

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 February 2025

DOCKET NUMBER: AR20240005249

APPLICANT REQUESTS: correction of his DA Form 199 (Physical Evaluation Board (PEB) Proceedings) by adding additional conditions as unfitting resulting in his retirement for physical disability.

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Health Summary (85 pages), 21 April 2024
- Social Security Administration Benefit Verification Letter, 21 April 2024
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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. The error and injustice that need to be corrected in his military records is the lack of consideration and acknowledgment of all disabilities experienced at the time of the medical board evaluation. He believes that due to downsizing in the Army during the commencement and completion of the medical board process, not all of his disabilities were accurately documented or considered. Subsequently, his health condition has deteriorated, revealing additional disabilities that were not initially recognized.

Furthermore, he express a sense of unfair treatment in not granting full retirement from the Army but instead providing a minimal payout and directing him to the VA for further assistance with exacerbated health issues.

b. He strongly feels his years of service and sacrifices warrant a retired status in the Army, considering the impact on his well-being for the country's service. It is essential to address these discrepancies in his military records to ensure a fair and comprehensive evaluation of his disabilities and service-related injuries. By rectifying these

inaccuracies, he can receive the appropriate recognition and support deserving of his dedication and sacrifices during his time in the military.

c. As a former member of the Army Military Police who served in combat during Operation Enduring Freedom in 2009, the injustices intertwined within his military journey run deep. The handling of his disabilities during the medical board process revealed a glaring oversight stemming from the Army's downsizing that failed to acknowledge crucial disabilities. This oversight has led to a deterioration in his health, unmasking additional disabilities that went unnoticed initially. The unfairness of the situation becomes even more apparent when considering the current state of his health care, which is far from satisfactory. He is also deprived of the same benefits and cost of living adjustments that retirees receive.

d. It is disheartening to witness veterans with minor injuries thriving post-service. At the same time, he, with profound issues that have permanently altered his life, was medically boarded out without the deserved recognition. Moreover, being denied awards both in combat and stateside due to favoritism has significantly impacted his standing within the unit. The toxic environment fueled by favoritism and the pressure to ignore medical profiles created rifts that deepened his sense of isolation within the unit. Unit leadership's lack of understanding and consideration further exacerbated the injustice, leaving him feeling marginalized and undervalued.

e. The losses experienced, including friends who succumbed to illnesses and death, were profound. Many of them, much like himself, were removed and medically boarded out, and some were forced to alter their status under similar circumstances. These collective experiences underscore the urgent need for a thorough review and correction of his military records to rectify the injustices, bring closure to unresolved pain, and acknowledge the sacrifices and service rendered for our country. In essence, the amalgamation of oversight in handling his disabilities, the disparities in treatment and support post-service, and the impact of favoritism within the unit highlight the systemic injustices that have shaped his military experience. Rectifying these inaccuracies in his military records is essential for his well-being and the acknowledgment of the sacrifices and challenges endured during his service to the nation.

3. The applicant enlisted in the Regular Army on 19 July 2007. He served in Afghanistan from 14 May 2009 to 12 May 2012.

4. On 13 July 2012, a Physical Evaluation Board (PEB) found the applicant unfit for further military service due to meralgia paresthesia, left and right hips. The PEB recommended a combined 10% disability rating and the applicant's separation with severance pay. The PEB found him fit for the following 5 additional conditions because the conditions, individually or in combination, were not associated with profile limitations and did not impact the applicant's ability to perform any of the 10 functional activities.

and the Medical Evaluation Board (MEB) indicated the conditions met medical retention standards:

- keratitis sicca secondary to mild meibomian gland dysfunction
- congenital left optic nerve drusen
- high myopia refractive error
- lid fasciculations
- obstructive sleep apnea

5. The PEB also indicated the applicant's condition of adjustment disorder with mixed anxiety and depression is a condition not constituting a physical disability.

6. On 23 July 2012, the applicant acknowledged he was advised of the findings and recommendations of the PEB and had received a full explanation of the results of the findings and recommendations and legal rights pertaining thereto. He concurred with the PEB's findings and recommendations and waived a formal hearing of his case. He did not request reconsideration of his VA ratings.

7. The applicant's DA Form 199 contains the following statements:

a. This case was adjudicated as part of the Integrated Disability Evaluation System (IDES) under the 19 December 2011 Policy and Procedure Directive-type Memorandum.

8. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged on 9 October 2012 under the provisions of Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation) by reason of disability, severance pay, combat related (enhanced).

9. The applicant provided:

a. His VA Health Summary (85 pages), dated 21 April 2024. Per the VA Myhealthvet website, this document is a summary of a veteran's VA health information and contains essential health and medical care information from the veteran's VA Electronic Health Record. The VA Health Summary was designed to allow the veteran to share a summary of his/her VA health information with a non-VA health care system or provider.

b. A Social Security Administration Benefit Verification Letter showing he is receiving social security benefits.

