

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 February 2025

DOCKET NUMBER: AR20240005613

APPLICANT REQUESTS:

- in effect, duty-related physical disability retirement in lieu of transfer to the Retired Reserve due to non-duty related medical unfitness for retention
- personal appearance before the Board

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

- two DD Forms 149 (Application for Correction of Military Record)
- self-authored statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty) ending 11 June 2004
- U.S. Army Human Resources Command (AHRC) memorandum, 27 April 2017
- Soldier's Medical Evaluation Board (MEB) Counsel memorandum, 30 January 2023
- DA Form 5016 (Retirement Accounting Statement), 19 April 2023
- DA Form 199-1 (Formal Physical Evaluation Board (PEB) Proceedings), 3 November 2023
- Supervisor Maintenance Specialist's letter, 30 November 2023
- DA Form 3349 (Physical Profile Record), 5 December 2023
- email witness statement, 7 December 2023
- Licensed Counselor's letter, 17 December 2023
- Headquarters, U.S. Army Physical Disability Agency (USAPDA) memorandum, 21 December 2023
- Soldiers' PEB Counsel memorandum, 24 January 2024
- Vietnam Veterans of America letter, 25 January 2024
- Department of the Army Orders 0007221758.00, 8 February 2024
- letter from Office of the Chief of Legislative Liaison (OCLL), 21 February 2024
- U.S. Army Reserve Command (USARC) Surgeon letter, 23 February 2024
- Department of Veterans Affairs (VA) Disability Ratings printout, 18 March 2024
- Standard Form 513 (Consultation Sheet), 25 April 2024
- VA letter, 23 September 2024
- VA My HealtheVet Personal Information Report, 23 September 2024

- letter from Member of Congress' Office, undated
- Digital Privacy Release Form, 6 November 2024
- email from OCLL, 12 November 2024
- Department of Defense (DOD) Manual 1332.18, Volume 1 (Disability Evaluation System (DES) Manual: Processes)
- Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR))
- Applicant's Guide to Applying to the ABCMR

FACTS:

1. The applicant states:

a. He is a military technician and an Afghanistan combat veteran forced to retire from the USAR, in both the military and civilian capacity, after the medical board found him physically unfit due to his back condition, but not for his other service-connected or combat incurred conditions. He never asked for a permanent profile rating of 3 for his lower back and he did not provide any medical documentation, but rather his physical health assessment stated he complained of lower back pain.

b. He appealed the medical board's findings and gave them his VA service-connected ratings, for not only his asthma but also for his post-traumatic stress disorder (PTSD), because his Government appointed lawyer had no access to his VA records. His PTSD, asthma, sinusitis, allergic rhinitis, and tinnitus are all connected to his combat deployment to Afghanistan in 2003 -2004 and should be considered duty-related, unfitting conditions. He feels he did not receive due process and is attaching his VA breakdown, orders, and additional documents for the Board to review. He feels he was not given a fair medical board as they ignored his request due to not having a military profile, but he does not understand how he was given a P3 profile without any medical documentation or a medical provider's statement or findings.

c. His physical profile states nothing about his back nor do the limitations deal with his lower back, but are geared toward his PTSD and asthma, for which he was found fit but are service-connected. He finds this hard to believe as you need a medical waiver to enlist if you have asthma and since he did not have asthma when he joined and he did not have it when he deployed, but only now after his deployment. He still has asthma, and it is service-connected, yet he still has no profile for it. He is looking for this error to be corrected and to show his conditions are unfitting, service-connected, and combat-related.

d. He is currently attending a weekly PTSD group meeting at Gibbsboroo American Legion Hall run by R. K ____ L _____. He has also seen Dr. H____, who originally diagnosed him, as well as a VA appointed psychiatrist and he takes prescribed

medication to help him with his daily life. The applicant's family has been impacted by his PTSD, his asthma, and all of his other disabilities. His PTSD is a major factor, as it affects not only himself, but everyone around him, including at his job as a military technician. He has worked as a military technician going on 20 years and is required to maintain USAR membership to keep his job.

e. The medical board failed to consider his PTSD and asthma as service-connected or duty-related because his appointed lawyer did not have access to his VA files in order to accurately represent him. He is now not only being processed out of the Army, but also losing his military technician job as a Heavy Equipment Repairer Work Leader.

