

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 February 2025

DOCKET NUMBER: AR20240007440

APPLICANT REQUESTS: in effect, correction to his DA Form 199, Physical Evaluation Board (PEB) Proceedings to add all his service-connected medical conditions.

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

- DD Form 149, Application for Correction of Military Record
- Enlisted Record Brief
- Service Medical Records
- DA Form 3349, Physical Profile
- DA Form 3947, Medical Evaluation Board (MEB) Proceedings
- DD Form 2808, Report of Medical Examination
- DA Form 199, PEB Proceedings
- DD Form 214, Certificate of Release or Discharge from Active Duty
- Department of Veterans Affairs (VA) Progress Notes

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 post-traumatic stress disorder (PTSD). He states, in summary:

a. He was separated from the service with a low disability rating because he did not understand he needed to report all his medical conditions to the physician. He assumed his PEB would have included all the medical conditions he was treated for on active duty, as these conditions were documented in his medical records. The PEB should have considered his PTSD, back pain, sciatic nerve pain, hypertension, hand pain, and knee pain.

b. His disability rating was arrived at based on the questions he was asked during the examination, and he was only asked about his hand; he was not asked about his PTSD, or body pains.

3. On 5 March 2002, the applicant enlisted in the Regular Army. He served in Iraq from 21 January 2005 to 15 April 2005.

4. On 26 April 2005, he was awarded the Purple Heart for wounds he received in action.

5. On 29 August 2005, he was awarded the Combat Action Badge for actively engaging or being engaged by the enemy on 13 April 2005.

6. The record does not contain documents related to the applicant's disability processing. However, his DD Form 214 shows he was retired due to temporary disability on 30 April 2006, in accordance with Army Regulation 635-40, Personnel Separations- Disability Evaluation for Retention, Retirement, or Separation, paragraph 4-24b(2).

7. On 11 May 2012, the applicant petitioned the Physical Disability Board of Review (PDBR) for an increase in his VA disability rating of 60%.

a. On 31 July 2013, the PDBR convened to review the disability rating along with the medical separation documents. After careful review, the PDBR recommended no recharacterization of separation or modification of the disability rating previously assigned.

b. The PDBR Record of Proceeding clarifies why the applicant's final disposition was to be retired due to temporary disability versus being discharged due to disability with severance pay. The proceedings state: The PEB adjudicated left (non-dominant) 5th finger amputation and bilateral thumb pain with scarring as unfitting, rated 10% and 10%, citing criteria of the US Army Physical Disability Agency (USAPDA) pain policy. However, the USAPDA changed the rating to bilateral thumb pain due to intramuscular scarring at 20% and left (non-dominant) 5th finger amputation through proximal phalanx at 10% and placed [the applicant] on the Temporary Disability Retired List (TDRL) citing criteria of the USAPDA pain policy and Veterans Affairs Schedule for Rating Disabilities (VASRD). On 13 June 2007, the [applicant] was released from the TDRL. After re-evaluation, his left 5th finger amputation through the proximal phalanx was rated at 10% and bilateral thumb pain due to intramuscular scarring condition was found not independently unfitting. The [applicant] made no appeals and was medically separated."

8. The applicant provides:

a. A Standard Form 600, Health Record-Chronological Record of Medical Care, 1 June 2005, which shows the applicant reported numbness and tingling in both thumbs post the IED event and surgical repair.

b. DA Form 3349, 3 January 2006, permanent physical profile for bilateral hand injuries.

c. Miscellaneous medical records pertaining to treatment for his hand injury and surgical finger amputation.

d. His MEB Proceedings, 9 February 2006, which shows his left fifth digit amputation and bilateral thumb pain with scarring was referred to a PEB. The applicant agreed with the board's findings and recommendation.

e. A copy of the physical examination completed in conjunction with his MEB, 10 January 2006. The examiner determined the applicant was not qualified for service. Item 77, Summary of Defects and Diagnoses, of the DD Form 2808, lists the following conditions:

- Improvised Explosive Device wounds to both thumbs and left digit amputation
- PTSD-stable

f. Page 1 of his PEB Proceedings, 16 February 2006, which shows the applicant's left fifth finger amputation through proximal phalanx and bilateral thumb pain with scarring were found to be physically unfitting. The PEB recommended the applicant be separated with severance pay with a combined disability rating of 20 percent.

g. A PEB Liaison Officer Estimated Disability Compensation Worksheet, which shows the applicant was estimated to receive \$44,938.80, before taxes, in severance pay based on his 9 years of service.

h. VA Progress notes, 2010-2020, which show the applicant was diagnosed with, and treated for, pain in his hand, PTSD, other medical issues, tinnitus, and anxiety disorder.

9. By regulation:

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 service.

b. The mere presence of impairment does not of itself justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the member reasonably may be expected to perform because of their office, rank, grade, or rating.

c. Rating disabilities which are neither unfitting nor contribute to the physical unfitness of a Soldier is prohibited.

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.

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 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 additional medical conditions be determined unfitting for continued service with a subsequent increase in his military disability rating and change in his disability discharge disposition from separated with disability severance pay to permanent retirement for physical disability. He states:

"I was released from service with a low disability rating due to my understanding at that time that my medical conditions would automatically be considered. I was unaware of the fact that I had to notify the physician at the time of all my conditions. I have been handling all my disability claims on my own. I feel that I should have been medically retired from the Army due to I have been suffering from conditions of PTSD, back pain, sciatic nerves pain, hypertension, hand and knee pain."

