

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 August 2025

DOCKET NUMBER: AR20240010071

APPLICANT REQUESTS: reconsideration of the final percentage of his permanent disability retirement as listed on his DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings).

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

- DD Form 149 (Application for Correction of Military Record)
- Memorandum, Activities of Daily Living (ADL), 28 June 2024
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- DD Form 215 (Correction to DD Form 214)
- 4-Page Narrative Summary (NARSUM), 19 December 2016
- Winn Army Community Hospital – Behavioral Health Addendum, 12 January 2017
- DA Form 3947 (Medical Evaluation Board (MEB) Proceedings), 20 January 2017
- DA Form 199, 27 June 2017
- 86 Pages of Medical Records

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 Numbers AR20090010604 on 22 December 2009, AR20100025919 on 3 May 2011, and AR20150007719 on 18 October 2016.

2. The applicant requests a comprehensive review and reconsideration of his medical discharge rating and states, in effect:

a. The initial evaluations and MEB proceedings did not fully consider the long-term impact and severity of his conditions. He requests a thorough review of his records to address the errors and ensure his medical conditions and service-related injuries are accurately reflected for the benefits he is entitled.

b. He was diagnosed with a major neurocognitive disorder following a traumatic brain injury (TBI) from a motor vehicle accident in Iraq. The severity of the condition was

underestimated, leading to an improper disability rating of 40% instead of a higher rating which reflects the significant impact on his cognitive functions and duty performance in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3-30j (neurological disorders).

c. His depressive disorder secondary to his neurocognitive disorder was also not adequately rated. His depressive symptoms significantly impaired his occupational and social functioning, warranting a higher disability rating than the 30% given, in accordance with Army Regulation 40-501, chapter 3-32c (mood disorders).

d. The inaccuracies and blatant disregard for his medical profiles significantly impacted his benefits and recognition of his service-related conditions. The applicant notes violation of his medical profiles, violation of duty hours, mismanagement of psychiatric disorders, and the failure to monitor and address self-harm concerns to support his contentions.

e. He claims mishandling and discrepancies of his MEB and PEB proceedings concerning his neurocognitive and depressive disorders to include inconsistencies in record keeping and diagnosis and errors in his retirement benefits processing. He claims the previous Board's correction to retroactively permanently retire him at 60% disability indicates his processing was flawed.

3. The applicant provides a/an:

a. Memorandum dated 28 June 2024, outlining the impairments and disabilities experienced, detailing the ADL losses of and dealing with:

- Adjustment Disorder with Disturbance of Emotions and Conduct
- Concussion with Moderate Loss of Consciousness
- Organic Psychiatric Disorders
- Motor Vehicle Traffic Accident
- Occupational Problem
- Malingering

b. Winn Army Community Hospital – ABCMR Behavioral Health Addendum, 12 January 2017.

c. 86 pages of medical records from 2005.

4. The applicant enlisted in the Regular Army on 6 July 2004. He served in military occupational specialty 88M (Motor Transport Operator). Evidence shows he served in Iraq from 6 December 2004 to 26 March 2005.

5. On or about 26 March 2005, the applicant was medically evacuated from Iraq to Germany and subsequently transferred to Walter Reed Army Medical Center (WRAMC). A Summary of Evaluation conducted by the Defense and Veterans Brain Injury Center (DVBIC) at WRAMC, dated 11–15 April 2005, documents that on 15 March 2005, the applicant was seated in the passenger seat of a military vehicle when it was struck head-on by another vehicle traveling at approximately 40–50 miles per hour. During the collision, he sustained a head injury after impacting the windshield or dashboard on the left side of his head. He was wearing a Kevlar helmet at the time and did not require surgical intervention. The applicant reported a loss of consciousness lasting approximately 24 hours, regaining awareness at a combat support hospital. He also experienced retrograde amnesia spanning several days, with his last memory being preparations for two or three missions prior to the incident. Post-traumatic amnesia persisted for a few days following the event.

6. Neuropsychological evaluation and testing revealed findings consistent with a mild to moderate traumatic brain injury (TBI), indicating frontal lobe dysfunction and some impairment in the right hemisphere. Based on these findings, DVBIC recommended that the applicant not be redeployed. Additional recommendations included a limited duty profile restricting work to no more than eight hours per day, referral for outpatient occupational therapy to enhance adaptive strategies, and psychoeducation regarding his brain injury and potential emotional concerns.