2. The applicant enlisted in the U.S. Army Reserve (USAR) on 21 March 1992.
3. A partially legible DD Form 214 shows the applicant was ordered to active duty as a member of the USAR on 9 July 2003, in support of Operation Enduring Freedom, with service in Afghanistan from 15 August 2003 through 11 May 2004. He was honorably released from active duty on 11 June 2004, due to completion of required active service and transferred back to his USAR unit. He was credited with 11 months and 9 days of net active service this period.
4. An AHRC memorandum, 27 April 2017, notified the applicant he completed the required years of qualifying Reserve service and was eligible for retired pay upon application at age 60.
5. The applicant's DA Form 7652 (Disability Evaluation System (DES) Commander's Performance and Functional Statement), MEB Narrative Summary (NARSUM), DA Form 3947 (MEB Proceedings), DA Form 199 (Informal PEB Proceedings), Department of Veterans Affairs (VA) Compensation and Pension (C&P) Exam, VA Proposed Rating Decision for DES purposes, and VA Rating Decision are not in his available records for review and have not been provided by the applicant.
6. A Soldier's MEB Counsel memorandum, 30 January 2023, shows:
 - a. The applicant reviewed his informal PEB findings and non-concurred with the findings, requesting a formal PEB for review of his asthma diagnosis and the records that establish his asthma is unfitting and related to his active service.
 - b. The enclosed medical records document his diagnosis of asthma and sarcoidosis. The records also diagnose difficulty breathing and shortness of breath preventing physical exercise. As documented in the records, the applicant's symptoms of shortness of breath and inability to perform strenuous physical activity persist despite treatment. Pulmonary function tests are also included. A review of the record in its

entirety establishes his burn pit exposure as a primary factor in his asthma and his asthma warrants referral as a duty-related disqualifying medical condition.

7. A DA Form 5016, 19 April 2023, shows effective 20 March 2020, the applicant completed 25 years of qualifying service for retirement.

8. A DA Form 199-1 shows:

a. On 3 November 2023, a formal PEB convened while the applicant was in a USAR drilling member status, where he was found physically unfit and that his disposition should be referral for case disposition under Reserve Component regulations.

b. His medical condition determined to be unfitting was low back pain with lumbosacral L5-S1 spondylosis (non-compensable/non-duty-related). The case file indicates the applicant reported back pain due to improper lifting on his Periodic Health Assessment in June 2011. He was issued temporary physical profiles in November 2013 and September 2021, and permanently profiled in September 2022. These conditions are not compensable because at the time he was diagnosed with these conditions, he was not on active duty status for more than 30 days or entitled to base pay and there is no line of duty (LOD) investigation for these conditions. Additionally, there is no evidence within his available case file that indicates military service has aggravated the conditions. He is unfit because his DA Form 3349 functional activity limitations associated with these conditions interfere with his ability to reasonably perform required duties.

c. The applicant elected to appear and did appear at the formal proceedings, where regularly appointed counsel represented him.

d. During the formal proceedings, the applicant contended he remains unfit for his lower back pain with lumbosacral L5-S1 spondylosis and that his asthma is found to be unfitting and in the LOD. Based on the preponderance of evidence, the PEB determined his low back pain with lumbosacral L5-S1 spondylosis remained unfitting and his asthma condition was not unfitting. He testified his breathing issue was due to his exposure to burn pits and a fecal pond while deployed to Kandahar, Afghanistan in 2003 – 2004. He said he first had trouble breathing in 2014 – 2015, following the completion of the Army Physical Fitness Test (APFT), with no breathing issue prior to that event. He first sought treatment with the VA shortly following that and was first diagnosed as having rhinitis. He further testified he sought care from a civilian practitioner and was diagnosed with asthma. The case file includes results of a pulmonary functions test.

e. The applicant further testified to not requiring home nebulized medication, inpatient care, emergency department care, oral steroid medication, or immunomodulation medication to control an asthma exacerbation. He reported he uses inhaled medication daily and has prescribed inhaled rescue medication; however, he testified he last used the rescue inhaler last year. Furthermore, he testified he was able to participate in and pass the run portion of his last two ATFTs in 2018 and 2019. He did not have a current profile as a consequence of this condition. An Army Reserve Medical Management Center memorandum, dated 24 February 2023, stated that current documentation was not sufficient to determine his reported shortness of breath as a consequence of mild asthma did not meet retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness). The preponderance of evidence does not support this condition is duty limiting.

f. The applicant signed the form on 20 December 2023, indicating he had been advised of the findings and recommendations of the formal PEB and did not concur, attaching his written appeal to the form. The applicant's appeal is not in his available records for review.

