ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 20 March 2025

DOCKET NUMBER: AR20240006173

APPLICANT REQUESTS: in effect, correction of his DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings by adding additional conditions as unfitting resulting in a higher disability rating.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- 43 pages of medical records

FACTS:

1. The applicant states -

a. He is requesting post-traumatic stress disorder (PTSD), depression, sleep apnea, insomnia, and periodic limb movement disorder be added to his disability rating. The Army did not have full access to his medical records at the time of his retirement, because he was performing recruiting duties. He was unaware his medical records from private physicians were not uploaded to his permanent record until he received his rating and he was not aware he could request correction of his records.

b. He was medically retired from the United States Army for his low back and left knee conditions. After further discussion with family and former service members, he feels his entire medical profile should have been considered during his PEB/Medical Evaluation Board (MEB) process. He understands portions of his profile were most likely not available during this time period because he was on recruiting duty in Indiana and these documents were not uploaded into his medical history file. With that being said, he would like to submit, and humbly request the Board review his medical documents to see what he is entitled to. His rating from the United States Army is 50% at this current time. Please, review the documents and consider adding to his rating the following diagnoses, which would have further made him unfit for active duty:

- PTSD (diagnosed 9 January 2020 by Rockey Psychological Services)
- Depression (Diagnosed 9 January 2020 by Rockey Psychological Services)

- sleep apnea (Diagnosed 3 September 2020 by Community Health Network)
- insomnia (Diagnosed 3 September 2020 by Community Health Network)
- periodic limb movement disorder (Diagnosed 3 September 2020 by Community Health Network)

2. The applicant enlisted in the Regular Army on 11 May 2005. He served in Iraq from 7 December 2007 to 20 February 2009 and in Afghanistan from 16 June 2010 to 1 April 2011.

3. The applicant's MEB proceedings are not available.

4. On 12 April 2021, a PEB found the applicant unfit for further military service due to degenerative disc disease lumbar spine stenosis, lumbosacral strain, and left knee plica status post arthroscopic excision. The PEB recommended a 50% disability rating and his permanent disability retirement.

5. The PEB found the applicant's 17 additional conditions (undisclosed) were not unfitting because the MEB indicated the conditions met retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), the conditions were not listed on the DA Form 3349 (Physical Profile) as preventing him from performing one or more functional activities, and there was no evidence indicating that performance issues, if any, were due to these conditions. The DA Form 199 contains the following entries in section VI (Instructions and Advisory Statements):

a. This case was adjudicated as part of the Integrated Disability Evaluation System (IDES).

b. As documented in the Department of Veterans Affairs (VA) memorandum dated 16 March 2021, the VA determined the specific VA Schedule for Rating Disabilities code(s) to describe the Soldier's condition(s). The PEB determined the disposition recommendation based on the proposed VA disability rating(s) and in accord with applicable statutes and regulations.

6. Orders published on 22 April 2021 ordered the applicant's release from assignment and duty because of physical disability and his retirement for permanent physical disability effective 18 July 2021. The orders show he was assigned a 50% disability rating.

7. The applicant's DD Form 214 shows he was retired on 18 July 2021 by reason of disability, permanent.

8. 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 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 that his PTSD, depression, sleep apnea, insomnia, and periodic limb movement disorders be determined to have been additional unfitting medical conditions with a subsequent increase in his military disability rating. He states:

"At time of retirement, the Army did not have full access to my medical records due to me being a recruiter."

c. The Record of Proceedings details the applicant's service and the circumstances of the case. His DD 214 for the period of Service under consideration shows he entered the regular Army on 11 May 2005 and was permanently retired for physical disability on 18 July 2021 under provisions in chapter 4 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (19 January 2017).

d. A Soldier is referred to the Integrated Disability Evaluation System (IDES) when they have one or more conditions which appear to fail medical retention standards reflected on a duty liming permanent physical profile. At the start of their IDES processing, a physician lists the Soldiers 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 other conditions they believe to be service-connected disabilities in block 8 of section II of this form, or on a separate Application for Disability Compensation and Related Compensation Benefits (VA Form 21-526EZ).

e. Soldiers then receive one set of VA Disability Benefits Questionnaires (DBQ – aka 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. The medical evaluation board (MEB) uses these exams along with AHLTA encounters and other information to evaluate all

conditions which could potentially fail retention standards and/or be unfitting for continued military service. Their findings are then sent to the physical evaluation board for adjudication.

f. All conditions, both claimed and referred, are rated by the VA using the VA Schedule for Rating Disabilities (VASRD). The physical evaluation board (PEB), after adjudicating the case, applies the applicable ratings to the Soldier's unfitting condition(s), thereby determining his or her 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.

g. On 13 October 2020, the applicant was referred to the IDES for "Left knee plica status post arthroscopic excision." The applicant claimed ten additional conditions on a separate Application for Disability Compensation and Related Compensation Benefits (VA Form 21-526EZ), including sleep apnea, periodic limb movement disorder, and PTSD/depression/insomnia. A medical evaluation board (MEB) determined he had two conditions which failed the medical retention standards of AR 40-501, Standards of Medical Fitness: "Left knee plica status post arthroscopic excision" and "Degenerative disc disease lumbar spine stenosis, lumbosacral strain."

h. The MEB determined 17 additional medical conditions met medical retention standards, to include restless leg syndrome, obstructive sleep apnea, and "Unspecified trauma and stressor related disorder." From the MEB narrative summary for these conditions:

> **"**Restless Leg Syndrome, Bilateral: Soldier reports current symptoms of restless leg syndrome. Medical records indicate the Soldier was treated with pramipexole, however the medicine profile indicate the Soldier has not refilled the medication since 20JUL2020. There is no medical support that the condition interferes with MOS [military occupational specialty]. Condition does not impact the Soldier's ability to work. No permanent profile limitations due to condition or does AR 40-501 Chapter 3-1 a, b, c, d, e and f apply.
>
> Obstructive Sleep Apnea: Soldier reports the condition began in 2020. Medical records indicate the Soldier had a sleep study on 23JUN2020 with results of mild with overall AHI [apnea-hypopnea index] of 8.2. Soldier has been prescribed a CPAP machine. Soldier needs a trial of 12 months and a review of his compliance before a permanent profile is issued.

