

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 August 2025

DOCKET NUMBER: AR20240009568

APPLICANT REQUESTS: in effect, reconsideration of his prior request for inclusion of multiple unfitting conditions to his Disability Evaluation System (DES) proceedings.

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

- DD Form 149 (Application for Correction of Military Record)
- Lafayette General Medical Center medical records, 20 November 1988 – 9 January 1989
- Department of Veterans Affairs (VA) Disabilities and Rated Disabilities sheet, 23 October 2008
- VA Rating Decision, 1 February 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 AR20190003756 on 8 July 2021.

2. The applicant states:

a. He was injured in a motor vehicle accident on 20 November 1988, and was only rated 30 percent disabled for loss of vision in his left eye. See the attached VA list of disabilities and the Lafayette General Medical Center records, to include the discharge summary.

b. He also sustained a traumatic brain injury (TBI) and multiple other injuries as a result of the same motor vehicle accident. He wants a correction of his records to reflect all injuries that he sustained on that date of injury in 1988, which were not included as service-connected at the time.

c. He has been consistent with the VA and the Texas Veteran Commission that his multiple additional issues should have been considered during his medical appointments. He has been diligent for 33 years in attending his appointments, filing appeals, and providing documents or additional information when requested by the VA.

d. He has marked the blocks indicating that post-traumatic stress disorder (PTSD), TBI, and other mental health conditions are related to his request.

3. The applicant enlisted in the Regular Army on 4 June 1987.

4. The applicant provided multiple pages of Lafayette General Medical Center records, which have been provided in full to the Board for review, and in pertinent part detail his admission, treatment, and discharge from the hospital, resulting from injuries sustained in a motor vehicle accident on 20 November 1988.

5. A DA Form 2173 (Statement of Medical Examination and Duty Status) shows the applicant was admitted to Lafayette General Hospital on 20 November 1988, subsequent to a motor vehicle accident where he sustained a skull fracture and trauma to his left optic nerve.

6. An Optional Form 275 (Medical Record Report), 14 August 1989, details the Medical Evaluation Board (MEB) Narrative Summary (NARSUM) and shows:

- the applicant's chief complaint was decreased vision in the left eye
- his diagnoses were no light perception oculus sinister (OS) (left eye) secondary to optic atrophy from head trauma and mild to moderate sensory neural hearing loss
- he was on medical hold and was awaiting MEB processing for determination of status
- he did not meet retention standards secondary to his no light perception in the left eye
- his physical profile included no duties requiring binocular vision

7. A DA Form 3947 (MEB Proceedings) shows:

a. An MEB convened on 14 August 1989, where the following conditions were considered:

- no light perception OS secondary to optic atrophy from head trauma
- mild to moderate sensory neural hearing loss

b. The applicant signed the form on 17 August 1989, certifying he agreed with the MEB's findings and recommendation, this MEB accurately covered all of his medical conditions, that all health records pertaining to his case were turned over to proper authorities, and he had been counseled.

8. The acronym "PUHLES" describes the following six physical factors used in the profiling system to classify medical readiness: "P" (Physical capacity or stamina), "U"

(Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric). Physical profile ratings are permanent (P) or temporary (T). A service member's level of functioning under each factor is represented by the following numerical designations: 1 indicates 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.

9. A DA Form 3349 (Physical Profile) shows on 14 August 1989, the applicant was given a permanent physical profile rating with a PULHES of 111131 for decreased vision in the left eye. His assignment limitations included no duties requiring binocular vision.

10. A DA Form 199 (Physical Evaluation Board (PEB) Proceedings) shows:

a. A PEB convened on 28 August 1989, where he was found unfit with a recommended combined rating of 30 percent and that his disposition be permanent physical disability retirement.

b. His unfitting condition was blindness in the left eye from optic nerve trauma; rated as 20/20 in one eye and no light perception in other eye (MEB diagnosis (Dx) 1).

c. MEB Dx 3 was not ratable.

11. A Medical Department Activity (MEDDAC) Form 1656 (Response to PEB Findings) shows the applicant signed the form on 5 September 1989, indicating he had been advised of the PEB findings and recommendations and concurred.

12. A U.S. Army Physical Evaluation Board memorandum, 7 September 1989, provided Headquarters, Department of the Army, Personnel Command (PERSCOM) with the applicant's PEB Proceedings and requested a line of duty (LOD) determination pertaining to a sustained skull fracture and trauma to his left optic nerve sustained in a motor vehicle accident on 20 November 1988.

13. A U.S. Total Army Personnel Command memorandum, 13 November 1990, shows a finding of in the LOD was made in the applicant's case for injuries sustained on 20 November 1988.

