

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 January 2025

DOCKET NUMBER: AR20240004662

APPLICANT REQUESTS:

- initiation and approval of a formal Line of Duty (LOD) investigation showing his condition of lumbar degenerative disc disease with stenosis, spondylosis and radiculopathy was incurred or aggravated by military service
- removal from his records documents indicating his injury was as a result of misconduct
- 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 199-1 (Formal Physical Evaluation Board (PEB) Proceedings), dated 23 October 2023
- memorandum from the U.S. Army Physical Disability Agency (USAPDA), dated 16 January 2024, subject: Rebuttal to Formal PEB (FPEB) Findings; (applicant's name)
- Notification of Eligibility for Retired Pay at Age 60 (15-Year Letter), dated 7 February 2024
- Department of the Army Orders 0007221413.00, dated 8 February 2024
- 91 pages of medical records

FACTS:

1. The applicant states, in effect, he was found medically unfit for further military service, but his unfitting condition was deemed not service-connected and non-compensable. He contends that his back injury was incurred on active duty during a deployment to Kuwait in 2009-2010 and was aggravated during his second deployment to Kuwait. He was denied service-connection by informal and FPEBs. He provided documents showing he sought medical care before deployment and immediately after arriving from his second deployment, therefore, his injury should be considered service-connected. He further contends that his record contains documents indicating his injury

was a result of misconduct and not service-connected. He requests the removal of these documents from his record.

2. The applicant is requesting that documents indicating his injury was as a result of misconduct be removed from his records. However, a review of his available records failed to locate documents indicating misconduct. Therefore, this portion of the applicant's request will not be discussed further in this Record of Proceedings.

3. The applicant enlisted in the U.S. Army Reserve on 25 August 2005. His record shows service in Kuwait from 12 December 2009 to 26 October 2010 and from 19 February to 8 November 2017.

4. On 23 October 2023, an FPEB found the applicant unfit for further military service due to lumbar degenerative disc disease with stenosis, spondylosis, and radiculopathy (non-compensable). The PEB recommended the referral of the applicant's case for disposition under Reserve Components regulations and indicated the following:

NDR [Non-Duty Related]: The case file indicates the Soldier sought treatment for this condition in January 2015. This condition has no documented mode of injury. Although the Soldier stated during demobilization in 2017 he had low back pain, there is no evidence of service aggravation or treatment of the preexisting condition during the time he was on orders. The condition is not compensable because at the time the Soldier was diagnosed with this condition the Soldier was not in an Active Duty status for more than 30 days or entitled to base pay, and there is no Line of Duty investigation for this condition. Additionally, there is no evidence within the Soldier's available case file that indicates that military service has aggravated the condition.

5. The PEB also indicated the following:

a. The Soldier contends that his lumbar degenerative disc disease with stenosis, spondylosis and radiculopathy is service connected so that a Line of Duty Advisory Opinion request should be sent to the Army Human Resource Command (AHRC). Based on the preponderance of evidence, the PEB has determined that the Soldier's lumbar degenerative disc disease with stenosis, spondylosis, and radiculopathy does not have a clear link to a service connection injury. The Soldier testified that his back condition began during his 2009 to 2010 deployment to Kuwait during physical training but did not seek medical treatment during or after the deployment. The Soldier further testified his back condition worsened during his second deployment to Kuwait from January 2017 to December 2017 but did not seek medical treatment during or immediately after deployment.

b. The Soldier testified that he sought treatment for his back in January 2015 at a civilian medical provider while in a drilling status. Although the Department of Veterans Affairs VA provided a rating for the Soldier's back condition as service connected, there was insufficient medical evidence showing the Soldier required medical attention during or following either deployment. The preponderance of evidence available does not establish a clear connection between the Soldier's first reported back pain while deployed to Kuwait from 2009 to 2010 and the first recorded medical treatment in January 2015. Additionally, the board found insufficient medical documentation to support permanent service aggravation during the period of service between the Soldier's 2017 Kuwait deployment up until the Soldier received a permanent L3 profile in May 2022 for his back condition.

6. On 4 December 2023, the applicant indicated he did not concur with the FPEB's findings and recommendations and that he was submitting a written appeal. His written appeal is not available.