7. On 26 April 2005, the DVBIC, WRAMC, issued a temporary S3 profile (S = psychiatric) due the applicant's TBI with limitations of no deployment, no field duties, and work shifts no longer than 8 hours a day. The temporary profile was to expire on 26 July 2005. He was returned to duty at Fort Bragg, NC. Despite his profile, his jump record shows that he logged two jumps from a UH-60 helicopter on 22 and 23 May 2005.

8. In August 2005, he was evaluated by the 82nd Airborne Division Mental Health (DMH) in August 2005. At that time, he was having work related problems described by the Division Psychiatrist as "trouble managing competing demands of his [chain of command] and his profile." This was attributed to difficulty with memory and mental flexibility. On 4 August 2005, he was given a temporary P3 profile (P = physical stamina) with a 4 October 2005 expiration date with limitations to include 8-hour duty days, no field duty, and run at his own pace. The DVBIC, WRAMC, also issued a new temporary S3 profile on 10 August 2005 with expiration date of 10 November 2005 with the same limitations.

9. A DA Form 3822-R (Report of Mental Status Evaluation), dated 1 December 2005, shows the 82nd Airborne Division psychologist, a captain, and a psychiatrist, a major, conducted a clinical interview of the applicant. The psychologist's diagnosis of the applicant was cognitive disorder, not otherwise specified and adjustment disorder with mixed disturbance of emotions and conduct. They recommended inpatient hospitalization treatment which he underwent from 1 to 5 December 2005 at Womack Army Medical Center (WAMC). They also recommended to the applicant's command that the applicant be processed for a medical board or administrative separation under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 5-17, for other designated physical or mental conditions, due to the risk of continued problems the applicant was experiencing that would lead to misconduct. They reported that he was recently accused of disrespect and a period of absence without leave.

10. A WAMC memorandum, dated 5 December 2005, shows the applicant underwent a mental status evaluation by a psychiatrist in Inpatient Psychiatry. The examining psychiatrist found the applicant suffered from a cognitive disorder, not otherwise specified, and adjustment disorder with mixed disturbance of emotions and conduct. The applicant's state of emotional and/or behavioral dysfunction was of such severity that the applicant's ability to perform military duties was significantly impaired. He found the applicant had the mental capacity to participate in separation proceedings and that he was mentally responsible and able to distinguish right from wrong. He concluded the applicant's condition met the criteria set forth in Army Regulation 635-200, paragraph 5-17, for an administrative separation.

11. On 15 December 2005, the applicant received a medical examination. The examining doctor did not evaluate the applicant's psychiatric conditions but deferred that to WAMC Inpatient Psychiatry's evaluation. The examination found the applicant medically qualified for service.

12. On 15 December 2005, the applicant underwent a separation medical examination. The DD Form 2808 (Report of Medical Examination) documenting this examination lists no disabling conditions that would have supported the applicant's processing through medical channels.

13. The applicant's record does not contain a copy of the separation authority's final approval memorandum. However, his record does contain discharge orders and a DD Form 214 showing that he was honorably discharged on 24 February 2006 under the provisions of Army Regulation 635-200, paragraph 5-17, by reason of a condition, not a disability. The applicant had completed 1 year, 7 months, and 19 days of active duty service.

14. On 18 October 2016, this Board found the applicant should have been referred to the Physical Disability Evaluation System (PDES) prior to his separation from service and directed he be afforded processing through the PDES.

15. On 13 January 2017, the applicant underwent an MEB at Winn Army Community Hospital, Fort Stewart, GA. After consideration of clinical records, laboratory findings, and physical examination, the MEB found the applicant had the following medical conditions/defects:

- Major Neurocognitive Disorder
- Depressive Disorder due to Another Medical Condition (Neurocognitive Disorder)
- Headaches, (which met retention standards)

16. On 20 January 2017, the findings and recommendations of the MEB were approved and the applicant was referred to a PEB.

17. On 29 March 2017, an IPEB found the applicant unfit for further military service due to:

a. The applicant's condition originated on 26 March 2005 while deployed in Iraq, following a traumatic brain injury (TBI) sustained in a motor vehicle accident. At the time, the applicant was a passenger in a High Mobility Multipurpose Wheeled Vehicle (HMMWV) that was struck head-on by another vehicle. He was subsequently medically evacuated from the theater of operations. Initial neuropsychological testing conducted in 2005 indicated cognitive deficits consistent with a mild to moderate TBI. A follow-up neuropsychological assessment performed on 13 September 2016 revealed ongoing higher cortical dysfunction, particularly affecting new learning, recall, and memory. The examining clinician concluded that the applicant's performance was strongly indicative of the late effects of a moderate TBI and noted that his cognitive symptoms were likely more severe during the initial years following the injury.