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 1 April 2004 and was placed on the temporary disability retirement list (TDRL) on 30 April 2006 under provisions in paragraph 4-24b(2) of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (1 September 1990).

d. On 3 January 2005, the applicant was referred to the Disability Evaluation System (DES) for bilateral hand injuries. These are the only conditions listed on his Physical Profile (DD Form 3349). On his 10 January 2006 MEB Report of Medical Examination, the provider documented a normal examination except for the hand injuries and “PTSD – Stable” which was without duty limitations.

e. The MEB determined his “Left fifth digit amputation” and “Bilateral thumb pain with scaring” were the two conditions which failed medical retention standards. On 14 February 2006, the applicant agreed with the MEB’s findings and recommendation and his case was forwarded to a physical evaluation board for adjudication.

f. The applicant’s Informal Physical Evaluation Board (PEB) Proceedings (DA 199) show that on 16 February 2006, his informal PEB found the two referred conditions unfitting for continued service. Using the VA Schedule for rating Disabilities, they applied a 10% rating to each condition and recommended the applicant be separated with disability severance pay. Discharge orders dated 29 March 2006 show the applicant was placed on the TDRL effective 30 April 2006.

g. Orders removing the applicant from the TDRL and separating him with disability severance pay were not available for review. By statute, the maximum time a Soldier may be on the TDRL is five years.

h. The applicant’s case was reviewed Physical Disability Board of Review (PDBR) in 2013. They reviewed the PEB’s separation findings and ratings his bilateral hand conditions and concluded no change was warranted in his disability separation disposition of separate with disability severance pay:

“In the matter of the left 5th digit condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. In the matter of the bilateral thumb condition, the Board unanimously recommends no change from the PEB determination as not unfitting. There were no other conditions within the Board’s scope of review for consideration.”

i. Their recommendation was approved by the Deputy Assistant Secretary of the Army Review Boards on 15 January 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.

j. AHLTA shows the applicant was seen on several occasions for counseling related to his hand injuries. The diagnosis was "Adjustment disorder with disturbance of emotions" and he was treated with group therapy.

k. There is insufficient probative evidence an additional medical condition failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his separation. Furthermore, there is no evidence that any additional medical condition(s) prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his separation.

l. Paragraph 3-1 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (1 September 1990) states:

"The mere presence of an impairment does not, of itself, justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the soldier reasonably may be expected to perform because of his or her office, grade, rank, or rating."

m. JLV shows he has been awarded multiple VA service-connected disability ratings, including ratings for PTSD, sleep apnea, and lumbosacral or cervical strain. However, the DES only compensates an individual 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.

n. 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 Disability Evaluation System is warranted.

BOARD DISCUSSION:

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, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant's petition, available military records, and the medical review, the Board concurred with the advising official finding insufficient evidence an additional medical condition failed the medical retention standards. Therefore, an increase in his military disability rating is unwarranted as well as a referral of his case back to the Disability Evaluation System.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	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.

6/6/2025

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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. AR 635-40, Personnel Separations-Physical Evaluation for Retention, Retirement, or Separation, establishes the PDES and sets forth the policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of their office, grade, rank, or rating. It states that after establishing the fact that a Soldier is unfit because of a physical disability, and that the Soldier is entitled to benefits, the PEB must decide the percentage rating for each unfitting disability. The Veterans Affairs Schedule of Rating Disabilities (VASRD), as modified in the regulation, is used to establish this rating. This regulation states:

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 service.

b. The mere presence of impairment does not of itself justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the member reasonably may be expected to perform because of their office, rank, grade, or rating.

c. Rating disabilities which are neither unfitting nor contribute to the physical unfitness of a Soldier is prohibited.

d. A condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting, or ratable condition, is one which renders the Soldier unable to perform the duties of their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty.

e. 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.

f. Permits for permanent retirement when the disability is rated at 30 percent or more under VASRD, or the Soldier has at least 20 years of active Federal service.

3. Title 10, U.S. Code, section 1203, provides for the physical disability separation with severance pay of a member who has less than 20 years of service and a disability rated at less than 30 percent.

4. Title 38, Code of Federal Regulations, contains the schedule for rating disabilities. The rating schedule is primarily a guide in the evaluation of disability resulting from all types of diseases and injuries encountered as a result of or incident to military service. The percentage ratings represent as far as can practicably be determined the average impairment in earning capacity resulting from such diseases and injuries and their residual conditions in civil occupations. Generally, the degrees of disability specified are considered adequate to compensate for considerable loss of working time from exacerbations or illnesses proportionate to the severity of the several grades of disability. For the application of this schedule, accurate and fully descriptive medical examinations are required, with emphasis upon the limitation of activity imposed by the disabling condition. Over a period of many years, a veteran's disability claim may require re-ratings in accordance with changes in laws, medical knowledge and their physical or mental condition. It is thus essential, both in the examination and in the evaluation of disability, that each disability be viewed in relation to its history.

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.

6. Title 38, USC, 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.

7. Title 38, USC, 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.

8. 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.

9. 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.

10. AR 15-185, ABCMR, 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.

//NOTHING FOLLOWS//