9. A Supervisor Maintenance Specialist's letter, 30 November 2023, shows he was the applicant's civilian supervisor in his dual status military technician position in one of several maintenance repair shops for USAR equipment. He worked with the applicant since the mid-2000s and over the years he noticed the applicant would come to be easily and noticeably on guard and irritable, getting upset more than the average person. He is one of the most productive employees when it comes to accomplishing a task, but you always need to know your audience when you are talking to him.

10. 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.

11. DA Form 3349 shows the applicant's unit commander signed and approved the form on 5 December 2023, which further shows:

a. He was given a PULHES of 123111, with ratings for the following conditions:

- a rating of 2 in factor U for elbow injury/pain (right), approved on 15 December 2017

- a rating of 2 in factor U for Army Combat Fitness Test (ACFT) modification, approved on 17 March 2020
- a rating of 3 in factor L for lower back/tailbone injury/pain, approved 21 September 2023
- a rating of 3 in factor L for ACFT modification, approved 4 June 2023
- a rating of 2 in factor L for ACFT modification, approved, 4 June 2023

b. He was limited in all functional activities and multiple ACFT events, but not the ACFT 2-mile run. Numerous alternate approved exercises and drills are listed on the form.

12. An emailed witness statement, 7 December 2023, shows the author of the email deployed with the applicant to Afghanistan and while there, they were subjected to very unorthodox physical training. One time he saw the applicant doing a fireman's carry relay with an exceptionally large captain on his back, toward the end of which he collapsed to his knees holding his back in pain. The applicant also carried the squad automatic weapon on his back all through the tour in Afghanistan.

13. A Licensed Counselor's letter, 17 December 2023, has been provided in full to the Board for review, and in pertinent part shows the applicant is a veteran with severe symptoms of PTSD. He has been attending group therapy with 25 other PTSD veterans in Gibbsboro, NJ American Legion for over 1 year, but he needs a far more comprehensive program to address his PTSD that has severely and negatively affected his life and work.

14. A Headquarters, USAPDA memorandum, 21 December 2023, shows:

a. They noted the applicant's rebuttal to the formal PEB, wherein he stated his disagreement with the findings of the formal PEB, requesting to be found unfit for asthma and PTSD and that both conditions be identified as duty-related. In addition, the applicant requested his unfitting low back pain with lumbosacral L5-S1 spondylosis be found duty related.

b. Regarding the applicant's asthma, he is not currently on a DA Form 3349 for this condition and has no associated permanent functional activity restrictions. They noted the 24 February 2023 memorandum completed by the Army Reserve- Medical Management Center (AR-MMC) specifically regarding his asthma and their conclusions. They reviewed the 1 December 2023 follow up note completed by Dr. H____, which revealed "normal" Pulmonary Function Tests (PFT) and while treatment was adjusted, made no recommendations for any permanent functional activity restrictions. The preponderance of evidence does not allow them to conclude differently than the formal PEB concluded as noted on the DA Form 199-1, dated 3 November 2023, his asthma is

not unfitting. While they do not make LOD determinations, one would not be sought for a condition that is fitting.

c. Regarding his PTSD, he is not currently on a DA Form 3349 for this condition and has no associated permanent functional activity restrictions. They reviewed and considered the 17 December 2023 initial behavioral health evaluation by K____ L____, LPC and note that there are no recommendations made by this behavioral health provider regarding a need for permanent functional activity restrictions. A review of his Joint Legacy Viewer records indicate that he was last seen on 19 October 2023 by his psychiatrist (uploaded into electronic PEB) and there were no recommendations made at that time for permanent functional activity restrictions. The preponderance of evidence to include the recent behavioral health provider notes and the absence of any permanent functional activity restrictions on his current DA Form 3349 does not support that his PTSD is unfitting. While they do not make LOD determinations, one would not be sought for a condition that is fitting.