7. On 16 January 2024, in a memorandum addressed to the applicant's PEB Counsel, the USAPDA responded to the applicant's appeal and stated the following:

a. On 3 January 2024 the USAPDA asked AHRC to complete an LOD determination as requested in the FPEB appeal. On 10 January 2024, AHRC provided an LOD determination memorandum and noted, "After a thorough review if there had of been an LOD initiated, the determination would have been Not in Line of Duty-Not Due to Own Misconduct." As such, we are unable to conclude differently than the FPEB concluded as noted on the DA Form 199-1 dated 23 October 2023, which indicates that the applicant is unfit for lumbar degenerative disc disease with stenosis, spondylosis and radiculopathy (non-compensable).

b. The USAPDA concludes that the applicant's case was properly adjudicated by the FPEB, which correctly applied the rules that govern the Physical Disability Evaluation System in making its determination. The findings and recommendations of the FPEB are supported by a preponderance of evidence and are therefore affirmed. The issues raised in the applicant's 28 December 2023 appeal were adequately addressed by the FPEB in its board proceedings. If the applicant feels that our findings are in error, any future submission for correction may be directed to the Army Board for Correction of Military Records.

8. The applicant's Notification of Eligibility for Retired Pay at Age 60 (15-Year Letter), is dated 7 February 2024. This letter informed him that as a member of the Selected Reserve who has been medically disqualified from further service, and has attained at least 15 years but less than 20 years of qualifying service, he is eligible to apply for retired pay and benefits upon attaining age 60.

9. Department of the Army Orders 0007221413.00, dated 8 February 2024, directed the applicant's transferred to the Retired Reserve effective 15 March 2024 by reason of retirement – voluntary.

10. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, the Army Aeromedical Resource Office (AERO), and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting reversal of the United States Army Physical Disability Agency's (USAPDA) and the United States Army Human Resources Command's (USAHRC) determinations that his unfitting lumbar spine condition had not been incurred in the line of duty, i.e., incurred or permanently service aggravated while in a qualifying duty status, and therefor was non-compensable. He states:

"I was listed as unfit medically to continue service. I applied for duty associated aggravation of the back injury that occurred on active duty on a deployment to Kuwait 2009-2010 which was further aggravated on my second deployment and was denied by both an informal and formal board. I provided documents that showed I sought medical care after my second deployment immediately after arriving home and the change in my back before and after deployment. This should be duty associated."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case.

d. The applicant was placed on a permanent duty-limiting physic profile for "Lower Back/Tailbone Injury/Pain" on 20 September 2020. On 26 June 2022, the United States Army Reserve Medical Management Center (ARMMC) informed him of this medical disqualification for further service and provided with four options:

"(1) Army Reserve Military Retirement, you must have twenty (20) or more credible years of service. This is NOT a Medical Retirement and any benefits eligible to you will be received at age 60 - minus qualified Active Duty years

after 2008. Reference the Reduced Retirement Age HRC Memo enclosure.

(2) Early Army Reserve Military Retirement, you must have fifteen (15), but less than twenty (20), credible years of service. This is NOT a Medical Retirement and any benefits eligible to you will be received at age 60 minus qualified Active-Duty years after year 2008. Reference the Reduced Retirement Age HRC Memo enclosure.

(3) Final discharge under election Option C: Honorable Discharge, is available in the event you have less than fifteen (15) credible years of service.

(4) PDES [Physical Disability Evaluation System], is also commonly referred to as the Non-Duty Physical Evaluation Board (NDPEB). This is NOT a Medical Evaluation Board (MEB). The main purpose of this election is for a board to make a final determination of your medical fitness for retention and/or separation. The NDPEB does not make any determination of benefits of any kind.

e. The applicant selected option 4.

f. Reserve Component (RC) Service Members who are not on a call to active duty of more than 30 days and who are pending separation for non-duty related medical conditions may enter the Disability Evaluation System (DES) for a determination of fitness. A non-duty related physical evaluation board (NDR PEB) affords these Soldiers the opportunity to have fitness determined under the standards that apply to Soldiers who have the statutory right to be referred to the DES for a duty related medical condition. After 2014, these boards would also look to see if the referred condition(s) were duty related, and if so, return them to the sending organization for entrance into the duty related processes of the DES.

g. The NDR narrative summary prepared by ARMMC stated there was no evidence the condition was duty related:

“Basis for Non-Duty Related vs/ Duty Related Process: There has been no IDRMM [IDES Referral Memorandum, a form of in-line of duty (LOD) determination] denied. This SM [service member] does not qualify for an IDRMM because he was not diagnosed while serving on a period of active duty of more than 30 days in accordance with AR 600-8-4 [Physical Evaluation for Retention, Retirement, or Separation]. No LOD has been adjudicated for profiled condition, and, in accordance with AR 600-8-4, an LOD will not be initiated for a SM not in an authorized duty status. Additionally, per ALARACT 025-2021, LODS are not to be

conducted solely for DES entry. Due to these stipulations, the case is to proceed to the ND-PEB.”

h. On 13 September, the informal NDR PEB found the applicant’s “Lumbar degenerative disc disease with stenosis, spondylosis and radiculopathy” to be unfitting for continued service and non-compensable as they found the condition was not duty related:

“NDR: The case file indicates the Soldier sought treatment for this condition in January 2015. This condition has no documented mode of injury. Although the Soldier stated during demobilization in 2017 he had low back pain, there is no evidence of service aggravation or treatment of the preexisting condition during the time he was on orders.

