



DEPARTMENT OF THE ARMY
BOARD FOR CORRECTION OF MILITARY RECORDS
1901 SOUTH BELL STREET 2ND FLOOR
ARLINGTON, VA 22202-4508

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 August 2007
DOCKET NUMBER: AR20070004621

I certify that hereinafter is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in the case of the above-named individual.

[REDACTED]

Director
Analyst

The following members, a quorum, were present:

[REDACTED]

Chairperson
Member
Member

The Board considered the following evidence:

Exhibit A - Application for correction of military records.

Exhibit B - Military Personnel Records (including advisory opinion, if any).

THE APPLICANT'S REQUEST, STATEMENT, AND EVIDENCE:

1. The applicant requests correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show his social security number (SSN) as [REDACTED] and the narrative reason for separation as "medical disability (sic)."
2. The applicant states, in effect, that he has provided enough proof to correct and change his SSN as well as the type of discharge.
3. The applicant provides a Social Security Administration SSN Verification Letter dated 23 March 2007, Report of Confidential Social Security Benefit Information, self-authored letter, Department of Veterans Affairs Disability Verification Statement, Department of Veteran's Affairs Treatment Verification Statement, and a copy of his SSN card in support of his application.

CONSIDERATION OF EVIDENCE:

1. The applicant is requesting correction of an alleged error which occurred on 15 May 1987, the date of his discharge. The application submitted in this case is dated 24 March 2007.
2. 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 allows the Army Board for Correction of Military Records (ABCMR) to excuse failure to file within the 3-year statute of limitations if the ABCMR determines that it would be in the interest of justice to do so. In this case, the ABCMR will conduct a review of the merits of the case to determine if it would be in the interest of justice to excuse the applicant's failure to timely file.
3. The applicant's records show he enlisted in the Regular Army on 22 April 1986 using [REDACTED] as his SSN. His DD Form 1584 (National Agency Check Request) shows his SSN as [REDACTED] in Items 4 (Social Security Number) and 18 (Remarks). All other documents in his records show his SSN as [REDACTED]. His DD Form 214 shows that he was released from active duty on 15 May 1987 under SSN [REDACTED].
4. Army Regulation 635-5 (Separation Documents) prescribes the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It establishes standardized policy

for the preparation of the DD Form 214. In pertinent part it states that the DD Form 214 is a synopsis of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of active Army service at the time of release from active duty, retirement or discharge.

5. The applicant's records show that, on 6 November 1986, a Medical Evaluation Board recommended the applicant's expeditious discharge from the Army due to a disorder that existed prior to service (EPTS). On 23 December 1986, a Physical Evaluation Board found the applicant physically unfit as a result of an EPTS condition and recommended that he be separated from military service without entitlement to disability benefits.

6. The applicant's records show that during formal proceedings on 19 February 1987, a Physical Evaluation Board reevaluated the applicant's medical records and sworn testimony. Based on that review, the Board again found the applicant physically unfit and recommended separation without entitlement to disability benefits.

7. The applicant's records show that his DD Form 214 was prepared and annotated in item 28 (Narrative Reason for Separation) with the entry "Physical disability without severance pay." Records further show that the applicant signed his DD Form 214 upon discharge.

8. 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. The U.S. Court of Appeals, observing that applicants to the Army Discharge Review Board (ADRB) are by statute allowed 15 years to apply there, and that this Board's exhaustion requirement (Army Regulation 15-185, paragraph 2-8), effectively shortens that filing period, has determined that the 3 year limit on filing to the Army Board for Correction of Military Records (ABCMR) should commence on the date of final action by the ADRB. In complying with this decision, the ABCMR has adopted the broader policy of calculating the 3-year time limit from the date of exhaustion in any case where a lower level administrative remedy is utilized.

DISCUSSION AND CONCLUSIONS:

1. The applicant contends, in effect, that his SSN recorded in his military service records should be corrected because it is in error.

2. The evidence of record shows that upon entrance into the U.S. Armed Forces, throughout his military service, and upon his separation from the Army, the applicant consistently indicated and certified that his SSN was [REDACTED]. The evidence of record also shows that the applicant authenticated the DD Form 214 issued to him on 15 May 1987 with his signature in Item 21. This indicates that he verified the information contained on the separation document, to include the SSN, was correct at the time it was issued.

3. There is no evidence in the available record and the applicant has failed to provide evidence to show that his SSN was different from that which is shown in his military records when the records were created. For historical purposes, the Army has an interest in maintaining the accuracy of its records. The data and information contained in those records should actually reflect the conditions and circumstances that existed at the time the records were created. In the absence of a showing of material error or injustice, this Board is reluctant to recommend that those records be changed.

4. The applicant's records show that his separation was in compliance with Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation). The narrative reason is entered correctly on his DD Form 214. The applicant's records did not show any evidence and the applicant has failed to submit sufficient relevant evidence to demonstrate the existence of a probable error or injustice.

5. Neither does the rating action by the VA necessarily demonstrate an error or injustice on the part of the Army. The VA, operating under its own policies and regulations, assigns disability ratings as it sees fit. The VA is not required by law to determine medical unfitness for further military service in awarding a disability rating, only that a medical condition reduces or impairs the social or industrial adaptability of the individual concerned.

6. Records show the applicant should have discovered the alleged error or injustice now under consideration on 15 May 1987; therefore, the time for the applicant to file a request for correction of any error or injustice expired on 14 May 1990. The applicant did not file within the 3-year statute of limitations and has not provided a compelling explanation or evidence to show that it would be in the interest of justice to excuse failure to timely file in this case.

BOARD VOTE:

_____ GRANT FULL RELIEF
 _____ GRANT PARTIAL RELIEF
 _____ GRANT FORMAL HEARING
 _____ DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined that the evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined that the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.
2. As a result, the Board further determined that there is no evidence provided which shows that it would be in the interest of justice to excuse the applicant's failure to timely file this application within the 3-year statute of limitations prescribed by law. Therefore, there is insufficient basis to waive the statute of limitations for timely filing or for correction of the records of the individual concerned.