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 (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, and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant has applied to the ABCMR requesting additional unnamed medical conditions be found unfitting for continued service, an increase in his military disability rating, and subsequent change in his current disability separation disposition from separated with disability severance pay to permanent retirement for physical disability. The applicant states in part:

"The error and injustice that need to be corrected in my military records is the lack of consideration and acknowledgment of all disabilities experienced at the time of the med board evaluation. I believe that due to downsizing in the army during the commencement and completion of the med board process, not all of their disabilities were accurately documented or taken into account. Subsequently, my health condition has deteriorated, revealing additional disabilities that were not initially recognized."

c. The Record of Proceedings details the applicant's service and the circumstances of the case. The DD 214 for the period of Service under consideration shows he entered the regular Army on 19 July 2007 and was separated with \$29,851.20 of disability severance pay on 9 October 2012 under provisions provided in Chapter 4 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (20 March 2012).

d. A Soldier is referred to the IDES when they have one or more conditions which appear to fail medical retention standards as documented on a duty limiting permanent physical profile. At the start of their IDES processing, a physician lists the Soldier's referred medical conditions in section I the VA/DOD Joint Disability Evaluation Board Claim (VA Form 21-0819). The Soldier, with the assistance of the VA military service coordinator, lists all conditions they believe to be service-connected disabilities in block 8 of section II or a separate Statement in Support of Claim (VA form 21-4138).

e. Soldiers then receive one set of VA C&P examinations covering all their referred and claimed conditions. These examinations, which are the examinations of record for the IDES, serve as the basis for both their military and VA disability processing. All conditions are then rated by the VA prior to the Soldier's discharge. The physical evaluation board (PEB), after adjudicating the case sent them by the medical evaluation board (MEB), applies the applicable VA derived ratings to the Soldier's unfitting condition(s), thereby determining their final combined rating and disposition. Upon discharge, the Veteran immediately begins receiving the full disability benefits to which they are entitled from both their Service and the VA.

f. The applicant was referred to the IDES for "Meralgia paresthetica" on 9 June 2011. From the Mayo Clinic website:

"Meralgia paresthetica is a condition that causes numbness, tingling, and burning sensations in the outer thigh. It occurs due to compression of the lateral femoral cutaneous nerve, which runs from the lower back to the thigh."

<https://www.mayoclinic.org/diseases-conditions/meralgia-paresthetica/symptoms-causes/syc-20355635>

g. He claimed four additional conditions of his VA form 21-0819. Three were related to mental health: Adjustment disorder, mood swings, and anxiety disorder. A medical evaluation board (MEB) determined the referred condition failed the medical retention standards of AR 40-501, Standards of Medical Fitness. They determined 6 additional medical conditions met medical retention standards, including "Adjustment disorder with mixed anxiety and depression, condition and circumstance not constituting a physical disability."

h. From the psychiatrist mental health MEB narrative summary for mental health conditions:

"His current symptoms are consistent with a diagnosis of adjustment disorder but are NOT so severe as to be disqualifying IAW AR 40-501. SPC [Applicant] is has just in the past month engaged in a formalized trial of treatment for his symptoms, and even if his symptoms were debilitating, he has not been engaged in a full trial of a six month course of treatment consisting of counseling and medication management, and thus, it would be premature to make a recommendation independent of other physical conditions with respect to medical separation due to behavioral health symptoms.

Dr. D. from the VA conferred a diagnosis of adjustment disorder. This assessment is fully consistent with the findings of the undersigned and with the established diagnoses of the medical record.

SPC [Applicant] meets DSM IV-TR criteria for a diagnosis of adjustment disorder. From a behavioral health perspective, this service member meets retention criteria under AR 40-501. No formal psychiatric addendum is required for the purpose of the Medical Evaluation Board.

FINAL DIAGNOSIS: adjustment disorder with mixed anxiety and depression, condition and circumstance not constituting a physical disability IAW DoDI 1332.38.

This finding was explicitly discussed with SPC [Applicant] who concurred with the assessment.”

i. On 7 February 2012, the applicant agreed with the board’s findings and recommendation and his case was forwarded to a physical evaluation board (PEB) for adjudication.

j. On 13 July 2012, the applicant’s informal PEB found his left hip meralgia paresthetica and his right hip meralgia paresthetica were unfitting medical conditions for continued service. They determined the remaining medical conditions were not unfitting for continued military service. The PEB applied the VBA derived ratings of 10%, and 0% respectively and because the applicant’s combined military disability rating was less than 30%, the PEB recommended the applicant be separated with disability severance pay.

k. On 23 July 2012, after being counseled on the informal PEB’s findings and recommendation by his PEB Liaison Officer (PEBLO), he concurred with the informal PEB’s findings, waived his right to a formal hearing, and declined the opportunity for a VA reconsideration of his disability ratings.

l. Review of the DES case file in ePEB and his records in the EMR show the findings throughout his DES process are consistent with the medical evidence in the case file. No material errors, discrepancies, or omissions were identified.

m. The only health records submitted with the case are VA records from 2023-2024 – more than 10 years after his separation – and of no significant probative value.

