also, being in a light infantry brigade, there are few medical resources available, other than the unit medic. He hopes the Board will not take a derogatory view toward the presence of civilian medical records in the packet he is submitting.

g. He would like to make a statement regarding his meeting with Mr. F____ J____ on 2 October 2018, and the Medical Retention Decision Point (MRDP) memorandum he signed on that day. His medical readiness noncommissioned officer (NCO) contacted him a few weeks prior to this meeting and informed him that he was to go to the Clay National Guard Center in Marietta, GA, a few days later in order to sign some medical paperwork.

h. He worked the nightshift at AT&T and the Clay Center was not far from his workplace, so he went there after his shift ended. His wife, who is a medic, met him at the Clay Center for the meeting. A female captain, he does not remember her name, met them in the lobby and berated him for bringing his wife, saying he was not allowed to have his spouse at the counseling and also for not being in uniform. He informed the captain that he had just gotten off work and had also not been informed that being in uniform was a requirement. If he had been informed of the requirement to be in uniform, he would have worn one.

i. The captain told him he was to be discharged from the ARNG because he had been on profile for over 1 year. If he wanted to dispute this decision, then he had 2 weeks for his unit to provide documentation to the effect. He informed the captain that his unit was in Afghanistan at the time and that his rear detachment would not be capable of assisting him. She told him to contact them anyway and to come back on 2 October. He followed her instructions was unable to get any assistance from his unit after multiple attempts to contact them.

j. He arrived at the Clay National Guard Center on the morning of 2 October and met with Mr. F____ J____, a medical case manager. Like the captain 2 weeks prior, he also informed him that he was to be discharged. He did state that he could be retired if he had 15 or more years of qualifying service, which he did. He said in that case, he would have all of the normal retirement benefits as any other retiring Soldier. This did not sit well in his mind, and he asked for clarification. Mr. J____ became somewhat disgruntled with him and said that his unit should have informed him about retirement benefits over the past 2 weeks. He told him about the unit's deployment status and the lack of continuity with the rear detachment staff. He waived that aside and said he should have been counseled regardless.

k. Mr. J_____ then added he could try to stay in the ARNG if he went before some sort of board. He told him he definitely wanted to stay in the ARNG and asked him to tell him more about this board. He said his unit should have told him about it. He repeated, or tried to repeat, what he said earlier. Mr. J_____ said he could try to go before the board, but if he did, his unit had 60 days to prepare the documentation packet and provide it to him or he would be discharged anyway. Once more, he tried to tell him he was not receiving any support from his unit. Mr. J_____ told him that his only option was to accept retirement in this case.

l. He again asked Mr. J_____ about the details regarding retirement. How could he qualify with less than 20 years? What are the benefits? What did he need to do to make sure he and his spouse qualified for everything they had earned. Mr. J_____ became angry with him once again and as previously stated, insisted his unit should have spoken with him about all these topics. He told Mr. J_____ he needed more time to make an informed decision. He said he had no time and had to sign the forms today.

m. Mr. J_____ tried, in a slightly conciliatory way, to assure him he was not losing out on any benefits and that he was keeping everything he had earned. He was not so sure, but under pressure, he did sign the paperwork. Later on, after speaking with a Retirement Services Officer on the topic, per Department of Defense instructions, he learned he should have been examined by the IDES before being considered for separation from the service. He now fully realizes an injustice has occurred and asks the Board's assistance in remedying this error.

3. An NGB Form 23B (ARNG Retirement Points History Statement) shows the applicant enlisted in the USAR on 3 March 1992.

4. The applicant provided a DA Form 3647 which shows he was admitted to Moncrieff Army Community Hospital, Fort Jackson, SC, as a member of the USAR, on 8 October 1992 and discharged on 10 October 1992. His diagnoses are listed as tonsillitis, pharyngitis, and sinusitis.

5. A DD Form 214 shows, after a period of prior inactive service amounting to 1 year, 6 months, and 3 days, the applicant enlisted in the Regular Army on 16 February 1994, and was awarded the Military Occupational Specialty (MOS) 63S (Heavy Wheeled Vehicle Mechanic). He was honorably discharged after 1 year and 9 months net active service, on 15 November 1995, due to non-retention on active duty.