b. In accordance with Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), the applicant would have been deemed unfit for duty in 2005, as the condition impaired his ability to perform the essential functions of his Military Occupational Specialty (MOS) 88M. Specifically, memory impairments would have prevented him from completing assigned tasks accurately and in a timely manner. The applicant's condition was rated at 40% in 2005, based on objective evidence of mild memory impairment. This rating aligns with the Department of Veterans Affairs (VA) Rating Decision dated 22 January 2010, which assessed the applicant's TBI at 40%.

c. The applicant's depressive disorder originated on 26 March 2005 in Iraq, following a traumatic brain injury (TBI) sustained in a motor vehicle accident. At the time, the applicant was a passenger in a High Mobility Multipurpose Wheeled Vehicle

(HMMWV) that was struck head-on by another vehicle. He was subsequently evacuated from the theater for medical treatment. From 2 to 5 November 2005, the applicant was placed on unit watch due to passive suicidal ideation. During hospitalization in December 2005, the treating psychiatrist determined that the severity of the applicant's behavioral dysfunction significantly impaired his ability to perform military duties.

d. In accordance with Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), the applicant was unfit for duty in 2005. His condition would have prevented him from safely carrying and firing a weapon, and from deploying in support of military operations. His symptoms of depressed mood at the time were most consistent with occupational and social impairment resulting in occasional decreases in work efficiency. This condition was rated at 30%, reflecting the level of impairment observed in 2005. The rating corresponds with the Department of Veterans Affairs (VA) Rating Decision dated 22 January 2010, which assigned a 30% disability rating for the applicant's behavioral health condition, effective 1 December 2009.

18. The PEB recommended a 60% disability rating and the applicant's permanent disability retirement. DA Form 199, Section IV: Medical Conditions Determined Not to be Unfitting, notes the combined effect was considered in the fitness determination for conditions referred by the MEB. In full consideration of DoDI 1332.18, Appendix 2 to Enclosure 3 the PEB determined the applicant was fit for the MEB diagnosis of headaches.

19. The case was rated based on the standards and severity of condition in 2005. The ratings were combined in accordance with VA Schedule for Rating Disabilities (VASRD) paragraph 4.25: 40% combined with 30% = 58% which rounds to 60%. On 3 April 2017, the applicant concurred with the PEB findings and recommendations and waived a formal hearing of his case.

20. On 22 June 2017, his DD Form 214 was corrected by DD Form 215 to show he retired honorably in accordance with Army Regulation 635-40, paragraph 4-24b(1) due to permanent disability.

21. 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 (USAPDA) 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 DOD Directive 1332.18 and Army Regulation 635-40.

22. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a reconsideration of the percentage of his permanent medical retirement. The applicant contends that his request is related to his experience of traumatic brain injury (TBI) and mental health conditions that impacted the circumstances of his discharge. 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 (RA) on 06 July 2004; 2) The applicant deployed to Iraq from 06 December 2004 to 26 March 2005; 3) On 06 December 2005, the applicant was counseled regarding the recommendation of his separation from the military due to AR 635-200, Chapter 5-17, for "an other Designated Mental Condition"; 4) The applicant was discharged on 24 February 2006, AR 635-200, paragraph 5-17 – separated for a condition, not a disability. He completed 1 year, 7 months, and 19 days of net active military service during this period. His military service was characterized as honorable; 5) The applicant applied to the Army Discharge Review Board (ADRB) previously on 22 December 2009, 03 May 2011, and 18 October 2016. On the 18 October 2016 ADRB, it was determined that the applicant should have been referred to IDES prior to his separation from service and directed a referral to be evaluated by IDES; 6) On 22 June 2017, the applicant's DD Form-214 was corrected to show he retired honorably in accordance with AR 635-40, paragraph 4-24b(1) due to permanent disability; 7) On 26 June 2017, the applicant was notified that he would be retired at 60% disability for Major Neurocognitive Disorder and Depressive Disorder Due to Another Medical Condition (Neurocognitive Disorder).

