ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 8 April 2025

DOCKET NUMBER: AR20240006537

APPLICANT REQUESTS:

- a full review of his Physical Evaluation Board (PEB) Proceedings and to add his post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), and muscular/skeletal injuries
- an increase of his disability rating to a level the meets the requirements for a medical retirement
- video appearance before the Board

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

- DD Form 149, Application for Correction of Military Record
- Applicant's Statements (2)
- Accident Report
- Request of Permanent Physical Profile
- DA Form 199, PEB Proceedings
- DD Form 214, Certificate of Release or Discharge from Active Duty
- Service Medical Records
- Department of Veterans Affairs (VA) Medical Records
- List of VA service-connected conditions

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant indicates his request is related to PTSD and TBI. He states, in effect, all of his medical conditions were not considered by the PEB resulting in an inaccurate rating of 20%. These injuries/illness are connected to his military service, they are chronic, and they require continuous care. He further states, in effect:

a. In March 2001, he was involved in a training accident shortly after redeploying from Bosnia Herzegovina at a time of conflict and by an instrumentality of war. After the initial incident, he went through reconstruction and reattachment of digits and three more surgeries on his dominate right hand and eventually had his middle and index distal phalanges of his right hand amputated. Since being discharged he experiences chronic pain, arthritis, joint stiffness, and difficulties with grabbing and handling certain items. He has had physical therapy on his lower back and bilateral knees with injections.

b. His PEB did not consider his degenerative back disease with chronic pain and bilateral retro patellar pain syndrome. The VA has diagnosed him with PTSD and TBI. These conditions were present at the time of his PEB.

3. The applicant enlisted in the Regular Army on 11 August 1992. He held military occupational specialty (MOS) 13B, cannon crewmember.

4. His record shows he completed foreign service in Alaska and Bosnia.

5. The applicant received a performance evaluation for the period May 2002 through February 2002, while assigned as the Arms Room Noncommissioned Officer for an Armored Cavalry Regiment, Fort Carson, Colorado. His rater indicated that the applicant's profile did not hinder his duty performance. His senior rater found the applicant's overall potential for promotion and or service in positions of greater responsibility was "AMONG THE BEST."

6. He was honorably discharged on 16 February 2003 under the provisions of Army Regulation (AR) 635-40, Personnel Separations-Physical Evaluation for Retention, Retirement, or Separation, by reason of disability with severance pay with a 20% disability rating. He completed 10 years, 6 months, and 6 days of net active service for the period.

7. The applicant provides:

a. An U.S. Army Abbreviated Accident Report, 13 April 2001. This report shows that on 1 March 2002, the vehicle the applicant was riding in hit a bump and a faulty hatch came down and crushed his pointer, middle and ring fingers.

b. A memorandum, 17 September 2002, wherein his commander requested the applicant be issued a permanent profile due to his limited ability to only perform supervisory tasks which require minimum use of his right hand. The applicant had been unable to conduct physical training or his MOS specific duties since the incident.

c. A DA Form 199, 2 December 2002, which shows the PEB considered his right-hand injury sustained when a Howitzer hatch crushed his fingers resulting in partial amputation. The PEB found this condition unfitting and recommended a combined disability rating of 20% with severance pay if otherwise qualified. The applicant concurred with the PEB findings and recommendation and waived a formal hearing on 10 December 2002. The PEB proceedings were approved on 12 December 2002.

d. Medical records for the period 2001 -2003. These records detail the treatment the applicant received for his right-hand injury which include corrective surgery, occupational therapy, and ultimately amputation.

e. VA medical records, 2023-2024, which show the applicant had several encounters for various medical conditions to include his right-hand injury, TBI, PTSD, and back pain.

f. A VA letter, 6 February 2024, which lists all his service-connected disabilities. This letter further shows he has a disability rating of 100%. The applicant highlighted the following conditions: amputation of fingers on right hand, chronic lumbar strain, left knee retro patellar pain syndrome, right knee retro patellar pain syndrome.

8. The VA may award compensation for disabilities which were incurred in or aggravated by active military service. However, an award of a VA rating does not establish error or injustice in the Army not separating the individual for physical unfitness. An Army disability rating is intended to compensate an individual for interruption of a military career after it has been determined that the individual suffers from an impairment that disqualifies him or her from further military service.

9. 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 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:

"Correction: Full review of my Medical evaluation and decision to include additional medical conditions PTSD, TBI, and muscular/skeletal injuries that were sustained during my military service that were not reviewed or considered in my original DD form 199 evaluation and decision.