6. After a break in service, an NGB Form 22 shows the applicant enlisted in the ARNG on 12 September 1998, was awarded the MOS 11B, and was honorably discharged after 3 years and 2 months on 11 November 2001.

7. After another break in service, the applicant again enlisted in the ARNG on 4 February 2006.
8. A second DD Form 214 shows while a member of the ARNG, the applicant was ordered to active duty in support of Operation Iraqi Freedom on 4 June 2006.
9. The applicant provided a mostly illegible MEDCOM Form 691-R, which shows his release and discharge instructions from 22 June 2006. His admitting diagnosis is ventral hernia, and he was given 14 days of convalescent leave upon discharge to home.
10. The applicant deployed to Iraq on 14 August 2006.
11. A DA Form 2823 shows the applicant provided a sworn statement on 12 July 2007, wherein he stated he was admitted to Darnall Army Hospital on 22 June 2006, for a ventral hernia repair and underwent laparoscopic surgery on that day. He recovered for 1 day in the hospital and was released on 14 days of convalescent leave, with a 30-day physical profile including no heavy lifting, running, or sit-ups and cleared him for return to the mobilization station at Fort Hood, TX, and deployment.
12. A DA Form 2173 signed by the attending physician or patient administrator on 13 July 2007, reflects the applicant's ventral hernia repair while he was on active duty. It further shows a formal LOD was not required and was signed by the company medic.
13. The applicant's DD Form 214 shows he completed his service in Iraq on 8 August 2007, was released from active duty on 3 September 2007, and transferred back to the Georgia ARNG. He was credited with 1 year and 3 months of net active service this period.
14. A second NGB Form 22 shows the applicant was honorably discharged from the ARNG effective 3 February 2008, due to expiration term of service (ETS).
15. A VA letter, 16 May 2008, shows the applicant was granted service-connection effective 4 September 2007, for the following conditions:
 - bilateral tinnitus, 10 percent
 - status post ventral hernia repair with scar, 0 percent
16. The applicant's third and final NGB Form 22 shows he again enlisted in the ARNG on 11 December 2008.
17. A third DD Form 214 shows the applicant was ordered to active duty in support of Operation Enduring Freedom on 1 March 2009, with duty in Afghanistan beginning on 22 April 2009.

18. A second DA Form 2173 shows:

a. The applicant was seen as an outpatient at a military hospital in Bagram Afghanistan, on 29 September 2009, for bronchitis.

b. The unit advisor signed the form on 14 January 2010, indicating a formal LOD investigation was not required, and this injury was considered to have been incurred in the LOD.

19. An undated corresponding NGB memorandum, verifies the applicant's bronchitis which was incurred during Operation Enduring Freedom was approved as in the LOD.

20. The applicant's DD Form 214 shows he completed his service in Afghanistan on 27 February 2010, and was honorably released from active duty due to completion of required active service on 21 April 2010, with transfer back to his ARNG unit in GA. He was credited with 1 year, 1 month, and 21 days of net active service this period.

21. A physical profile is used to classify a Soldier's physical disabilities. PULHES is the acronym used in the Military Physical Profile Serial System to classify a Soldier's physical abilities in terms of six factors, as follows: "P" (Physical capacity or stamina), "U" (Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric) and is abbreviated as PULHES. Each factor has a numerical designation: 1 indicates a high level of fitness, 2 indicates some activity limitations are warranted, 3 reflects significant limitations, and 4 reflects one or more medical conditions of such a severity that performance of military duties must be drastically limited. Physical profile ratings can be either permanent (P) or temporary (T).