14. U.S. Total Army Personnel Command Orders D228-13, 20 November 1990, relieved the applicant from assignment and duty because of physical disability incurred while entitled to basic pay and under conditions that permit his retirement for permanent physical disability effective 11 December 1990, with a disability rating of 30 percent

15. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was retired on 11 December 1990, under the provisions of Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) due to permanent physical disability, with corresponding Separation Code SFJ.

16. A VA Disabilities and Rated Disabilities sheet, 23 October 2008, presumably pertaining to the applicant although his name is not listed on the sheet, shows the applicant had a 100 percent service-connected disability rating for the following conditions:

- left trigeminal neuralgia, 10 percent
- temporomandibular joint syndrome with bruxism, 30 percent
- degenerative arthritis of the spine and intervertebral disc syndrome, 20 percent
- right, radiculopathy, upper radicular group, 40 percent
- status post fracture right humerus, 20 percent
- motor vehicle accident trauma with optic atrophy and exotropia from total blindness, previously rated as loss of vision, left eye with optic atrophy, 50 percent
- cognitive disorder not otherwise specified due to TBI, 70 percent
- status post uvulopalatopharyngoplasty, 0 percent
- neuritis, left sciatic nerve with restless leg syndrome, 20 percent
- left, radiculopathy upper radicular group, 20 percent
- obstructive sleep apnea, 50 percent
- absence seizures, 0 percent
- dysphagia, oropharyngeal phase, 0 percent
- tension headaches, 30 percent
- unspecified depressive disorder with anxiety, 70 percent

17. The applicant previously applied to the ABCMR in February 2019, requesting in effect, the inclusion of multiple unfitting conditions to his DES proceedings. On 8 July 2021, the Board denied his request, determining the evidence provided did not demonstrate the existence of a probable error or injustice and the overall merits of his case were insufficient as a basis for correction of his records.

18. VA Rating Decision, 1 February 2024, shows:

- entitlement to a separate 20 percent evaluation, but no higher, for left lower extremity radiculopathy as a neurological manifestation of TBI, effective 12 December 1990, was granted
- entitlement to a separate 20 percent evaluation, but no higher, for left upper extremity radiculopathy as a neurological manifestation of TBI, effective 12 December 1990, was granted

- entitlement to a separate 10 percent evaluation, but no higher, for left trigeminal neuralgia as a neurological manifestation of a TBI effective 12 December 1990, was granted

17. 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.

18. 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 reconsideration of his prior request (AR20190003756) for inclusion of multiple unfitting conditions to his Disability Evaluation System (DES). The Applicant stated:

"I was injured in a MVA on 20 Nov 1988 and was only rated at 30% for loss of vision in my left eye. See the attached: (1) list of disabilities and (2) Lafayette General Medical Center medical records, 20 November 1988 – 9 January 1989."

"I also sustained TBI to include other multiple injuries that occurred on that same DOI (Date of Injury). I want the correction of the records to reflect all injuries that were sustained in 1988. I also want relief for the injuries that were not included as service-connected from the MVA on 11 Nov 1988 to be corrected to that same DOI. My injuries from the same MVA."

c. Due to the Applicant's period of service, his medical record would be documented via paper record. All documentation in JLV were post military service. In his supporting documentation, there was a discharge summary from Lafayette General Medical Center dated 9 January 1989. The discharge summary showed that the Applicant had sustained multiple injuries from a motor vehicle accident (dated 20 NOV 1988) to include brain concussion, basilar fracture, questionable facial fracture, chest contusion, right humeral fracture, and blunt injury on the left eye. This same

document revealed that the Applicant's condition showed gradual improvement, and his mental status gradually normalized. However, his left eye function remained impaired at the time of discharge from the hospital dated 9 December 1988.

d. In regard to the change in his left ear hearing loss at 4000Hz frequency, it is the opinion of the medical advisor that the applicant did not suffer from a career terminating hearing loss necessitating a referral for disability evaluation given that the Applicant still had 100% speech discrimination despite his mild left ear hearing loss ten years after his discharge from active duty.

e. There was no other documentation of TBI symptoms submitted in his supporting documents. His medical evaluation board conditions were: "No light perception OS secondary to optic atrophy from head trauma and Mild to moderate sensory neural hearing loss.

f. Upon review of available documents in the available databases, there were no other career terminating medical condition(s) beside the above conditions that were already evaluated by DES. The applicant's VA service-connected ratings do not qualify as career terminating conditions as per AR 635-200. DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions incurred during or were permanently aggravated by their military service; or for compensating conditions which did not contribute to career termination. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

g. Based on the information available for review, there is insufficient evidence to support the applicant's request.

#### BEHAVIORAL HEALTH REVIEW:

a. Background: The applicant is requesting reconsideration of his prior request for inclusion of multiple unfitting conditions to his Disability Evaluation System (DES) proceedings. The applicant selected PTSD, OMH, and TBI on his application as related to his request.

b. 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:

- Applicant enlisted in the Regular Army on 4 June 1987.
- A DA Form 2173 (Statement of Medical Examination and Duty Status) shows the applicant was admitted to Lafayette General Hospital on 20 November 1988,

subsequent to a motor vehicle accident where he sustained a skull fracture and trauma to his left optic nerve.

