

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 February 2025

DOCKET NUMBER: AR20240005465

APPLICANT REQUESTS: processing through the Integrated Disability Evaluation System (IDES) for physical disability discharge or retirement in lieu of honorable administrative discharge due to Secretarial Authority.

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) letter, 16 September 2022
- Army Discharge Review Board (ADRB) Case Report and Directive, 3 April 2024
- ADRB letter, 7 April 2024

FACTS:

1. The applicant states:

a. He was originally involuntarily separated due to denying the COVID vaccination. However, the Medical Evaluation Board (MEB) process had been initiated, and he was referred to a Physical Evaluation Board (PEB) for medical discharge. He is requesting that, since he was wrongfully discharged, the medical discharge be reinstated.

b. The ADRB determined his discharge was inequitable and changed his characterization from under honorable conditions to honorable. He was originally going to be medically discharged, so that should still happen since the process was interrupted for the wrong reasons. He had submitted a medical exemption from taking the COVID vaccination that was denied without concrete evidence as to why it was denied.

2. The applicant enlisted in the Regular Army on 10 August 2020 and was awarded the Military Occupational Specialty (MOS) 15T (A9 UH-60 Helicopter Repairer).

3. A DA Form 4856 (Developmental Counseling Form) shows the applicant was counseled on 16 September 2021. On 24 August 2021, the Secretary of the Defense directed the Secretary of the Army to begin full vaccination of the U.S. Army against the

COVID-19 disease and on 7 September 2021, he declined to receive the COVID-19 vaccine. He was ordered to become fully vaccinated no later than 17 September 2021.

4. A Surgeon Office, 10th Combat Aviation Brigade memorandum, 23 September 2021, signed by the Brigade Physician Assistant shows:

a. The applicant had requested a medical exemption from the mandatory COVID-19 vaccine.

b. On the date of the memorandum, he was counseled by a medical professional on the risks and benefits of receiving/not receiving the vaccine and his medical record was reviewed for potential conditions or medical history indicating the need for a medical exemption.

c. On 23 September 2021, his request for medical exemption was declined.

5. A second DA Form 4856 shows the applicant was again counseled on 4 October 2021, and again ordered to receive the COVID-19 vaccine. He initialed and signed the form on 4 October 2021, indicating he was refusing the lawful order to receive the COVID-19 vaccine.

6. Email correspondence between the applicant's immediate commander and the Brigade Physician Assistant, 7 -12 October 2021, shows the applicant's company commander was hoping to clarify the applicant's situation and that he was attempting to get an opinion from his neurologist. The Brigade Physician Assistant responded that she spoke with the applicant's neurologist and he had been cleared to get the vaccine, strongly recommending he get vaccinated and stating there was no medical exemption.

7. A third DA Form 4856 shows the applicant was counseled on 12 October 2021, that he was being flagged for adverse action due to his refusal to receive the COVID-19 vaccine.

8. A DA Form 268 (Report to Suspend Favorable Personnel actions (FLAG)) shows an adverse action flag was initiated on the applicant's records on 12 October 2021.

9. The acronym "PUHLES" describes the following six physical factors used in the profiling system to classify medical readiness: "P" (Physical capacity or stamina), "U" (Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric). Physical profile ratings are permanent (P) or temporary (T). A service member's level of functioning under each factor is represented by the following numerical designations: 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.

10. The applicant's Enlisted Record Brief (ERB), 15 October 2021, shows his PULHES was 111111 on that date, based on his last physical exam on 20 April 2021.

11. On 1 November 2021, the applicant was issued a General Officer Memorandum of Reprimand (GOMOR) for disobeying a lawful order by refusing to become fully vaccinated against COVID-19.

a. On 30 November 2021, he acknowledged receiving, reading, and understanding the reprimand and indicated he would submit matters in mitigation. His submitted rebuttal is not in his available records for review.

b. On 16 December 2021, the GOMOR issuing authority reviewed the reprimand and all supporting documentation, including rebuttal matters, and determined the GOMOR should be filed in the applicant's Army Military Human Resource Record (AMHRR).