22. The applicant provided five DA Forms 3349 and one DA Form 3349-SG, which show:

a. On 14 April 2012, the applicant was given a temporary PULHES rating of 333111 for back pain, herniated disk, lumbar spine, with a profile expiration date of 13 July 2012. He was limited in multiple functional activities and all Army Physical Fitness Test (APFT) events.

b. On 11 January 2014, he was given a temporary PULHES rating of 113111 for torn cartilage (meniscus) in both knees, with a profile expiration date of 11 April 2014. He was limited in the functional activity of wearing load bearing equipment (LBE) for at least 12 hours per day and in the 2-mile run APFT event. He was expected to be fully mission capable on 11 April 2014.

c. On 19 October 2014, he was given a temporary PULHES rating of 112111 for knee pain, with a profile expiration date of 17 January 2015. He was not limited in any

functional activities but he was unable to participate in the 2-mile run event of the APFT. He was expected to be fully mission capable on 17 January 2015. He had arthroscopy in May 2014 and was currently able to do physical training (PT) with restrictions.

d. On 22 January 2015, the applicant was given a temporary PULHES rating of 113111 for chronic bilateral knee arthritis with meniscus tears, with a profile expiration date of 23 March 2015. He was limited in multiple functional activities and the APFT 2-mile run event. He was expected to be fully mission capable on 23 March 2015. The applicant has a history of bilateral knee pain exacerbated by an annual training event in 2013. He presents with magnetic resonance imaging (MRI) results consistent with bilateral knee degenerative change and meniscal tears and has been seeing an orthopedist. A fitness for duty exam for a permanent physical profile was recommended as he had ongoing knee pain for several years.

c. On 16 September 2015, the applicant was given a permanent PULHES rating of 112111 for bilateral knee arthritis, chondromalacia status post arthroscopic repair, lumbar degenerative disc disease, history of migraine headache, and sleep apnea. He was not limited in any functional activities but was not able to participate in the APFT 2-mile run event. He has been diagnosed with and treated for bilateral knee osteoarthritis, chondromalacia, meniscus damage, to include bilateral arthroscopic procedures in April 2014. He is capable of performing duties of his MOS along with Soldier tasks; however, orthopedics recommends limiting frequent running as a preventive measure to conserve joint space and function. He has radiographic findings consistent with lumbar degenerative disc disease; has an infrequent history of migraine headaches that occur less than 2 times a year and resolve with medication. He has a diagnosis of sleep apnea; does not use a continuous positive airway pressure (CPAP).

d. On 7 December 2017, the applicant retained a permanent PULHES rating of 212111, initiated on 6 May 2017, for knee pain/injury (bilateral), lower back injury/pain, migraine headaches, and pauses in breathing during sleep. He was not restricted in any functional activities but was unable to perform the APFT 2-mile run event. He should perform injury specific exercises as prescribed by the medical provider during unit physical readiness training. He may wear knee brace or tape as directed, if an increase in pain or swelling occurs, he must be allowed ice and to elevate the knee for 10 minutes. He may require temporary duty changes due to headaches. He requires the use of his CPAP machine during sleep. If unable to use a CPAP and he is sleepy, he should not fire a weapon, drive vehicles, operate dangerous equipment, stand guard, or perform dangerous duties. He is expected to be deployment ready on 6 March 2018.

23. A DD Form 689 (Individual Sick Slip), 27 February 2018, shows the applicant should not wear the advanced combat helmet (ACH) or body armor due to neck injury, C4-C5 compression with spinal cord impingement, which was not considered to have been incurred in the LOD.

24. A final DA Form 3349-SG, 18 September 2018, shows the applicant was given a permanent PULHES rating of 213111, for knee pain/injury (bilateral), migraine headaches, neck injury/pain, and pauses in breathing during sleep. He could not participate in multiple functional activities and two APFT event. His many additional restrictions included no running, jumping, or military movement drills; no combatives; no heel hook; no foot march or movements with body armor/ruck/no standing in gear or formation longer than 30 minutes.

25. A GAARNG memorandum, 2 October 2018, notified the applicant of his medical disqualification from further military service under the provisions of Army Regulation 40-501 (Standards of Medical Fitness), based on his current medical condition of knee pain/injury and neck injury/pain. He was advised he must choose one of the following options:

a. Accept the medical disqualifications and be medically discharged if he had less than 15 years of creditable service for retirement.

b. Accept the medical disqualifications and be medically retired and transferred into the Retired Reserve if he had 15 years or more of creditable service for retirement.

c. Request a non-duty related Physical Evaluation Board (PEB), which will determine his fitness for continued military service. The non-duty related PEB would be a non-appearance board at Fort Sam Houston, TX, and would review all pertinent medical information pertaining to his disqualifying conditions from both his military records and personal physician.

d. If he believed his medical condition was incurred or aggravated while performing active or inactive duty for training while a member of the ARNG, he must provide an approved memorandum or approved DA Form 261 (Report of Investigation – LOD and Misconduct Status) along with an approved DA Form 2173 prior to the suspense date.

