

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 January 2025

DOCKET NUMBER: AR20240007373

APPLICANT REQUESTS: a reconsideration of his previous request for correction to his DD Form 214 (Certificate of Release or Discharge from Active Duty) to:

- change his narrative reason for separation to show he was medically retired due to disabilities incurred in combat
- change his Separation Program Designator (SPD) code

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

- Self-authored letter for reconsideration, 26 March 2024
- Medical records (33 pages)
- AR20230009496, 6 March 2024

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20220001388 on 26 August 2022.
2. The applicant states, in effect, he is requesting a reconsideration of his previous request to change his narrative reason for separation to show he was medically retired due to disabilities incurred in combat, and a change to his SPD code. He further states he can provide additional documentation of all service and combat related disabilities. He asks the Board to reconsider his case based on new medical evidence he has submitted.
3. The applicant provides medical records that will be reviewed and discussed by the Medical and Behavioral Health Staff at the Army Review Boards Agency (ARBA).
4. The applicant's service record shows the following:
 - a. He enlisted in the Regular Army on 1 February 1995.

b. The applicant has service in Iraq from 7 April 2003 through 31 March 2004, for which he was awarded two Combat Action Badges.

c. DA Form 3349 (Physical Profile) reflects he was issued a permanent profile on 25 February 2008 due chronic low back pain with degenerative disc disease, bilateral knee pain, sleep apnea, and shaving bumps. This document also shows:

- he received a “2” in “P” (physical capacity or stamina) indicates some activity limitations are warranted
- he received a “3” in “L” (lower extremities) reflects significant limitations
- no running, jumping, squats, climbing, lunges or stooping
- may wear knee brace
- allow access to CPAP, water, and electricity to run CPAP machine
- reasonable accommodations for driving and ordinance if the service member does not have access to CPAP and is unduly tired and fatigues
- no shaving with razor (may use hair clippers to trim)
- beard length not to exceed 1/4 inch. No styling authorized
- a MEB was recommended

d. DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), shows a PEB convened on 14 March 2008, wherein the applicant was found physically unfit with a recommended combined disability rating of 20 percent (%), and that the disposition be separation with severance pay if otherwise qualified for degenerative arthritis of the spine since 2002. Incurred or aggravated in the line of duty in a duty status. The applicant did concur with the findings and waived a formal hearing of his case. This document further shows the PEB made the following administrative determinations:

(1) The Soldier's retirement is not based on disability from injury or disease received in the line of duty as a direct result of armed conflict or caused by an instrumentality of war and incurring in line of duty during a period of war as defined by law.

(2) Evidence of record reflects the Soldier was not a member or obligated to become a member of an armed force or reserve thereof, or the NOAA or the USPHS on 24 September 1975.

(3) The disability did not result from a combat-related injury as defined in Title 26, U.S. Code, Section 104.

e. His DD Form 214 shows he was honorably discharged from active duty on 10 July 2008 due to disability, severance pay, non-combat related. He was assigned an SPD code of “JFO” and reentry code “3.” He completed 13 years, 5 months, and 10

days of active duty service. His grade at the time of discharge was staff sergeant (SSG)/E-6. He was awarded and/or qualified for the following awards:

- Army Achievement Medal (fourth award)
- Valorous Unit Award
- Army Good Conduct Medal (fourth award)
- National Defense Service Medal (second award)
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal
- Korean Defense Service Medal
- Noncommissioned Officer Professional Development Ribbon
- Army Service Ribbon
- Overseas Service Ribbon (third award)
- Combat Action Badge (second award)

5. In a Physical Disability Board of Review (PDBR) Docket Number on 29 July 2014, the applicant requested, in effect, a higher disability rating due to his Department of Veterans Affairs (VA) disability rating of 90%. In the matter of the contended bilateral knee pain, delayed post-traumatic stress disorder, the adjustment disorder, sleep apnea, hypertension, and dyslipidemia conditions, the Board unanimously recommended no change from the PEB determinations as not unfitting. There were no other conditions within the Board's scope of review for consideration.

6. In a prior ABCMR Docket Number AR20220001388 on 26 August 2022, the applicant requested a change to his narrative reason for separation, and a change to his SPD code.

a. On 13 June 2022 the Headquarter U.S. Army Physical Disability Agency, provided an advisory opinion, and found the applicant's request to be legally insufficient, and recommend that no changes be made to his rating and military records. Disability Evaluation System (DES) ratings are a snapshot in time. They are taken at the time of discharge. In contrast, VA ratings can change over the course of one's lifetime. The applicant's conditions were considered by both the Medical Evaluation Board (MEB) and PEB and the boards, respectively, found that the conditions met retention standards and were fitting. The hand condition was not claimed during either the MEB or PEB process and it is unknown when the condition occurred. The applicant did not provide any new evidence to demonstrate that the conditions were somehow unfitting at the time of separation or that an error occurred outside of a generic statement that human error occurred in not finding his hand and Behavioral Health conditions as unfitting.

b. 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 determined there is insufficient evidence that shows the applicant's contested disability rating should be increased nor considered combat related. The applicant is advised conditions considered by the PDBR receive a decision that is final and are not upset by this Board. The Board found 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 to his records.

7. In a prior ABCMR Docket Number AR20230009496 on 6 March 2024, the applicant requested a reconsideration of his previous request to change his narrative reason for separation, and a change to his SPD code. The request was returned without action due to the lack of new medical evidence and/or argument with his request.

