

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 April 2025

DOCKET NUMBER: AR20240008682

APPLICANT REQUESTS: physical disability retirement in lieu of physical disability separation with severance pay

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), 1 May 2020

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 states:

a. He is requesting to correct his medical separation to a medical retirement. During the medical separation process, he was awarded a 20 percent disability rating from the Army, while the VA decision gave him a 100 percent permanent and total service-connected disability rating.

b. The separation was processed solely based on his physical conditions, due to the complications that a behavioral health separation would have introduced, particularly given the extended process during the COVID-19 pandemic while stationed in Germany. While on active duty, he was treated by behavioral health professionals for post-traumatic stress disorder (PTSD), depression, and anxiety.

c. During the Medical Evaluation Board (MEB), his PTSD was classified as adjustment disorder, a broad and basic term used in behavioral health to cover a wide range of mental health issues. Due to the time constraints associated with the separation conditions and the need to separate while in Germany during COVID-19, it was not feasible for him to prolong the process by including a mental health separation

alongside the physical conditions. This decision was influenced by the potential risk of being stranded in a foreign country during the height and escalation of the COVID-19 pandemic, without any guarantee of an extension or essential support outside the continental U.S., during a national lockdown.

d. Given these circumstances, it is in the interest of justice to review and correct this oversight. His honorable and dedicated service, coupled with the impact of the pandemic on the separation process, warrant a reconsideration of the initial decision.

3. The applicant enlisted in the Regular Army on 10 November 2015.

4. A DA Form 199 shows:

a. An informal PEB convened on 1 May 2020, where the applicant was found physically unfit with a recommended rating of 20 percent and that his disposition be separation with severance pay.

b. His medical condition determined to be unfitting was internal and external hemorrhoids with fissure (MEB diagnosis (Dx) 1); 20 percent.

c. His medical conditions in MEB Dx 2-31, as follows, were determined not to be unfitting, as the MEB indicated they meet medical retention standards of Army Regulation 40-501 (Standards of Medical Fitness), none are listed on the DA Form 3349 (Physical Profile) as preventing functional activities, and there is no evidence to indicate any performance issues are due to these conditions:

- rectal Botox injections with resultant fecal incontinence
- erectile dysfunction
- left-sided varicocele
- prostatitis
- right median nerve partial palsy affecting the right index finger
- temporomandibular joint (TMJ) disorder, bilateral with bruxism
- wrist tendonitis, bilateral
- bilateral femoral acetabular impingement syndrome
- patellofemoral pain syndrome
- bilateral shoulder strain
- right index finger laceration with scar
- flat foot (pes planus) bilateral
- bilateral hallux valgus
- plantar fasciitis
- lumbosacral strain
- rhinitis, unspecified

- irritable bowel syndrome
- gastroenteritis, resolved
- mixed hearing loss right ear (speech discrimination right ear 94 percent)
- sensorineural hearing loss left ear (speech discrimination left ear 100 percent)
- migraine headaches
- tension headaches
- traumatic brain injury (TBI)
- hyposmia
- hypogeusia
- adjustment disorder mixed type anxiety and depressed mood, chronic
- insomnia disorder, chronic
- bilateral elbow condition
- sleep apnea
- ear or peripheral vestibular condition

d. The applicant signed the form on 5 May 2020, indicating he had been advised of the findings and recommendations of the informal PEB and concurred, waiving a formal hearing of his case. He also indicated he did not request reconsideration of his VA ratings.

e. The applicant's DD Form 214 shows he was honorably discharged on 19 August 2020, under the provisions of Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) due to disability with severance pay, non-combat related. He was credited with 4 years, 9 months, and 10 days of net active service.

5. Title 38, USC, Sections 1110 and 1131, permit the 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 an error or injustice on the part of the Army.