Relief: Change and increase my 20% rating to a level that meets the Medical Retirement requirements and consider the Boards recommendations of the retirement section of my original DD form 199."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 shows he entered the regular Army on 11 August 1992 and was discharged with disability severance pay on 17 February 2003 under provisions in paragraph 4-24b(3) of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (1 September 1990).

d. On 1 March 2001, the applicant sustained severe injuries to his right index, middle, and ring fingers when a vehicle hatch fell on these fingers during a training exercise. From the accident ground report:

"The hatch came down and crushed his pointer, middle, and ring finger of his right hand. Hatch cut through the skin and bone of pointer and middle finger. ring finger sustained a severe laceration and was broken in three places. Middle finger was cut off at the joint with only skin to keep it attached. Pointer finger was broken in three places. All three fingers needed steel rods that ran through the bones to aid in heeling. The middle finger was reattached. Soldier sustained an infection to the middle finger which may result in amputation. Soldier is still under medical care for injuries received during accident."

e. He was later referred to a medical evaluation board (MEB) for these injuries. On 21 November 2002, MEB determined the applicant's "Residual cold intolerance and hypersensitivity of index, middle and ring fingers of the right hand failed medical retention standards.

f. They determined that his intermittent low back pain, retropatellar *knee) pain syndrome, occasional migraine headaches, recurrent allergic reactions to insect bites, and tinea unguium (fungal infection) all met medical retention standards. On 25 November 2002, the applicant agreed with the Board's findings and recommendation and the case was forwarded to a physical evaluation board (PEB) for adjudication.

g. Dated 2 December 2002, the applicant's Informal Physical Evaluation Board (PEB) Proceedings (DA Form 199) show the PEB determined the referred condition was the sole unfitting condition for continue military service. However, they only included the index and middle finger while omitting the ring finger. The MEB narrative summary had stated:

> "The ring finger reveals some deformity of the nail but no other significant tenderness about the distal phalanx. He does have some loss of motion of the distal interphalangeal joint with flexion."

h. The VASRD is the document used to rate unfitting military disabilities. Paragraph B-1a and B1b of Appendix B to AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (1 September 1990):

> a. Congress established the VASRD as the standard under which percentage rating decisions are to be made for disabled military personnel. Such decisions are to be made according to Title IV of the Career Compensation Act of 1949 (Title IV is now mainly codified in chap 61 of Title 10, United States Code).
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> b. Percentage ratings in the VASRD represent the average loss in earning capacity resulting from these diseases and injuries. The ratings also represent the residual effects of these health impairments on civil occupations.

i. Using the VA Schedule for Rating Disabilities as required by law, they derived and applied a 10% disability rating to each finger for a combined rating of 20%, and recommended the applicant be separated with disability severance pay. On 10 December 2002, after being counseled by his PEB liaison officer, the applicant concurred with the PEB and waived his right to a formal hearing.

j. There is insufficient probative medical evidence the applicant had any additional duty incurred 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.

k. The Veteran's Benefits Administration's disability rating sites are the professionals in rating disabilities. While the PEB used diagnostic code 5223 for favorable ankylosis two digits of one hand and derived a 20% rating, the VBA used 5222 for favorable ankylosis three digits of one hand and derived a 30% rating which was applied the day after his separation from the Army. This is the same 30% rating in place today.

l. It is the opinion of the ARBA Medical Advisor that this 30% rating more accurately reflects his military disability and he should have been permanently retired for physical disability rather than separated with disability severance pay.

BEHAVIORAL HEALTH REVIEW:

a. The applicant is applying to the ABCMR requesting a full review of his Physical Evaluation Board (PEB) Proceedings and adding PTSD, traumatic brain injury (TBI), and physical injuries. This opine will only address the applicant's reported PTSD and TBI. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) The applicant enlisted in the Regular Army on 11 August 1992; 2) The applicant was deployed to Bosnia during his active service; 3) The applicant was honorably discharged on 16 February 2003 under the provisions of Army Regulation (AR) 635-40, Personnel Separations-Physical Evaluation for Retention, Retirement, or Separation, by reason of disability with severance pay with a 20% disability rating. He completed 10 years, 6 months, and 6 days of net active service for the period.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) and military and VA medical documentation provided by the applicant were also examined.