n. There is no significant probative evidence the applicant had any additional medical condition(s) which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge; Thus, there is no cause for a referral to the Disability Evaluation System.

o. JLV shows he has been awarded multiple VA service-connected disability ratings, including ratings for PTSD, sleep apnea, and excessive tearing. However, the DES only compensates an individual 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.

p. It is the opinion of the ARBA medical advisor that neither an increase in his military disability rating nor a referral of his case back to the DES is warranted.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition and available military records, the Board concurred with the advising opinion of the ARBA medical advisor that neither an increase in his military disability rating nor a referral of his case back to the DES is warranted. The Board recognized the applicant's contentions that his medical evaluation was incomplete due to Army downsizing and that several conditions were overlooked or not properly considered during the Medical Evaluation Board (MEB) and Physical Evaluation Board (PEB) process.

2. The Board acknowledged the applicant's honorable service, including his deployment to Afghanistan, and recognizes the challenges he has faced post-service. However, the evidence of record shows that the applicant was found unfit for continued military service solely due to meralgia paresthesia of the left and right hips, resulting in a combined 10% disability rating and separation with severance pay. Evidence shows the PEB reviewed five additional conditions and determined they met retention standards and did not interfere with the applicant's ability to perform military duties. The condition

of adjustment disorder with mixed anxiety and depression was also reviewed and determined not to constitute a physical disability. The applicant concurred with the PEB findings, waived his right to a formal hearing, and did not request reconsideration of his VA ratings at the time.

3. Furthermore, while the applicant has since provided a VA Health Summary and documentation of Social Security benefits, these materials reflect his current health status and do not establish that the additional conditions were unfitting at the time of his separation. The Board is not authorized to retroactively recharacterize conditions as unfitting unless there is compelling evidence that they failed retention standards at the time of the original PEB proceedings. Based on the available records and the applicant's concurrence with the original findings, the Board found no error or injustice in the adjudication of his disability evaluation. Therefore, the request to correct his DA Form 199 to reflect additional unfitting conditions and retirement for physical disability is denied.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	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.

X //SIGNED//

CHAIRPERSON

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 10, U.S. Code, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army Disability Evaluation System (DES) and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with Department of Defense (DOD) Directive 1332.18 and Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation).
3. Army Regulation 635-40 establishes the Army DES and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating.
 - a. The disability evaluation assessment process involves two distinct stages: the MEB and PEB. The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his or her ability to return to full duty

based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition.

b. Service members whose medical condition did not exist prior to service who are determined to be unfit for duty due to disability are either separated from the military or are permanently retired, depending on the severity of the disability. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

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

d. The percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Ratings are assigned from the VA Schedule for Rating Disabilities (VASRD). The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting or ratable condition is one which renders the Soldier unable to perform the duties of his or her office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of his or her employment on active duty.

e. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

4. Title 10, U.S. Code, section 1201, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30 percent (%). Title 10, U.S. Code, section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating of less than 30%.

5. Directive-type Memorandum (DTM) 11-015, dated 19 December 2011, explains the IDES. It states:

a. The IDES is the joint DOD-VA process by which DOD determines whether wounded, ill, or injured service members are fit for continued military service and by

which DOD and VA determine appropriate benefits for service members who are separated or retired for a service-connected disability. The IDES features a single set of disability medical examinations appropriate for fitness determination by the Military Departments and a single set of disability ratings provided by VA for appropriate use by both departments. Although the IDES includes medical examinations, IDES processes are administrative in nature and are independent of clinical care and treatment.

b. Unless otherwise stated in this DTM, DOD will follow the existing policies and procedures requirements promulgated in DODI 1332.18 and the Under Secretary of Defense for Personnel and Readiness memoranda. All newly initiated, duty-related physical disability cases from the Departments of the Army, Air Force, and Navy at operating IDES sites will be processed in accordance with this DTM and follow the process described in this DTM unless the Military Department concerned approves the exclusion of the service member due to special circumstances.

c. IDES medical examinations will include a general medical examination and any other applicable medical examinations performed to VA Compensation and Pension standards. Collectively, the examinations will be sufficient to assess the member's referred and claimed condition(s) and assist VA in ratings determinations and assist military departments with unfit determinations.

d. Upon separation from military service for medical disability and consistent with the Board for Correction of Military Records (BCMR) procedures of the military department concerned, the former service member may request correction of his or her military records through his or her respective military department BCMR if new information regarding his or her service or condition during service is made available that may result in a different disposition. For example, a veteran appeals VA's disability rating of an unfitting condition based on a portion of his or her service treatment record that was missing during the IDES process. If the VA changes the disability rating for the unfitting condition based on a portion of his or her service treatment record that was missing during the IDES process and the change to the disability rating may result in a different disposition, the service member may request correction of his or her military records through his or her respective Military Department BCMR.

e. If, after separation from service and attaining veteran status, the former service member desires to appeal a determination from the rating decision, the veteran has one year from the date of mailing of notice of the VA decision to submit a written notice of disagreement with the decision to the VA regional office of jurisdiction.

6. 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//