26. A DA Form 4856 (Developmental Counseling Form) shows:

a. The applicant was counseled by Mr. F____ J____ on 2 October 2018, advising him of his medical disqualification for continued service under the provisions of Army Regulation 40-501.

b. He was advised he must elect to accept the medical disqualification and be medically disqualified if he had less than 15 years of service, accept the medical disqualification and be medically retired if he had 15 or more years of qualifying service, or submit a packet for a non-duty related PEB, which is an option for Soldiers who want to appeal the disqualification and feel they can continue service with limitations.

c. The applicant signed the form on 2 October 2018, indicating he acknowledged reading and understanding his rights and responsibilities.

27. A second GAARNG memorandum, 2 October 2018, provided notification of intent for medical retention determination point. On the memorandum, the applicant signed the form and acknowledged/indicated:

a. He had knee pain/injury and neck pain/injury, which medically disqualified him from further military service in accordance with Army Regulation 40-501.

b. He had been counseled regarding his rights and responsibilities and understood those rights and responsibilities.

c. He understood the elections he made herein were irrevocable and not subject to appeal and that he made this election without influence or coercion from a third party.

d. His election was to accept the medical disqualifications and be medically retired, and transferred into the Retired Reserve if he had 15 years or more creditable service for retirement, with a requested date of retirement of 25 November 2018.

28. Joint Force Headquarters Georgia memorandum, 25 November 2018, notified the applicant of his eligibility for retired pay for non-regular service(15 Years). He was informed he completed at least 15 years, but fewer than 20 years of qualifying service and would be eligible for retired pay upon his application at age 60, unless he qualified for a reduced eligibility age. His eligibility was based upon meeting the following criteria:

- he was in the Selected Reserve
- he completed at least 15, but less than 20, years of qualifying service on or after 1 October 1991
- he no longer met the qualification for membership in the Selected Reserve solely because he was unfit due to a physical disability; and the disability was not the result of his intentional misconduct, willful neglect, or willful failure to comply with standards for retention and not incurred during a period of unauthorized absence
- he was discharge from the ARNG and, unless he requested transfer to the Retired Reserve, he was also separated as a Reserve of the Army

29. A final NGB Form 22 shows effective November 2018, the applicant was honorably discharged from the ARNG and transferred to the USAR Control Group (Retired Reserve), under the provisions of National Guard Regulation 600-200 (Enlisted Personnel Management) paragraph 6-35, due to medical unfitness for retention per Army Regulation 40-501. He was credited with 9 years, 11 months, and 15 days of net service this period and 18 years, 7 months, and 28 days of total service for retired pay.

30. The Adjutant General State of Georgia orders 024-160, 24 January 2019, honorably discharged the applicant from the ARNG effective 25 November 2018, and transferred him to the USAR Control Group (Retired Reserve) under the provisions of National Guard Regulation 600-200, paragraph 6-35, with assignment/loss code XM, (Early qualification for retired pay at age 60 (Involuntary- medically disqualified members)).

31. An NGB Form 23A, 24 January 2019, shows the applicant completed 18 years, 7 months, and 28 days of creditable service for retired pay.

32. A DD Form 2656-5, 3 February 2020, with supporting documentation including two marriage certificates and two divorce degrees, shows the applicant made an RCSBP spousal election on the date of the form, more than 1 year after his transfer to the Retired Reserve.

33. The applicant provided a copy of email correspondence from an AHRC representative, 6 May 2020, which shows they received the submission of his DD Form 2656-5; however, records indicate he was a member of the ARNG at the time of his notification of eligibility and was supposed to return his DD Form 2656-5 election within 90 days of his notification for processing and it was received nearly 1 year past the due date.