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 MEB narrative and VA medical documentation 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 TBI and mental health issues during his active service that impacted his ultimate discharge. According to military TBI clinic documentation dated 28 March 2005, the applicant was evaluated for TBI following a 14 March 2005 motor vehicle accident while deployed in Iraq. He was documented as having a loss of consciousness of approximately 24 hours and no memory of events beginning a few moments before the accident. He was medically evacuated from the in-theater location on 17 March 2005 out of the country. Following this incident, he reported issues with short term memory loss. On 12 April 2005, the applicant underwent a neuropsychological evaluation which resulted in findings consistent with mild to moderate TBI, continued residual cognitive difficulties, and a post-concussive disorder. As a result of his limitations, the applicant was recommended for a limited duty profile

while healing from his injury. The applicant was referred to active-duty mental health services beginning on 31 August 2006, for the evaluation of suspected suicidal ideation (SI) and command conflict due to the impact of his medical profile. He was subsequently seen by mental health for an “occupational problem” and “concussion with moderate loss of consciousness” every 2 weeks until his discharge, with his final contact occurring on 19 December 2005. On 01 December 2005, the applicant underwent a mental status evaluation following the applicant going AWOL and displaying increasing SI, which resulted in the change in diagnoses to Cognitive Disorder NOS and Adjustment Disorder with Mixed Disturbance of Emotions and Conduct. This evaluation resulted in immediate referral to psychiatric hospitalization and the recommendation for separation by either medical board or Chapter 5-17 in order to avoid further emotional deterioration and potential resulting misconduct by the applicant. On 05 December 2005, the applicant was seen again for a mental status evaluation by a different provider while psychiatrically hospitalized. This evaluation continued the previous evaluation’s diagnoses and formally recommended Chapter 5-17 administrative separation to command due to the applicant’s level of emotional and/or behavioral dysfunction impacting the applicant’s military duties. The applicant attended a post-hospitalization check in with mental health on 06 December 2005, which continued the previous diagnoses and recommendations.

d. The VA’s Joint Legacy Viewer (JLV) was examined, which indicated that the applicant initiated VA contact beginning on 24 January 2007 for physical and mental health services. The applicant was evaluated for the purposes of his MEB narrative summary on 12 January 2017 by Neuropsychology and on 20 January 2017 broadly for mental health purposes, which resulted in the diagnoses Major Neurocognitive Disorder and Depressive Disorder Due to Another Medical Condition (Neurocognitive Disorder). The applicant was found physically unfit by a Physical Evaluation Board (PEB) on 29 March 2017 and recommended a rating of 60% based on the aforementioned diagnoses. The applicant has most recently been treated by VA mental health for Major Depressive Disorder, Recurrent, Moderate; Anxiety Disorder, Unspecified; PTSD; Alcohol Use; and Cannabis Use on 13 September 2023. The applicant is currently 100% VA service-connected for Major Depression (100%) and includes various physical conditions (including 40% for residuals of traumatic brain injury).

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there was insufficient novel information regarding the applicant’s time in active service to re-submit the applicant for evaluation by IDES. The applicant’s post separation IDES evaluation(s) took into account his behavioral health and TBI symptoms prior to discharge and determined that they did not warrant any additional medical disability percentage over 60%. He did not provide any additional in-service documentation to indicate any additional severity or additional condition(s) at the time of service to warrant an additional referral to IDES. Therefore, there is insufficient evidence

the applicant's case warrants an additional referral to IDES to be re-assessed for additional medical retirement, 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 increased medical retirement.

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

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

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, medical review, and executed a comprehensive review based on law, policy, and regulation. The Board concurred with the advising official finding that the applicant's post separation IDES evaluation(s) took into account his behavioral health and TBI symptoms prior to discharge and determined that it did not warrant any additional medical disability percentage over 60%. Therefore, the Board determined that there is insufficient evidence the applicant's case warrants an additional referral to IDES to be re-assessed for additional medical retirement and denied the applicant's request for reconsideration.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XX	XX	XX	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 Numbers AR20090010604 on 22 December 2009, AR20100025919 on 3 May 2011, and AR20150007719 on 18 October 2016.

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. 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 USAPDA 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 DOD Directive 1332.18 and Army Regulation 635-40.

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501, chapter 3.

b. The disability evaluation assessment process involves two distinct stages: the MEB and 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.

c. 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.

2. 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. Once a determination of physical unfitness is made, all disabilities are rated using the VASRD.

3. Title 38, Code of Federal Regulations (CFR), Part 4, Schedule for Rating Disabilities, provides guidance on the VASRD, which lists the detailed requirements for assigning disability ratings to conditions for military disability, assigning a four-digit VASRD Code to each condition or analogous symptom of a condition and regulating the amount of compensation received for each disability.

4. 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%. 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%.

5. Title 38, U.S. Code, sections 1110 and 1131, permits the VA to award compensation for medical conditions incurred in or aggravated by active military service. The VA, however, is not empowered by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual may have a medical condition that is not considered medically unfitting for military service at the

time of processing for separation, discharge, or retirement, but that same condition may be sufficient to qualify the individual for VA benefits based on an evaluation by that agency.

6. Section 1556 of Title 10, U.S. Code, 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 ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//