12. Two final DA Forms 4856 show:

a. The applicant was counseled by his company commander on 12 January 2022, regarding his refusal comply with mandated COVID-19 testing for unvaccinated individuals and ordering him to do so. The applicant signed the form on 12 January 2022, indicating he refused to comply with COVID-19 testing procedures.

b. He was counseled by his company commander on 9 February 2022, advising him he was initiating procedures to separate him under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), chapter 14, for commission of a serious offense.

13. A DA Form 3822 (Report of Mental Status Evaluation) shows:

a. The applicant underwent a behavioral health evaluation on 24 February 2021, for the purpose of administrative separation under the provisions of Army Regulation 635-200, chapter 14, due to misconduct.

b. He had no duty limitations due to behavioral health reasons and currently met behavioral health medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness).

c. His listed diagnoses are epilepsy and migraines.

d. Further Comments show from a behavioral health standpoint, there were no psychiatric symptoms sufficient to require hospitalization, necessitate limitations of duty, or interfere with effective military service. He was psychiatrically cleared for administrative action deemed appropriate by his command; however, he was currently in the IDES process due to a medical condition and needed to be medically cleared for a recent traumatic brain injury (TBI).

14. A DD Form 2808 (Report of Medical Examination) shows:

a. The applicant underwent medical examination on 2 March 2022, for the purpose of administrative separation.

b. He was found not medically qualified for separation with a PULHES of 311111.

c. His disqualifying medical diagnosis is seizures.

d. The summary of medical diagnoses shows seizure disorder and epilepsy, Army Regulation 40-501, paragraph 3-3li.

e. The recommendation shows MEB.

15. On 24 March 2022, the applicant was notified by his commander of his initiation of action to separate him with a general (under honorable conditions) characterization of service under the provisions of Army Regulation 635-200, paragraph 14-12c, due to commission of a serious offense. He was advised of his right to consult with counsel and submit statements in his own behalf.

16. On 24 March 2022, the applicant acknowledged receipt of notice from his commander informing him of the basis for the contemplated action to separate him under the provisions of Army Regulation 635-200, paragraph 14-12c and the rights available to him.

17. On 24 March 2022, the applicant acknowledged having been advised by his consulting counsel on the basis for the contemplated action to separate him under the provisions of Army Regulation 635-200, paragraph 14-12c, its effects, and the rights available to him. He indicated was not submitting statements in his own behalf and waived consulting counsel representation.

18. On 24 March 2022, the applicant's battalion commander recommended approval of the applicant's separation under the provisions of Army Regulation 635-200, paragraph 14-12c, due to commission of a serious offense. He recommended the applicant's service be characterized as general, under honorable conditions because he refused the vaccine, putting his personal belief ahead of the safety of others.

19. A PDES Narrative Summary (NARSUM), 4 April 2022, has been provided in full to the Board for review, and in pertinent part shows:

a. The applicant was referred to an MEB for generalized tonic-clonic seizures with olfactory aura.

b. DA Form 3947 (MEB Proceedings), block 13a (Diagnoses (pending final signature) to show generalized tonic clonic seizures with olfactory aura (VA diagnosis; secondary generalized tonic-clonic seizure with olfactory aura (Department of Defense (DOD) diagnosis): fails to meet retention standards in accordance with Army Regulation 40-501, paragraph 3-3li; year/date of origin 2021.

c. The following conditions met retention standards:

- unspecified anxiety disorder
- post-concussional syndrome
- lumbar myofascial strain
- pseudofolliculitis barbae
- calluses, right and left forefoot/great toes
- hypertrophic toenails, right and left great toes; right and left second toes
- forehead scar
- right elbow scar
- migraine, including migraine variants
- tension headaches
- right and left knee patellar instability
- right and left pes planus
- right and left hallux valgus

20. A DA Form 3947 shows:

a. An MEB convened on 5 April 2022.

b. Generalized tonic-clonic seizures with olfactory aura (VA diagnosis; secondary generalized tonic-clonic seizure with olfactory aura (DOD diagnosis) fails retention standards of Army Regulation 40-501, paragraph 3-3li, with approximate date of origin in 2021.

c. MEB diagnoses 2 – 14 (as listed in the NARSUM) were determined to meet retention standards of Army Regulation 40-501.

d. The applicant signed the form on 6 April 2022, indicating her concurred with the MEB decision and he was referred to a PEB.