34. A letter from Retirement Services Officer D____ S____, 19 July 2020, shows:

a. He was writing on the applicant's behalf and the evidence he furnished made a compelling case for the argument that he should have been reviewed by the IDER prior to his ARNG discharge.

b. Rather than being evaluated for his various medical conditions, the applicant's case was mismanaged, and he was discharged with a 15-year notice of eligibility for retired pay. He would like the IDER to review the following conditions:

- neck problems (including spinal fusion notes)
- back problems
- knee pain/surgery
- migraines and vertigo
- significant hearing loss
- PTSD
- hernia
- pneumonia and lung scarring
- wrist ganglion
- sleep apnea
- lung capacity/respiratory problems

- sinusitis

c. He was additionally requesting multiple changes to the applicant's records if the IDES review resulted in physical disability retirement, to include amendment to his NGB Form 22, eligibility to make an SBP election, the issuance of service certificates and a flag set, and the opportunity to meet with a qualified retirement specialist.

35. A Medical Records Review from M____ G____, Master of Public Health, 25 August 2020, has been provided in full to the Board for review. In pertinent part, it shows in her opinion, the applicant suffered numerous health conditions during his military service, many of which have serious life-long consequences, and due to the temporal relationship to the development of his symptoms and increased risk factors he experienced, it is reasonable to conclude they were caused or exacerbated by his service. These conditions include:

- ventral hernia
- chronic knee injuries and chronic patellofemoral pain syndrome (bilateral)
- left wrist ganglion
- cervical spondylitis
- degenerative spinal disease and chronic lower back pain
- hearing loss and tinnitus
- migraines
- vestibular neuritis
- recurrent respiratory illness with atelectasis and lung scarring
- obstructive sleep apnea

36. The applicant provided additional medical records in excess of 200 pages, which have been provided in full to the Board for review.

37. The applicant also provided copies of eight medical journal articles, which have been provided in full to the Board for review.

38. Title 38, USC, 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.

39. 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 (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical

Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, the Army Aeromedical Resource Office (AERO), and/or 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 in essence requesting referral to the Disability Evaluation System (DES) and a medical retirement. On his DD 149, he has indicated that PTSD and TBI are issues related to his request. He has requested review by the DES of twelve (12) conditions:

“For the record, I have the following service-related medical conditions which I would like the IDES to review.

- 01 . Neck problems (include spinal fusion notes)
02. Back problems
03. Knee pain/surgery
04. Migraines and vertigo
05. Significant hearing loss
06. PTSD (need diagnosis)
07. Hernia
08. Pneumonia and lung scarring (include bronchitis LOD) [Line of Duty]
09. Wrist ganglion
10. Sleep apnea
11. Lung capacity/ respiratory problems
12. Sinusitis

I have never been given any sort of simple, easy-to-understand training or counseling when it comes to service benefits or the benefits I have earned for retirement. I have always asked questions about these things but never received

answers which were clear, concise, and comprehensible. For this reason , I do not believe I was able to make an informed decision regarding my retirement options and ask the Board to assist me in reconciling this problem.”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. The applicant’s Report of Separation and Record of Service (NGB Form 22) for the period of Service under consideration shows the former Guardsman enlisted in the Army National Guard on 11 December 2008 and was discharged from the Georgia Army National Guard (GAARNG) on 25 November 2018 under the provisions of paragraph 6-35I(8) of NGR 600-200, Enlisted Personnel Management (31 July 2009): Medically unfit for retention per AR 40-501. It shows the applicant had 18 years, 07 months, and 28 days of total service for retired pay.

d. Paragraph 6-35I(8) of NGR 600-200:

“Commanders, who suspect that a Soldier may not be medically qualified for retention, will direct the Soldier to report for a complete medical examination per AR 40-501. If the Soldier refuses to report as directed, see paragraph 6-36u below. Commanders who do not recommend retention will request the Soldier’s discharge. When medical condition was incurred in line of duty, the procedures of AR 600-8-4 will apply. Discharge will not be ordered while the case is pending final disposition. This paragraph also includes those Soldiers who refuse or ineligible to reclassify into a new MOS. RE 3.”

e. The EMR shows the applicant had bronchitis in 2009 while deployed in Afghanistan. He underwent a post-deployment health assessment on 4 March 2010. He marked several PTSD related symptoms on his form and one head injury noted as:

“SM [service member] reported that he was a gunner and his vehicle rolled over and he fell down in his vehicle and a 60 lb. ammunition can fell and hit him in the head. SM reported that he was dazed and saw stars. SM reported that he was disoriented and needed assistance to disconnect from his gunners restraint system.”

f. The applicant was evaluated for sequela of a TBI that same day. The evaluating provider concluded:

“Diagnosis:

Diagnoses are limited to areas assessed in the current evaluation and are not meant to be a comprehensive list of prior or concurrent medical and/or psychological diagnoses.