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a change of his medical discharge to a permanent medical retirement. As a part of his narrative reason for this change, he contends he experienced other mental health conditions including PTSD that are related to his request for medical retirement. 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 10 November 2015; 2) The applicant was discharged on 19 August 2020, Chapter 4, AR 635-40- disability with severance pay, non-combat related. His character of service was honorable. He completed 4 years, 9 months, and 10 days of net active service.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the available military service and medical records. The VA's Joint Legacy Viewer (JLV) and hardcopy medical and service records provided by the applicant were also reviewed. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts he experienced other mental health conditions warranting a medical discharge. The applicant's earliest contact with the mental health treatment was through evaluation and treatment of ADHD beginning on 21 March 2018, with his first mental health intake for the purposes of treatment on 02 August 2019 for the diagnosis of adjustment disorder with mixed anxiety and depressed mood. The applicant's mental health treatment continued until his final active duty to VA transition appointment on 24 June 2020. During this treatment period, the applicant's psychiatrist diagnosed the applicant with PTSD, chronic on 09 April 2020 and remained until the end of his mental health treatment while on active duty service. However, his primary therapy provider continued to diagnosis the applicant with adjustment disorder with mixed and depressed mood throughout his treatment. There is insufficient evidence that the applicant was ever hospitalized for any mental health conditions. There was also insufficient evidence that any of the applicant's providers ever noted that the applicant did not meet retention standards from a mental health perspective. On 14 November 2019, the applicant's medical board was initiated due to anal fissures. The applicant's MEB completed on 26 February 2020 indicated that his mental health condition of adjustment disorder with mixed anxiety and depressed mood, met medical retention standards of Army Regulation 40-501. No mental health conditions were listed on the applicant's permanent profile as preventing functional activities, and there was no evidence to indicate any performance issues are due to these conditions as documented in the applicant's medical board narrative summary. An informal PEB convened on 1 May 2020, where the applicant was found physically unfit with a recommended rating of 20% due to a medical condition. The applicant elected not to contest this decision or rating at that time.

d. A review of JLV noted that the applicant underwent a 03 February 2020 compensation and pension examination for mental disorders and received the diagnoses: adjustment disorder with mixed anxiety and depressed mood, chronic and insomnia disorder, chronic. The applicant connected with the VA while still actively serving in the military as a part of the MEB process with coordination of the transition of VA beginning on 18 June 2020. The applicant attended his VA psychiatry and therapy intakes on 20 August 2020 and 28 August 2020, respectively for other specified trauma and stressor-related disorder and adjustment disorder. He has attended appointments intermittently up until 11 February 2025. The applicant is currently 100% service

connected for a variety of physical conditions as well as 50% for chronic adjustment disorder.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence at this time to warrant a change to his discharge status. The applicant did undergo a medical board process while on active-duty status and was granted physical disability status at 20%, which he accepted. The applicant's medical separation took into account his behavioral health and physical symptoms prior to discharge, and he was evaluated by multiple mental health examiners who determined that the applicant did not warrant a change to his military medical disability percentage. The applicant did not attend more than six months of treatment without improvement, nor did he require hospitalization in inpatient psychiatric treatment on two or more occasions, nor was he ever placed on a psychiatric permanent profile while on active service. Therefore, there is insufficient evidence the applicant's case warrants a change in his disability rating status 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? N/A. The applicant is requesting a medical discharge.

(2) Did the condition exist or experience occur during military service? N/A. The applicant is requesting a medical discharge

(3) Does the condition experience actually excuse or mitigate the misconduct? N/A. The applicant is requesting a medical discharge.

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, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military record and medical review, the Board concurred with the advisory opinion of the Agency Medical Advisor that there is insufficient evidence at this time to warrant a change to his discharge status. The applicant did undergo a medical board process while on active-duty status and was granted physical disability status at 20%, which he accepted.

2. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? N/A. The applicant is requesting a medical discharge.

(2) Did the condition exist or experience occur during military service? N/A. The applicant is requesting a medical discharge

(3) Does the condition experience actually excuse or mitigate the misconduct? N/A. The applicant is requesting a medical discharge.

3. The Board further noted the applicant’s medical separation considered his behavioral health and physical symptoms prior to discharge and was evaluated by multiple mental health examiners who determined that the applicant did not warrant a change to his military medical disability percentage. The Board concluded there was insufficient evidence that shows a medical/disability retirement was warranted during his period of active service.

4. 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

■ ■ ■ 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

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 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. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRBs) and Boards for Correction of Military/Naval Records (BCM/NRs) when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), sexual assault, or sexual harassment. Boards are to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based, in whole or in part, on those conditions or experiences.
3. Title 10, U.S. Code, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system (DES) and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 (Discharge Review Board (DRB) Procedures and Standards) and Army Regulation 635-40 (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 Military Occupational Specialty (MOS) Medical Retention Board (MMRB); and/or they are command-referred for a fitness-for-duty medical examination.

b. The disability evaluation assessment process involves two distinct stages: the MEB and Physical Evaluation Board (PEB). The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise 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.

4. Army Regulation 635-40 establishes the Army Disability Evaluation System and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

a. Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in military service.

b. Soldiers who sustain or aggravate physically-unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

(1) The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

(2) The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

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 Department of Veterans Affairs (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 their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty. 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.

5. Title 10, U.S. Code, section 1201, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30 percent. Title 10, U.S. Code, section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating of less than 30 percent.

6. Title 38, U.S. Code, section 1110 (General – Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

7. Title 38, U.S. Code, section 1131 (Peacetime Disability Compensation – Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

8. Title 10, U.S. Code, section 1556 requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//