- An MEB convened on 14 August 1989, where the following conditions were considered: no light perception OS secondary to optic atrophy from head trauma and mild to moderate sensory neural hearing loss.
- A DA Form 3349 (Physical Profile) shows on 14 August 1989, the applicant was given a permanent physical profile rating with a PULHES of 111131 for decreased vision in the left eye. His assignment limitations included no duties requiring binocular vision.
- A PEB convened on 28 August 1989, where he was found unfit with a recommended combined rating of 30 percent and that his disposition be permanent physical disability retirement. His unfitting condition was blindness in the left eye from optic nerve trauma; rated as 20/20 in one eye and no light perception in other eye (MEB diagnosis (Dx) 1).
- Applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was retired on 11 December 1990, under the provisions of Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) due to permanent physical disability, with corresponding Separation Code SFJ.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states he was injured in a motor vehicle accident on 20 November 1988 and was only rated 30 percent disabled for loss of vision in his left eye. He also sustained a traumatic brain injury (TBI) and multiple other injuries as a result of the same motor vehicle accident. He wants a correction of his records to reflect all injuries that he sustained on that date of injury in 1988, which were not included as service-connected at the time.

d. Due to the period of service no active-duty electronic medical records were available for review. In addition, no service records were found indicating treatment for any behavioral health conditions and the VA record shows the applicant was diagnosed with a TBI after he was discharged from military service. The available record shows the applicant was hospitalized on 20 November 1988, after a motor vehicle accident where he sustained a skull fracture and trauma to his left optic nerve. A MEB convened on 14 August 1989, the proceedings show that two conditions were considered: no light perception OS (left eye) secondary to optic atrophy from head trauma; and mild to moderate sensory neural hearing loss. The applicant was assigned a permanent physical profile rating with a PULHES of 111131 for decreased vision in the left eye. His assignment limitations included no duties requiring binocular vision. The PULHES rating appears to indicate there were no concerns regarding any psychiatric conditions. A PEB convened on 28 August 1989, where the applicant was found unfit with a recommended combined rating of 30 percent and his disposition was permanent physical disability retirement. His unfitting condition was blindness in the left eye from optic nerve trauma;

rated as 20/20 in one eye and no light perception in other eye (MEB diagnosis (Dx) 1). A Medical Department Activity (MEDDAC) Form 1656 (Response to PEB Findings) shows the applicant signed the form on 5 September 1989, indicating he had been advised of the PEB findings and recommendations and concurred.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 100% service connected for numerous medical conditions including brain syndrome 70%, loss of eye 50%, sleep apnea 50%, limited motion of jaw 30%, migraine 30%, intervertebral disc 20%, paralysis of sciatic nerve 20%, paralysis of upper radicular nerve group 20%, paralysis of fifth cranial nerve 10%, pharynx injuries 0%, seizure disorder 0%, and hiatal hernia 0%. The record indicates the applicant sought behavioral health services via the VA in October 2015 due to loss of his career due to tremors related to his TBI. The applicant reported he had worked as a barber from 1990 to 2006 but was forced to stop as a result of his tremors. He then worked in customer service for 7 years but reported difficulty with multitasking. At that time, he was diagnosed with Unspecified Depressive Disorder and treated via antidepressant medication and a support group. The electronic record shows the applicant has remained intermittently engaged in outpatient treatment with a focus on familial, relationship and work-related stressors. He was diagnosed with PTSD in January 2024.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence, at this time, to support a referral to the IDES process. No in-service treatment records were submitted documenting treatment or complaints related to a TBI or any other conditions. Based on the records available for review, there was insufficient medical evidence to support the applicant had any other medical conditions (with the exception of the left eye condition), that failed medical retention standards in accordance with AR 40-501, chapter 3, warranting separation through medical channels. Although the applicant has been 100% service connected for numerous medical conditions, VA examinations are based on different standards and parameters; they do not address whether a medical condition met or failed Army retention criteria or if it was a ratable condition during the period of service. Based on the documentation available for review, there is no indication that an omission or error occurred that would warrant a referral to the IDES process.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Not applicable.

(2) Did the condition exist or experience occur during military service? Not applicable.

(3) Does the condition or experience actually excuse or mitigate the discharge? Not applicable.

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, the medical and behavioral health reviews, the Board concurred with the advising officials. Based on this, the Board determined the applicant's PEB decision at the time of separation was appropriate and a change in his retired status or change to a physical disability retirement is not warranted.

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 amendment of the ABCMR decision rendered in Docket Number AR20190003756 on 8 July 2021.

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. 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.
2. 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.

3. 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.

4. 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.

5. 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.

6. 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//