There is no medical support that the condition interferes with MOS. Condition does not impact the Soldier's ability to work. No permanent profile limitations due to condition or does AR 40-501 Chapter 3-1 a, b, c, d, e and f apply.

Unspecified Trauma ANS Stressor Related Disorder (VA Diagnosis) (Claimed As Posttraumatic Stress Disorder, Depression, Insomnia): The 20201113 Initial PTSD DBQ examiner determined the SM meets DSM-5 diagnostic criteria for Other Specified Trauma and Stressor Related Disorder.

Regarding the claimed conditions of PTSD, depression, and Insomnia, the examiner noted, "There is no diagnosis because there are no findings, signs, and or symptoms to support a diagnosis." The examiner estimated that functional impairment due to BH symptoms was limited to "occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks, although generally functioning satisfactorily, with normal routine behavior, selfcare and conversation."

The SM [service member] identified plans to be employed at Amazon in a managerial job once separated. The SM resides with his spouse of eight years and children, and no impairment in social functioning was identified by the examiner.

Regarding behavioral health treatment, records indicate that the SM initiated treatment in January 2020. The SM has been prescribed trazadone for sleep and duloxetine 30mg since Feb 2020, and trazodone was noted to be helpful with sleep (JLV, PCP Note 20200225). The SM has also reportedly attended brief psychotherapy with a community-based provider.
SM denied any suicidal or homicidal ideation, plan or intent and has never required hospitalization.

The SM had brief profile restrictions due to "anxiety disorder" for 90 days, from 20200130 to 20200429, around the time of initiation of BH treatment. The SM does not have current profile restrictions for a BH condition.

Commander's Statement dated 20201013 notes the presence of physical and mental conditions but endorsed that the SM "Makes reasonable decisions, including complex or unfamiliar ones," "has effective work relationships" and did not identify any limitations in completing MOS tasks.

With respect to behavioral health symptoms, the preponderance of medical evidence shows that the diagnosed condition (Other Specified Trauma and Stressor Related

Disorder) does not have a significant negative impact on the SM's ability to perform the duties of his MOS, nor does it require limitations in duty at this time. From a BH perspective, it appears the SM meets retention standards per AR 40-501, Chapter 3.

i. His final NCO Evaluation Report covered 15 March 2020 thru 21 January 2021 and shows he was a successful Soldier. He met the standard for all attributes and competencies. His senior rater opined:

"MSG [Applicant] is in the top 25% of NCOs I have worked with throughout my Army career. Send to MLC [Master Leader Course] with peers and promote to 1SG when available. He is dedicated to any mission you give him and will do it with excellence."

j. On 22 October 2021, the applicant concurred with the MEB's decision, declined the opportunity to request an Impartial Medical Review (IMR), declined the opportunity to submit a written rebuttal, and his case was forwarded to a physical evaluation board (PEB) for adjudication.

k. On 12 April 2021, the applicant's informal PEB found his "Degenerative disc disease lumbar spine stenosis, lumbosacral strain" and "Left knee plica status post arthroscopic excision" unfitting conditions for continued military service. They found the 17 remaining medical conditions not unfitting for continued service. The PEB applied the Veterans Benefits Administration (VBA) derived ratings of 40% and 10% respectively for a combined military disability rating of 50%.

l. They recommended the applicant be permanently retired for physical disability. On 16 April 2021, after being counseled on the PEB's findings and recommendation by his PEB liaison officer (PEBLO), the applicant concurred with the Board's findings, waived his right to a formal hearing, and declined to request a VBA reconsideration of the disability ratings (VARR).

m. There is insufficient probative medical evidence the applicant had any additional 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 no evidence that any additional medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge.

n. Review of his PEB case file in ePEB along with his encounters in AHLTA revealed no substantial inaccuracies or discrepancies.

o. The applicant submitted 43 pages of civilian documentation from 2020. It shows he had been diagnosed with conditions he now requests be found unfitting for service. However, as noted above:

> "Soldiers then receive one set of VA Disability Benefits Questionnaires (DBQ – aka 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.

p. JLV shows was awarded numerous VA service-connected disability ratings, including ratings for sleep apnea, degenerative arthritis of the lumbar spine, and PTSD. However, the DES only compensates an individual for permanent service incurred medical condition(s) which have been determined to disqualify him or her from further military service and consequently prematurely ends their career. 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.

q. 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, the medical advisory opinion, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. The Board noted on 16 April 2021 the applicant concurred with the PEB's findings, waived his right to a formal hearing, and declined to request a VBA reconsideration of the disability ratings (VARR). Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advisory 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. Based on evidence in the record and advising opine, the Board denied relief.

2. 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.

3. The Board agreed that the VA provides post-service support and benefits for service connected medical conditions. The VA operates under different laws and regulations than the Department of Defense (DOD). In essence, the VA will compensate for all service connected disabilities. Variance in ratings does not indicate an error on the part of either entity. If the applicant has yet to file a claim with the Veterans Administration for his medical condition(s), he may consider doing so.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
:	:	:	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, 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).

2. 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 Medical Evaluation Board (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 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.

d. 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. 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.

4. 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 Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//