Axis I: No diagnosis

Axis II: Deferred (not assessed)

Axis III: Headache Disorder; Sleeplessness

Recommendations:

Based on these findings, it is likely that this Soldier has the cognitive ability to successfully perform the duties and manage the stressors of his current duty assignment. Physical capabilities were not evaluated.

Further assessment is not indicated. The Soldier reported he does not wish to take medications for his sleeplessness. No further follow up is indicated at this time. Medical providers are aware of his migraines, no further action is indicated at this time."

g. The only other behavioral health encounter in the EMR was an 8 February 2011 mandatory mental health screening for sniper school. Following the evaluation, the provider opined "No psychiatric diagnosis or condition on axis I."

h. There were no behavioral health or TBI encounters in the supporting documents and there are no behavioral health or TBI diagnoses on his JLV medical problem list.

i. The submitted contemporaneous civilian medical documentation shows the applicant was evaluated and treated for several of the conditions he has listed in his self-authored letter. In 2012, he was started on continuous positive airway pressure (CPAP) treatment for sleep apnea. He was successfully treated for vestibular vertigo in 2013. This returned in 2016 following a chiropractic adjustment of his neck. The vertigo only occurred with neck extension and it was felt related to his cervical spine pathology. He was treated for pneumonia in September and October of 2013.

j. Treatment of his knees over several years included arthroscopy for torn menisci and later viscosupplementation for degenerative arthritis. He was also evaluated and treated for low back pain with radiculopathy in 2014-15. He was intermittently treated for headaches. He was referred to neurosurgery for chronic neck pain and underwent C 5/6 and C6/7 anterior cervical discectomies with fusions on 16 January 2019.

k. The applicant was on a temporary duty limiting physical profile in 2012 for back pain with a herniated disc in his lumbar spine; on a temporary duty limiting physical profile in 2014 and 2015 for meniscal tears in both knees; and one for a neck injury in February of 2018.

l. A permanent non-duty limiting profile approved 6 May 2017 for bilateral knee pain/injury, lower back pain/injury, migraine headaches, and sleep apnea. The applicant was marked as capable of performing all the functional activities required of all Soldiers, including live in an austere environment. The profile simply allowed the applicant to perform an alternate aerobic event in lieu of the 2-mile run event for his Army Physical Fitness Test (APFT).

m. The applicant was placed on a permanent duty limiting physical profile for bilateral knee pain/injury and neck pain/injury on 18 September 2018. On 2 October 2018, the GAARNG notified the applicant of his medical disqualification for these two conditions and provided the applicant with several options and a suspense date of 2 December 2018. The applicant was counseled on these options on 2 October 2018 and agreed without comment (pages 278-9 of the supporting documents).

n. The applicant initialed next to the first three bullets on his elections memorandum:

1. I acknowledge that I have Knee Pain/Injury. Neck Pain/Injury which medically disqualifies me for further military service IAW AR 40-501, Ch. 3.
2. I have been counseled regarding my rights and responsibilities and received a copy of DODI 1332.38 { SUBJECT: Physical Disability Evaluation) para.1., para. E3.P1 .3. I understand those rights and responsibilities.
3. I understand that the elections made herein are irrevocable and not subject to appeal. I acknowledge that this election is made personally by me, without influence or coercion from any third party.

o. The applicant then initialed the option to "Accept the medical disqualification(s) and be medically retired, and transferred into the Retired Reserve, if you have 15 years or more of creditable service for retirement" and requested his date of retirement be 25 November 2018 (page 280 of the supporting documentation).

p. There is insufficient probative evidence that either of the applicant's medically disqualifying conditions was incurred during or permanently aggravated by his military service. Without one or more duty related disqualifying medical conditions, the

applicant was not and remains ineligible for DES processing as evidence does not support the applicant had a duty related medical condition which would have failed the medical retention standards of chapter 3, AR 40-501 prior to his discharge.

q. JLV shows the applicant has just two (2) VA service-connected disability ratings, both of which were awarded on 4 September 2007: Tinnitus (10%) and Superficial Scars (0%).

r. 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. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

s. It is the opinion of the Agency Medical Advisor that a referral of his case to the Disability Evaluation System in not warranted.