8. Due to the applicant's request for a medical retirement, the case is being forwarded to the Behavioral Health, and Medical staff at ARBA.

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 (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting reconsideration of their prior denial of his request for an increase in his military disability rating with a subsequent change in his disability discharge disposition from separated with disability severance pay to permanent retirement for physical disability.

c. The Record of Proceedings and prior denial detail the applicant's military service and the circumstances of the case. His DD 214 for the period of Service under consideration shows he entered the regular Army on 1 February 1995 and was discharged with \$74,520.00 of disability severance pay on 10 July 2008 under provisions in chapter 4 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (8 February 2006).

d. This request was previously denied by the ABCMR on 26 August 2022 (AR20220001 388). Rather than repeat their findings here, the board is referred to the

record of proceedings and medical advisory opinion for that case. This review will concentrate on the new evidence submitted by the applicant.

e. The new medical documentation submitted is from 2022 – 2003 and being 14 years after his separation is of no probative value.

f. The applicant's 14 March 2008 Physical Evaluation Board (PEB) Proceedings (DA 199) shows his degenerative arthritis of the lumbar spine was his sole unfitting condition for continued military service. The PEB derived and applied a 20% disability rating and recommend the applicant be separated with disability severance pay. On 20 March 2008, after being counseled on the Board's findings and recommendation by his PEB liaison officer, he concurred with the PEB and waived his right to a formal hearing.

g. The applicant's case was reviewed by the Physical Disability Board of Review (PDBR) in July 2014. Issues addressed included the applicant's degenerative arthritis of the lumbar spine, bilateral knee pain, delated PTSD, hyperlipidemia, hypertension, and adjustment disorder. The PDBR's findings dated 29 July 2014:

“BOARD FINDINGS: IAW DoDI 6040.44, provisions of DoD or Military Department regulations or guidelines relied upon by the PEB will not be considered by the Board to the extent they were inconsistent with the VASRD in effect at the time of the adjudication.

In the matter of the chronic low back pain condition with degenerative disc disease condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the contended bilateral knee pain, delayed post-traumatic stress disorder, the adjustment disorder, sleep apnea, hypertension, and dyslipidemia conditions, the Board unanimously recommends no change from the PEB determinations as not unfitting. There were no other conditions within the Board's scope of review for consideration.

RECOMMENDATION: The Board, therefore, recommends that there be no recharacterization of the CI's [covered individual] disability and separation determination.”

h. Their recommendation was approved by the Deputy Assistant Secretary of the Army Review Boards on 15 December 2014. DoD PDBR decisions are final and the issues considered by the PDBR cannot afterward be considered by the Army Board for Correction of Military Records.

i. 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 remain 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 and recommendations 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 and/or separation code.

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. Army Regulation 15-185 (ABCMR), currently in effect, prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

2. Title 10, United States Code (USC) (Armed Forces), 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 Department of Defense (DOD) Directive 1332.18 and AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in a Medical Evaluation Board (MEB); when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an 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 the Informal Physical Evaluation Board (PEB) Proceedings. The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the severity of the disability and length of military service. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

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

finding of fitness for continued duty. A Soldier is physically unfit when a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

3. Title 38, United States Code (USC) (Veterans' Benefits), 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.

4. Title 38, United States Code (USC) (Veterans' Benefits), 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.

5. Army Regulation 40-501 (Standards of Medical Fitness), in effect at the time, provides information on medical fitness standards for induction, enlistment, appointment, retention, and related policies and procedures.

a. A permanent profile may only be awarded or changed by the authority designated by Commanders of Army Military Treatment Facilities. If the profile is permanent, the profiling officer must assess if the Soldier meets the medical retention standards of this regulation, those Soldiers on active duty who do not meet the medical retention standards must be referred to an MEB. Permanent profiles may be amended at any time if clinically indicated and will automatically be reviewed at the time of a Soldier's periodic examination. The Soldier's commander may also request a review of a permanent profile.

b. A physical profile, as reflected on a DA Form 3349 (Physical Profile) or DD Form 2808, is derived using six body systems: "P" = physical capacity or stamina; "U" = upper extremities; "L" = lower extremities; "H" = hearing; "E" = eyes; and "S" = psychiatric (abbreviated as PULHES). Each body system has a numerical designation: 1 meaning 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. Physical profile ratings can be either permanent or temporary.

6. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes:

- RE code "1" applies to personnel who have completed their obligated term of active service and are considered qualified to reenter the U.S. Army if all other criteria are met
- RE code "2" Applies to persons not eligible for immediate reenlistment
- RE code "3" applies to personnel who are not considered fully qualified for reentry or continuous service at time of separation, but whose disqualification is waivable. They are ineligible unless a waiver is granted
- RE code "4" applies to personnel separated from last period of active-duty service with a nonwaivable disqualification

7. Army Regulation 635-5-1 (Separation Program Designator Codes) states that the Separation Program Designator (SPD) codes are three-character alphabetic combinations which identify reasons for, and types of, separation from active duty. SPD code "JFO" and RE code "3" are the appropriate codes to assign to enlisted Soldiers who are administratively discharged under the provisions of Army Regulation 635-40 for Disability, severance pay, non-combat related legacy DES.

8. Title 10, United States Code (USC) (Armed Forces), 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%. Title 10, United States Code (USC) (Armed Forces), 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%.

9. Title 10, United States Code (USC) (Armed Forces), section 1556 (Ex Parte Communications Prohibited) 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 applicant's (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//