d. Regarding his unfitting low back pain with lumbosacral L5-S1 spondylosis and the request that this be identified as being duty-related, they note that in the 'Memorandum Prepared in accordance with Non-Duty Related (NDR) Case Format, dated 5 January 2023, that the condition was not diagnosed while serving on a period of active duty for more than 30 days, so no Integrated Disability Evaluation System Referral Memorandum (IDRM) was sought and that no LOD exists for this condition. They reviewed and considered the 7 December 2023 statement provided by Sergeant J____ M____ (which did not provide dates of witnessed events). While there are reports of historical injuries related to his service in his medical records based on reports to his providers), the available evidence does not establish a clear connection between the applicant's military service and his unfitting back condition. While he reports suffering his initial injury in 2003, he did not require duty restrictions (demonstrated by DA Form 3349 profile) for a back condition according to the available e-profile records, until 15 November 2013. The available evidence does not warrant requesting a LOD determination; the applicant is unfit for Low back pain with lumbosacral L5-S1 spondylosis (non-compensable).

e. The applicant was advised of his right to apply to the ABCMR should he feel the USAPDA findings were in error. The USAPDA determined his case was properly adjudicated by the PEB in accordance with the rules that govern the Physical Disability Evaluation System in making its determination.

15. A Soldiers' PEB Counsel memorandum, 24 January 2024, advised the applicant that the USAPDA denied his appeal and his request for an appeal hearing regarding his formal PEB. That meant his case was finalized with the Army and she could no longer assist him once he was separated from the Army. She strongly suggested he consider

filing an application with the ABCMR and provided him with copies of numerous Army publications to assist him.

16. A Vietnam Veterans of America letter, 25 January 2024, to the applicant's command, inquiring why they refuse to consider the applicant's combat-incurred mental disorder as a disqualifying factor in his USAR discharge. He developed this serious PTSD diagnosis as a result of his USAR deployment and is entitled to a medical discharge. If they do not medically discharge the applicant from the USAR, he will have no other option but to sue the USAR through the White House Advocate's Office in Federal Court if they refuse to consider his combat-related PTSD as his cause of discharge.

17. Department of the Army Orders 0007221758.00, 8 February 2024, transferred the applicant from his USAR Troop Program Unit to the Retired Reserve effective 15 March 2024, due to mandatory retirement.

18. In response to a Congressional inquiry, a USARC Surgeon letter, 23 February 2024, shows:

a. This letter is in response to the 7 February 2024 inquiry on behalf of the applicant regarding his non-service-connected medical discharge from the USAR.

b. The applicant is a Dual Status Military Technician (DSMT/MT) serving as a Heavy Mobile Equipment Repairer Leader (Wage Leader-5803-09 step 4) with the Area Maintenance Support Activity (SMSA) Site 21 on Joint Base McGuire-Dix-Lakehurst, NJ. As a condition of his employment agreement, he is required to maintain membership in the Selected Reserve (SELRES) or as an Individual Mobilization Augmentee (IMA).

c. The applicant will honorably transfer to the Retired Reserve with an effective date of 15 March 2024.

d. The Military Health Services branch at the 99th Readiness Division (RD) received the applicant's DA Form 199 and unfit memorandum from the Army Reserve Medical Management Center (ARMMC) on 3 January 2024, after his final appeal was completed and a determination was made. The 99th RD staff processed retirement orders in accordance with the decision and is currently awaiting his request for retirement recognition packet from the unit.

e. The applicant was properly adjudicated by the PEB in accordance with the rules that govern the PDES in making its determination. If he feels the findings are in error, he will need to make submission for correction to the ABCMR.

f. The Civilian Human Resources Service Center (CHRSC, formerly Civilian Personnel Advisory Center) is responsible to review and determine if the applicant's civilian retention eligibility based on published military retirement orders. The Army Reserve MT Program Policy, dated May 2019 states, "Commands will separate MTs first hired as a DSMT after 10 February 1996, who involuntarily lose dual status not later than one year after the date on which the dual status is lost." CHRSC will provide the individual employee and his chain of command with an eligibility determination upon completion of review.

g. The 99th Readiness Division had no Department of the Army Civilian (DAC) coded Wage Leader 09 positions against which to non-competitively assign the applicant. Positions coded as DAC do not require a SELRES or IMA membership.