The condition is not compensable because at the time the Soldier was diagnosed with this condition the Soldier was not in an Active-Duty status for more than 30 days or entitled to base pay, and there is no Line of Duty investigation for this condition. Additionally, there is no evidence within the Soldier’s available case file that indicates that military service has aggravated the condition.”

i. The applicant non-concurred and requested a formal PEB (FPEB) hearing. The applicant was present for and represented by regularly appointed counsel at his 23 October 2023 formal board. Following a review of the evidence and sworn testimony, the formal board maintained the finding the condition had not been incurred in the line of duty:

“The Soldier contends that his lumbar degenerative disc disease with stenosis, spondylosis and radiculopathy is service connected so that a Line of Duty Advisory Opinion request should be sent to Human Resource Command (HRC).

Based on the preponderance of evidence, the PEB has determined that the Soldier's lumbar degenerative disc disease with stenosis, spondylosis, and radiculopathy does not have a clear link to a service connection injury.

The Soldier testified that his back condition began during his 2009 to 2010 deployment to Kuwait during physical training but did not seek medical treatment during or after the deployment. The Soldier further testified his back condition worsened during his second deployment to Kuwait from January 2017 to December 2017 but did not seek medical treatment during or immediately after deployment.

The Soldier testified that he sought treatment for his back in January 2015 at a civilian medical provider while in a drilling status. Although the VA provided a rating for the Soldier's back condition as service connected there was insufficient medical evidence showing the Soldier required medical attention during or following either deployment.

The preponderance of evidence available does not establish a clear connection between the Soldier's first reported back pain while deployed to Kuwait from 2009 to 2010 and the first recorded medical treatment in January 2015. Additionally, the board found insufficient medical documentation to support permanent service aggravation during the period of service between the Soldier's 2017 Kuwait deployment up until the Soldier received a permanent L3 profile in May 2022 for his back condition.”

j. While not bound to do so, the formal PEB honored his request to send the case to The Adjutant General to the Army at the USAHRC for a line of duty advisory opinion prior to submission of the case to the United States Army Physical Disability Agency for final processing.

k. The Adjutant General to the Army (TAG) oversees and manages the Army's line of duty processes as directed by the Deputy Chief of Staff, G-1. Paragraph 1-7c1 of AR 600-8-4, Line of Duty Policy, Procedures, and Investigations (15 March 2019):

“1-7. Deputy Chief of Staff, G-1  
The DCS, G-1 will —

c. Maintain functional responsibility for LOD determinations. The following specific tasks may be delegated, but not below The Adjutant General (TAG):

(1) Have functional responsibility for LOD determinations and act for the Secretary of the Army (SECARMY) on all LOD determinations and appeals referred to Headquarters, Department of the Army and all exceptions to provisions described in this regulation.”

l. In their 10 January 2024 response to USAPDA, the USAHRC reviewing official confirmed the prior not in line of duty determinations by the ARMMC and USAPDA:

“After a thorough review if there had of been an LOD initiated, the determination would have been Not in Line of Duty-Not Due to Own Misconduct. Army Regulation 600-8-4, Line of Duty Policy, Procedures, and Investigations, under Terms for

Preponderance of Evidence states: 'Findings must be supported by a greater weight of evidence (more likely than not) than supports any different conclusion.'

SFC [Applicant] insists he initially injured his back while on deployment to Kuwait in 2009-2010. However, SFC [Applicant] was not treated for a back injury until January 2015. The Soldier also asserts he further injured his back on a second deployment to Kuwait in 2017 and again did not seek care during the deployment or immediately following.

The evidence available does not meet the preponderance of evidence threshold that is required for the conditions of lumbar degenerative disc disease with stenosis, spondylosis, and radiculopathy. The medical evidence presented is not sufficient to establish a clear link to the conditions being service incurred or service aggravated."

m. The applicant's subsequent appeal of the formal PEB's determination was denied as seen in their 16 January 2024 memorandum:

"On 3 January 2024 we asked the Army Human Resources Command (AHRC) to complete a Line of Duty (LOD) determination as requested in the FPEB appeal. On 10 January 2024, AHRC provided a LOD determination memorandum and noted, "After a thorough review if there had of been an LOD initiated, the determination would have been Not in Line of Duty-Not Due to Own Misconduct." As such, we are unable to conclude differently than the FPEB concluded as noted on the DA Form 199-1 dated 23 October 2023, which indicates that SFC [Applicant] is unfit for lumbar degenerative disc disease with stenosis, spondylosis, and radiculopathy (non-compensable).