21. On 14 April 2022, the applicant's brigade commander recommended approval of the applicant's separation under the provisions of Army Regulation 635-200, paragraph 14-12c, due to commission of a serious offense. He recommended the applicant's service be characterized as general, under honorable conditions because he did not follow a lawful order to receive the COVID-19 vaccination.

22. On 16 May 2022, the approval authority directed the applicant's general discharge under honorable conditions under the provisions of Army Regulation 635-200, paragraph 14-12c, due to commission of a serious offense. The approval authority indicated the applicant's medical condition was not the direct or substantial contributing cause of the conduct that led to the recommendations for administrative elimination and he would not be referred to a PEB.

23. The applicant's ordinal DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was given a general discharge under honorable conditions on 8 June 2022, under the provisions of Army Regulation 635-200, due to misconduct (serious offense), with corresponding separation code JKQ. He was credited with 1 year, 9 months, and 29 days of net active service.

24. A VA letter, 16 September 2022, shows the applicant has one or more service-connected disabilities with a combined evaluation of 100 percent effective 1 July 2022 and that he is considered to be totally and permanently disabled due solely to his service-connected disabilities effective 9 June 2022.

25. An ADRB Case Report and Directive shows:

a. The applicant applied to the ADRB on 28 December 2022, requesting an upgrade of his characterization of service to honorable.

b. The ADRB determined his discharge was inequitable based on the 24 February 2023, Secretary of the Army Policy Memorandum, "Army Policy Implementing the Secretary of Defense Coronavirus Disease 2019 (COVID-19) Vaccination Mandate Rescission.

c. On 3 April 2024, the ADRB Presiding Officer authenticated the vote to grant relief in the form of an upgrade of the characterization of service and amended the narrative season of separation to Secretarial Authority with a corresponding separation code of JFF.

26. On 7 April 2024, the applicant was notified via letter that the ADRB reviewed his case and granted relief as outlined in the Case Report and Directive and that he would receive a corrected copy of his records in 150 days or sooner.

27. On 8 April 2024, the applicant's original DD Form 214 was voided and he was issued a new DD Form 214, which shows his characterization of service as honorable, his narrative reason for separation as Secretarial Authority, and his separation code as JFF.

28. 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.

29. 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, 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 requesting a reentry of his case into the Disability Evaluation System (DES) following the ADRB's upgrade of his discharge to honorable and the change in his reason for separation to Secretarial Authority.

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's initial DD 214 shows he entered the Regular Army on 10 August 2020 and was discharged under honorable conditions (general) on 8 June 2022 under the separation authority provided by paragraph 14-12c of AR 635-200, Active Duty Enlisted Administrative Separations (28 June 2021): Commission of a serious offense.

d. His case was reviewed by the ADRB on 21 February 2024:

"Board Type and Decision: In a records review conducted on 21 February 2024, and by a 5-0 vote, the Board determined the discharge was inequitable based on the 24 February 2023 SECARMY Policy Memo "Army Policy Implementing the Secretary of Defense Coronavirus Disease 2019 (COVID-19) Vaccination Mandate Rescission." The Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and based on the applicant's exemption submission changed the separation authority to AR 635-200, the narrative reason for separation to Secretarial Authority with a corresponding separation code of JFF."

e. His reissued DD 214 reflects these changes.

f. On 4 October 2022, an Army Medical Evaluation Board found the applicant's "Generalized tonic clonic seizures with olfactory aura (VA Diagnosis); Secondary generalized tonic-clonic seizure with olfactory aura" his sole unfitting condition for continued military service. They determined 13 additional conditions met medical retention standards. On 6 April 2022, the applicant concurred with the boards decision, declined to request an independent medical review, declined to submit a written appeal, and his case was to be forwarded to the PEB for adjudication.

g. However, the misconduct for which he was being involuntarily separated made him ineligible for further processing in the Disability Evaluation System without written authorization from his general court martial convening authority (GCMCA). From paragraph 4-3f(2) of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (19 January 2017):