19. A VA Disability Ratings printout, 18 March 2024, presumably pertaining to the applicant, although his name is not reflected on the form, shows his combined disability rating is 90 percent for the following conditions:

- erectile dysfunction, 0 percent, effective 5 August 2023
- obstructive sleep apnea with asthma, 50 percent, effective 15 March 2023
- sinusitis, 10 percent, effective 7 September 2022
- allergic rhinitis, 10 percent, effective 7 September 2022
- gastroesophageal reflux disease, 10 percent, effective 10 August 2022
- PTSD, 70 percent, effective 6 April 2021
- tinnitus, 10 percent, effective 6 April 2021

20. A Standard Form 513 shows the applicant underwent a sleep study on 25 April 2024, where he was diagnosed with mild obstructive sleep apnea with hypoxemia.

21. A VA letter, 23 September 2024, shows the applicant has one or more service-connected disabilities with a combined rating of 90 percent, he is not totally and permanently disabled due solely to his service-connected disabilities, and he is in receipt of special monthly compensation due to the type and severity of his service-connected disabilities.

22. The applicant provided a 91 page VA My HealtheVet Personal Information Report, 23 September 2024, which has been provided in full to the Board for review.

23. The Army rates only conditions determined to be physically unfitting at the time of discharge, which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career. The VA does not have authority or responsibility for determining physical fitness for military service. The VA may compensate the individual for loss of civilian employability.

24. 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 is applying to the ABCMR requesting a reversal of the United States Army Physical Disability Agency's finding that his lumbar spine condition was not duty related and the additional conditions of PTSD and asthma be determined unfitting and duty related with a subsequent revocation of orders transferring him to the Retired Reserve and, in essence, referral to the Disability Evaluation System.

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. Orders published 8 February 2024 show the applicant was transferred to the Retired Reserve effective 15 March 2024 with 25 years, 00 months, and 00 days of total service. He had received his Notification of Eligibility for Retired Pay at Non-Regular Retirement (20-Year Letter) on 27 April 2017.

d. The applicant was placed on a duty limiting permanent physical profile for non-duty related "Lower back/Tailbone Injury/Pain" on 22 September 27 August 2012. The profile had an additional two non-duty limiting condition – "Right Elbow Pain/Injury" and "Army Combat Fitness Test Modification" – but listed neither PTSD nor asthma.

e. The United States Army Reserve Command's Army Reserve Medical Management Center notified the applicant in a memorandum dated 26 September 2022 that his lumbar spine condition was disqualifying for continued military service. The applicant was provided with four options: Transferring to the Retired Reserve if he had 20 qualifying years of service, receiving a 15-year letter of eligibility for a non-regular retirement if he had more than 15 but less than 20 years of service, Honorable discharge if he had less than 15 years of service, or processing through a non-duty related physical evaluation board, or NDR PEB. The applicant selected this fourth option.

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 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 Disability Evaluation System (DES) for a duty related medical condition.

g. From the NDR-PEB narrative summary for this condition:

“Medical Basis of Diagnosis: In a periodic health assessment dated 20110624 the SM [service member] complained of lower back pain (LBP) ongoing several years from improper lifting. A lumbar spine x-ray dated 20210525 reported mild facet arthropathy [degenerative changes] at L5-S1. In a civilian primary care provider visit dated 20210913, the SM stated that the cause of his LBP was military related going back to 2003 when doing a fireman’s care on someone significantly larger than himself ... Recent lumbar x-rays showed mild degenerative changes at L4-5 and L5-S1 with prominent spondylosis [degenerative changes] at L5-S1 ...

[The applicant did not receive significant relief with multiple conservative treatments, including physical therapy and nerve blocks by physical medicine and rehab.]

There is no other documentation found in HRR, AHLTA, or JLV to support the SM’s condition is duty related. Therefore, a recommendation is made for referral to the NDR-PEB.”

h. His informal PEB determined his “Low back pain with lumbosacral L5-S1 spondylosis” was his sole unfitting condition for continued military service and was non-compensable as there was no evidence it was duty related:

NDR: The casefile indicates the Soldier reported back pain due to improper lifting on their Periodic Health Assessment (PHA) in June 2011. The Soldier was issued temporary profiles in November 2013 and September 2021, and permanently profiled in September 2022.