c. The applicant is applying to the ABCMR requesting a full review of his Physical Evaluation Board (PEB) Proceedings and adding PTSD and traumatic brain injury (TBI) to his list of conditions. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition including PTSD or a TBI that did not meet medical retention standards, attended more than six months of behavioral health treatment without improvement, required inpatient psychiatric hospital treatment twice, or was ever placed on a psychiatric permeant profile while on active service.

d. A review of JLV provided evidence the applicant began to engage with the VA in 2003 by completing a Compensation and Pension (C&P) evaluation. He did report migraines which were reported to be "post traumatic", but additional information was not provided in the medical record. The applicant also reported that following an alcohol related incident, he was admitted into a 30-day inpatient substance abuse program and was provided follow-up outpatient alcohol abuse treatment while he on active service and 19 years old. The applicant reported an improvement in his alcohol abuse following this treatment program. He also reported being deployed to Bosnia, but he denied exposure to combat or currently experiencing depression or anxiety outside of feelings of loss as a result of his injury and leaving the military. At that time, the applicant was not diagnosed with a service-connected mental health condition including PTSD or a TBI outside of experiencing migraines (10%SC). Later in 2014, the applicant reengaged

with behavioral services at the VA reporting some PTSD symptoms related to his accident in the military and childhood trauma. He began behavioral health treatment for PTSD in 2015, and he underwent another C&P evaluation in 2015 and was diagnosed with service-connected PTSD (70%SC).

e. Based on the available information, it is the opinion of the Agency Medical Advisor that the applicant did report behavioral health symptoms after his discharge and later in 2015, was diagnosed with service-connected PTSD. Earlier in 2003, the applicant was diagnosed with migraines, but there is insufficient evidence the applicant experiencef a TBI, which impacted his ability to meet medical retention standards. Also, during his active service, there is insufficient evidence the applicant was diagnosed with a mental health condition including PTSD that did not meet medical retention standards, attended more than six months of behavioral health treatment without improvement, required inpatient psychiatric hospital treatment twice, or was ever placed on a psychiatric permeant profile while on active service. Therefore, there is insufficient evidence the applicant's case warrants a referral to DES from a behavioral health perspective, at this time.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No, the applicant did report behavioral health symptoms after his discharge and later in 2015, was diagnosed with service-connected PTSD. Earlier in 2003, the applicant was diagnosed with migraines, but there is insufficient evidence the applicant experiencing a TBI, which impacted his ability to meet medical retention standards. Also, during his active service, there is insufficient evidence the applicant was diagnosed with a mental health condition including PTSD that did not meet medical retention standards, attended more than six months of behavioral health treatment without improvement, required inpatient psychiatric hospital treatment twice, or was ever placed on a psychiatric permeant profile while on active service. Therefore, there is insufficient evidence the applicant's case warrants a referral to DES from a behavioral health perspective, at this time.

(2) Did the condition exist or experience occur during military service? N/A.

(3) Does the condition experience actually excuse or mitigate the misconduct? N/A.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation and the findings and recommendations outlined in the medical review, the Board concluded there was sufficient evidence to modify the applicant's military record so that it shows he qualifies for a medical retirement.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
:XXX	:XXX	:XXX	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected by:

- amending the applicant's DA 199, dated 2 December 2002, to reflect 30% disability
- void the previously issued separation and replace it with a medical retirement order (same effective date)
- remove the comment in REMARKS of the applicant's DD Form 214 related to 20% disability
- change the separation code and narrative reason for separation to reflect medical retirement
- pay medical retirement retroactive to 16 February 2003, less any severance pay previously paid to the applicant

//SIGNED//

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CHAIRPERSON

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the Army Board for Correction of Military Records (ABCMR) to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation (AR) 635-40, Personnel Separations-Disability Evaluation for Retention, Retirement, or Separation, establishes the Disability Evaluation System (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 or her office, grade, rank, or rating. It states 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 38, U.S. Code, permits the Veterans Administration (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 error or injustice in the Army not separating the individual for physical unfitness. An Army disability rating is intended to compensate an individual for interruption of a military career after it has been determined that the individual suffers from an impairment that disqualifies him or her from further military service.

4. Title 38, U.S. Code section 1110, General - Basic Entitlement: 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.

5. Title 38, U.S. Code, section 1131, Peacetime Disability Compensation - Basic Entitlement: 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.

6. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards

shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

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.

8. AR 15-185, Boards, Committees, and Commissions-ABCMR prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR will decide cases on the evidence of record. It is not an investigative body. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires. Additionally, applicants may be represented by counsel at their own expense.

//NOTHING FOLLOWS//