"Approval and suspension of an AR 635-200 separation action is not authorized when the Soldier is pending both an AR 635-200 and AR 635-40 action. The GCMCA must decide which action to pursue (as described in AR 635-200). Soldiers continue to be eligible for these administrative separation actions up until the day of their separation or retirement for disability even though their PEB findings have been previously completed and approved by USAPDA for the SECARMY. In no case will a Soldier, being processed for an administrative separation for fraudulent enlistment or misconduct be discharged through the DES process without the approval of the GCMCA."

h. Paragraph 4-9a of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (19 January 2017) states "Disenrollment from DES, or termination of the case for any other reason, will occur no earlier than prescribed below:

"Enlisted Soldiers with an initiated or approved administrative separation for misconduct or fraudulent enlistment will be disenrolled when the MEB is completed, the Soldier's GCMCA has reviewed the MEB, and the GCMCA has directed in writing to proceed with the administrative separation. If the separation action was initiated after the Soldier's MEB was forwarded to the PEB, the last level of approved PEB findings prior to initiation of separation will be provided to the GCMCA for consideration in their decision."

i. In his 16 May 2022, the Commanding General of the 10th Mountain Division and Fort Drum directed the applicant be disenrolled for the DES and administratively separated.

j. Given the change in covid policy and his upgrade to honorable under Secretarial Authority, it is the opinion of the ARBA medical advisor the applicant should be reenrolled in DES.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising opinion of the ARBA medical advisor the applicant should be reenrolled in DES. The Board acknowledged the applicant's contentions that he was wrongfully separated for refusing the COVID-19 vaccination while actively undergoing medical evaluation for a disqualifying condition. He asserts that the Medical Evaluation Board (MEB) had already convened and referred him to a Physical Evaluation Board (PEB), and that the administrative discharge interrupted the disability evaluation process. Evidence shows the Army Discharge Review Board previously determined the applicant's discharge was inequitable and upgraded his characterization of service to honorable.

2. The Board determined the applicant was diagnosed with generalized tonic-clonic seizures with olfactory aura, a condition that fails retention standards under AR 40-501, paragraph 3-3li. The MEB convened on 5 April 2022 and referred the applicant to a PEB. The Board found that the applicant's medical condition warranted continuation through the IDES process and that the administrative separation prematurely terminated a valid disability evaluation. Based on the totality of evidence, the Board agreed that the applicant should have been processed through IDES. Therefore, the Board granted partial relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
XXX	XXX	XXX	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined that the evidence presented was sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by referring her records to The Office of the Surgeon General for review to determine if he should have been discharged or retired by reason of physical disability under the Integrated Disability Evaluation System (IDES).

a. In the event that a formal physical evaluation board (PEB) becomes necessary, the individual concerned will be issued invitational travel orders to prepare for and participate in consideration of her case by a formal PEB. All required reviews and approvals will be made subsequent to completion of the formal PEB.

b. Should a determination be made that the applicant should have been separated under the IDES, these proceedings will serve as the authority to void his administrative separation and to issue her the appropriate separation retroactive to her original separation date, with entitlement to all back pay and allowances and/or retired pay, less any entitlements already received.

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to physical disability discharge or retirement in lieu of honorable administrative discharge due to Secretarial Authority.

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, 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 (DES) 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 (Physical 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 (MMRB); 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 his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the severity of the disability and length of military service. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

c. The mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of his or her office, grade, rank, or rating. Reasonable performance of the preponderance of duties will invariably result in a finding of fitness for continued duty. A Soldier is physically unfit when a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

2. 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.

c. 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 Department of Veterans Affairs (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 their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty. 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.

3. 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.

4. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel. Chapter 15 (Secretarial Plenary Authority) provides that separation under this paragraph is the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and is used when no other provision of this regulation applies. Separation under this chapter is limited to cases where the early separation is clearly in the best interest of the Army. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as

announced in updated memorandums. Secretarial separation authority is normally exercised on a case-by-case basis but may be used for a specific class or category of Soldiers.

5. 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.

6. 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.

7. Title 10, U.S. Code, section 1556 requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//