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 applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence shows the applicant was honorably discharged from the ARNG and transferred to the Retired Reserve under the provisions of paragraph 6-35 of NGR 600-200, due to medical unfitness for retention per AR 40-501. The Board reviewed and agreed with the medical reviewer's determination that there is insufficient probative evidence that either of the applicant's medically disqualifying conditions was incurred during or permanently aggravated by his military service. Without one or more duty related disqualifying medical conditions, the applicant was not and remains ineligible for disability processing as the evidence does not support the applicant had a duty related medical condition which would have failed the medical retention standards of chapter 3, AR 40-501 prior to his discharge. Therefore, the Board determined that a referral of his case to the Disability Evaluation System in not warranted.

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. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRBs) and Boards for Correction of Military/Naval Records (BCM/NRs) when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress

disorder (PTSD), traumatic brain injury (TBI), sexual assault, or sexual harassment. Boards are to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based, in whole or in part, on those conditions or experiences.

3. 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 physical disability evaluation system and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 (Discharge Review Board (DRB) Procedures and Standards) and Army Regulation 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 a Medical Evaluation Board (MEB); when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an Military Occupational Specialty (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 Physical Evaluation Board (PEB). The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise their 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 their 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.

4. Army Regulation 635-40 establishes the Army Disability Evaluation System 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. 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.

a. 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 military service.

b. Soldiers who sustain or aggravate physically-unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

(1) The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

(2) The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

5. Army Regulation 40-501 provides information on medical fitness standards for induction, enlistment, appointment, retention, and related policies and procedures. Soldiers with conditions listed in chapter 3 who do not meet the required medical standards will be evaluated by an MEB and will be referred to a PEB as defined in Army Regulation 635-40 with the following caveats:

a. U.S. Army Reserve (USAR) or Army National Guard (ARNG) Soldiers not on active duty, whose medical condition was not incurred or aggravated during an active duty period, will be processed in accordance with chapter 9 and chapter 10 of this regulation.

b. Reserve Component Soldiers pending separation for In the Line of Duty injuries or illnesses will be processed in accordance with Army Regulation 40-400 (Patient Administration) and Army Regulation 635-40.

c. Normally, Reserve Component Soldiers who do not meet the fitness standards set by chapter 3 will be transferred to the Retired Reserve per Army Regulation 140-10 (USAR Assignments, Attachments, Details, and Transfers) or discharged from the Reserve Component per Army Regulation 135-175 (Separation of Officers), Army

Regulation 135–178 (ARNG and Reserve Enlisted Administrative Separations), or other applicable Reserve Component regulation. They will be transferred to the Retired Reserve only if eligible and if they apply for it.

d. Reserve Component Soldiers who do not meet medical retention standards may request continuance in an active USAR status. In such cases, a medical impairment incurred in either military or civilian status will be acceptable; it need not have been incurred only in the line of duty. Reserve Component Soldiers with non-duty related medical conditions who are pending separation for not meeting the medical retention standards of chapter 3 may request referral to a PEB for a determination of fitness in accordance with paragraph 9–12.

6. 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 percent.

7. National Guard Regulation 600-200 (Enlisted Personnel Management) prescribes the criteria, policies, processes, procedures and responsibilities to classify, assign, utilize, transfer within and between States, provides special duty assignment pay, separate and appoint to and from Command Sergeant Major ARNG and Army National Guard of the United States enlisted Soldiers. Paragraph 6-35, in effect at the time, provides for the separation of Soldier found medically unfit for retention per Army Regulation 40-501.

8. 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.

9. Title 38, U.S. Code, section 1131 (Peacetime Disability Compensation – 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 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.

10. 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.

//NOTHING FOLLOWS//