We conclude that SFC [Applicant]'s case was properly adjudicated by the FPEB, which correctly applied the rules that govern the Physical Disability Evaluation System in making its determination. The findings and recommendations of the FPEB are supported by a preponderance of evidence and are therefore affirmed. The issues raised in your 28 December 2023 appeal were adequately addressed by the FPEB in its board proceedings. If your client feels that our findings are in error, any future submission for correction may be directed to the Army Board for Correction of Military Records."

n. The applicant's Formal PEB Proceedings were approved for the Secretary of the Army on 17 January 2024.

o. On 7 February 2024, the applicant received a Notification of Eligibility for Retired Pay at Age 60 (15-Year Letter) under 10 U.S. Code § 12731b, Special rule for members with physical disabilities not incurred in line of duty (15-year notice of eligibility). Passed on 5 October 1999, this statute authorizes the Secretary concerned to treat a member of the Selected Reserve who no longer meets the qualifications for membership in the Selected Reserve solely because the member is unfit due to physical disability not incurred in the line of duty as having met the service requirements for years of service computed under 10 U.S. Code § 12732. The Secretary can then provide the member with a notification that the member has completed at least 15, and less than 20 of service. This "15-year Notice of Eligibility" authorizes a non-regular retirement.

p. Orders published on 8 February 2024 show the applicant was transferred to the USAR Retired Reserve effective 15 March 2024.

q. The applicant has submitted a handwritten timeline of his treatment for low back pain along with civilian clinical encounters which repeat his assertions and findings previously addressed. Several of these note the onset of evaluation and treatment of his lumbar spine condition in 2015 with further treatment in 2020 - 2022, periods of time when he was not in a qualifying military status.

r. It is the opinion of the ARBA medical advisor there is insufficient probative evidence to warrant reversals United States Army Physical Disability Agency's and the United States Army Human Resources Command's determinations that his unfitting lumbar spine condition had not been incurred in the line of duty.

#### 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.
2. The Board carefully considered the applicant's contentions, his record of service, the timing of his injuries, the treatment he received, his MEB and PEB proceedings, the reviews of his conditions by the Physical Disability Agency and Army Human Resources Command and the determination that his unfitting condition had not been incurred in the line of duty. The Board considered the applicant's statement and the timeline he provided for his pain treatments and civilian encounters. The Board considered the review and conclusions of the ARBA medical advisor. The Board concurred with the assessment of the medical advisor in finding that the medical evidence presented was not sufficient to establish a clear link to the conditions being service incurred or service aggravated. Based on a preponderance of evidence, the Board determined there was



a. The Army LOD Program is a commander's program which essentially protects the interest of both the Soldier and the U.S. Government where service is interrupted by injury, illness, disease, or death. LOD investigations determine duty status at the time of incident and whether misconduct was involved and, if so, to what degree. Additionally, LOD investigations may be required to determine an existed prior to service condition, and, if so, determine service aggravation.

b. An LOD investigation will be conducted for all Soldiers, regardless of component, if the Soldier experiences a loss of duty time for a period of more than 24 hours and:

(1) The injury, illness, or disease is of lasting significance (to be determined by a physician, physician assistant, or nurse practitioner).

(2) There is a likelihood that the injury, illness, or disease will result in a permanent disability.

(3) If a Reserve Component Soldier requires follow-on care for an injury, illness, or disease incurred during a period of active duty.

c. A formal LOD investigation is a detailed investigation that normally begins with a DA Form 2173 (Statement of Medical Examination and Duty Status) completed by the medical treatment facility and annotated by the unit commander as requiring a formal LOD investigation. The appointing authority, on receipt of the DA Form 2173, appoints an investigating officer who completes the DD Form 261 (Report of Investigation LOD and Misconduct Status) and appends appropriate statements and other documentation to support the determination, which is submitted to the general court-martial convening authority for approval.

d. An injury, disease, or death is presumed to be in LOD unless refuted by substantial evidence contained in the investigation. LOD determinations must be supported by substantial evidence and by a greater weight of evidence than supports any different conclusion. The evidence contained in the investigation must establish a degree of certainty so that a reasonable person is convinced of the truth or falseness of a fact.

2. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)) provides Department of the Army policy, criteria, and administrative instructions regarding an applicant's request for the correction of a military record. Paragraph 2-11 states 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.

3. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA)

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

//NOTHING FOLLOWS//