This condition is not compensable because at the time the Soldier was diagnosed with this condition, they were 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 conditions.

i. The applicant non-concurred maintaining that his asthma should also be unfitting and service connected. In the PEB's 12 April 2023 response, they maintained the findings of the PEB:

"Your rebuttal was carefully considered, and your case reviewed. Following the review of your case, the Board adheres to the original findings and recommendations of the informal proceedings.

In your appeal you contend your asthma condition is service connected and in line of duty due conditions which is also unfitting. Your asthma condition was reviewed by the Army Reserve Medical Management Center (ARMMC), who determined the evidence submitted "is not sufficient to determine that the SM shortness of breath as a consequence of mild persistent asthma does not meet retention standards IAW AR 40-501 chapter 3-13.b.

Your appeal will be included in your case file for consideration during your formal board scheduled for 2 November 2023."

j. The applicant was present for and represented by regularly appointed counsel at his formal PEB 3 November 2023. The formal PEB confirmed the informal PEB findings initial findings:

"FORMAL - The Soldier contends that he remains unfit for his low back pain with lumbosacral L5-S1 spondylosis and that his asthma is found to be unfitting and in the line of duty. Based on the preponderance of evidence, the PEB has determined that the Soldier's low back pain with lumbosacral L5-S1 spondylosis remains unfitting and his asthma condition is not unfitting.

The Soldier testified his breathing issue was due to his exposure to burn pits and a fecal pond while deployed to Kandahar, Afghanistan in 2003-04. The Soldier said he first had trouble breathing in 2014-15 following the completion of the Army Physical Fitness Test (APFT), with no breathing issue prior to that event.

He first sought treatment with the VA shortly following and was first diagnosed as having rhinitis. The Soldier further testified he sought care from a civilian practitioner and was diagnosed with asthma. The case file indicates the following results of pulmonary functions test: FEV1 = 80% of predicted value, on 21 January 2022, FEV1 92% of predicted value on 19 June 2022, FEV1 90% of predicted value on 19 August. Methacholine challenge test showed FEV1 , after methacholine, decreased to approximately 90% baseline.

The Soldier testified to not requiring home nebulized medication, inpatient care, emergency department care, oral steroid medication nor immunomodulation medication to control an asthma exacerbation. He reported that he uses inhaled medication daily and has prescribed inhaled rescue medication. However, the Soldier testified he last used the rescue inhaler last year. Furthermore, the Soldier testified he was able to participate and pass the run portion of his last two APFT's in 2018 and 2019.

He does not have a current profile as of consequence for this condition. Army Reserve Medical Management Center memo dated 24 February 2023 stated that current documentation is not sufficient to determine that his reported shortness of breath as a consequence of mild asthma does not meet retention standards IAW AR 40-501 chapter 3-13.b.

The preponderance of evidence does not support this condition is duty limiting. This case has been conditionally adjudicated based upon a review of the objective evidence of record, including the Soldier's statements provided during Formal Board proceedings; and considering the requirements for reasonable performance of duties required by rank and military specialty, in full consideration of DoDI 1332.18, Enc. 3, App. 2 and AR 635-40, to include combined, overall effect.”

k. After being counseled on the formal PEB's findings and recommendation, the applicant non-concurred and appealed the Formal PEB's findings with a written appeal prepared by his counsel dated 20 December 2023 in which he maintained his LBP was duty related from 20 years ago and with a new contention that his PTSD was also unfitting and duty related based on his 2003 Afghanistan deployment:

“I agree that my low back pain with lumbosacral L5-S-1 spondylosis is unfitting. However, I do not agree that it is non-duty related. I am providing Enclosure 1 which is a statement from former SGT M. describing the PT activities we engaged in while deployed to Afghanistan. He saw the incident when I had to carry another Soldier on my back and collapsed in pain from my back. This injury during PT while deployed to Afghanistan in 2003 was the beginning of my back problems. Although I was able to complete the deployment and continue to serve in the Reserves, I continued to experience back pain and finally ended up with the official diagnosis I have now.

I believe my PTSD should be found as an unfitting condition that is duty-related

and incurred during combat. My PTSD arose out of my service in combat action in Afghanistan. While deployed there when we convoyed, we had to get from one point to the next as quickly as possible to avoid any insurgents and mines.

My vehicle was a contact truck with a heavy square box on the back full of tools and other mechanic tools. The Humvee had a soft top and soft doors on the crew compartment which added to the vulnerability of our vehicle as our vehicle was always positioned in the back of the convoy in case any other vehicles broke down. This affected me greatly and contributed to my road rage as well as my anxiety coupled with multiple close calls and mortar fire.”

I. The formal PEB findings were maintained in their 21 December 2023 response to the applicant:

‘Regarding SFC [Applicant]’s asthma, he is not currently on a DA Form 3349 [Physical Profile} for this condition and has no associated permanent functional activity restrictions. We note the 24 February 2023 memorandum completed by the Army Reserve Medical Management Center (AR-MMC) specifically regarding his asthma and their conclusions.

We reviewed the 1 December 2023 follow up note completed by L. H., M.D. which revealed “normal” Pulmonary Function Tests (PFT) and while treatment was adjusted, made no recommendations for any permanent functional activity restrictions. The preponderance of evidence does not allow us to conclude differently than the FPEB concluded as noted on the DA Form 199-1 dated 3 November 2023, his asthma is not unfitting.

Regarding SFC [Applicant]’s PTSD, he is not currently on a DA Form 3349 for this condition and has no associated permanent functional activity restrictions. We reviewed and considered the 17 December 2023 initial behavioral health evaluation by K L, LPC and note that there are no recommendations made by this behavioral health provider regarding a need for permanent functional activity restrictions.

A review of his Joint Legacy Viewer records indicate that he was last seen on 19 October 2023 by his psychiatrist (uploaded into electronic PEB) and there were no recommendations made at that time for permanent functional activity restrictions. The preponderance of evidence to include the recent behavioral health provider notes and the absence of any permanent functional activity restrictions on his current DA Form 3349 does not support that his PTSD is unfitting.

Regarding SFC [Applicant]'s unfitting low back pain with lumbosacral L5-S1 spondylosis and the request that this be identified as being duty related, we note that in the 'Memorandum Prepared in accordance with Non-Duty Related (NDR) Case Format' dated 5 January 2023 that the condition was not diagnosed while serving on a period of active duty for more than 30 days, so no Integrated Disability Evaluation System Referral Memorandum (IDRM) was sought and that no LOD exists for this condition.

We reviewed and considered the 7 December 2023 statement provided by SGT J. M. (which did not provide dates of witnessed events). While there are reports of historical injuries related to his service in his medical records based on reports to his providers), the available evidence does not establish a clear connection between SFC [Applicant]'s military service and his unfitting back condition. While he reports suffering his initial injury in 2003, he did not require duty restrictions (demonstrated by DA Form 3349 profile) for a back condition according to the available eProfile records, until 15 November 2013. The available evidence does not warrant requesting a LOD determination; SFC Applicant r is unfit for Low back pain with lumbosacral L5-S1 spondylosis (non-compensable)."

m. The applicant's appeals exhausted, the formal PEB's findings were approved for the Secretary of the Army that same day with the statement that his next appeal level was the ABCMR.

n. The applicant's final NCO Evaluation Report was an annual with a thru date of 26 June 2023. It shows me "Met Standard" for all attributes and competency with his rater stating:

"o exercised common sense while performing all duties within his pay grade in an exceptional and professional manner

o has a wealth of knowledge allowing him to adjust quickly to unknown situations and seek guidance when needed"

o. His senior rater marked him "Qualified" and wrote for the applicant's "Overall Potential:"

SFC {Applicant} is a dynamic leader and strategic thinker that handles complex tasks with ease and enthusiasm. He demonstrates unlimited potential for success and will."

p. There is insufficient probative evidence the applicant had an additional duty related medical condition 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 was no cause for referral to the Disability Evaluation System. Furthermore, there is insufficient probative evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge.

q. There are no encounters in the EMR. JLV shows he has been awarded several VA service-connected disability ratings, including rating for PTSD, sleep apnea, and bronchial asthma. However, the DES compensates an individual only for service incurred medical condition(s) which have been determined to disqualify him or her from further military service. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

r. It is the opinion of the Agency Medical Advisor his lumbar spine was not related to his military service and therefore remains non-compensable; and that neither his PTSD nor asthma failed medical retention standards and so referral of his case to the DES is unwarranted.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation and the findings outlined in the medical review, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's narrative reason for separation.

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.

//SIGNED//
 X

 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. 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.
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 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. Paragraph 2-11 states applicants do not have a right to a formal hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//