

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 October 2023

DOCKET NUMBER: AR20220010468

APPLICANT REQUESTS:

- Correction of his discharge orders to reflect "servicemember discharged due to medical reasons
- Correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to reflect "00000000" for his Military Service Obligation (MSO)
- Correction of his DD Form 214 to reflect the correct reentry (RE) code
- Personal appearance before the Board via video/telephone

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

DD Form 149 (Application for Correction of Military Record)

FACTS:

1. The applicant states, in effect, on 29 September 2020, he went before a Medical Evaluation Board while in the Active Guard/Reserve program. The board found that he was physically unfit and recommended that he be separated with severance pay due to no fault or wrongdoing of his own. Due to his number of years of service, he elected to retire and be transferred to the Retired Reserve to receive retirement pay at the age of 60. Upon his discharge, he was informed that his MSO would be changed to "0000 00 00" as reflected on his DD Form 214. On 9 September 2022, he was informed he still has a service obligation until 2023. This error has impacted his children's ability to use his Post 9/11 GI Bill.

2. The applicant's service record contains the following documents for the Boards consideration:

a. On 14 June 2001, having had prior enlisted service in the Army National Guard, the applicant enlisted in the U.S. Army Reserve (USAR).

b. Memorandum, Subject: Notification of Eligibility for Retired Pay at Non-Regular Retirement (20-Year Letter), from the U.S. Army Human Resources Command (HRC), dated 26 November 2015, informed the applicant he was eligible for retired pay upon

application at age 60.

c. On 6 September 2016, the applicant entered active duty.

d. DA Form 199-1 (Formal Physical Evaluation Board (PEB) Proceedings), dated 29 September 2020, shows the PEB found the applicant physically unfit and recommended a rating of 20 percent and that he be separated with severance pay. The applicant did not concur with the findings and attached a written appeal, which is not available for the Board's consideration. He elected to be transferred to the retired reserve.

e. DD Form 214 honorably transferred the applicant to the USAR Control Group (Reinforcement) on 30 March 2021 by reason of completion of required active service. Item 6 (Reserve Obligation Termination Date) shows "0000 00 00". He completed 5 years, 4 months, and 15 days of net active service this period with 5 years, 1 month, and 29 days of total prior active service and 15 years, 10 months, and 23 days of prior inactive service. Item 27 (Reentry Code) shows "1."

f. Memorandum, Subject: Transfer to the Retired Reserve (20-Year Letter), dated 7 January 2021, from the U.S. Army Physical Disability Agency states the PEB had determined the applicant was physically unfit and he would be transferred to the retired reserve and was entitled to apply for retirement benefits upon reaching age 60.

g. Orders Number C-05-104720, published by HRC, dated 5 May 2021, released the applicant from USAR Control Group (Reinforcement) and transferred him to the Retired Reserve, effective 31 March 2021.

h. The applicant's service record is void of information regarding his MSO.

3. On 19 September 2023, the U.S. Army Human Resources Command (AHRC), Chief, Personnel Services Division, provided an advisory opinion, which states in effect:

a. The applicant requests correction of his discharge orders, MSO, and DD Form 214. The applicant went to the Retired Reserve in lieu of discharge for disability with severance pay and did not complete his service obligation for transfer of education benefits.

b. AHRC reviewed the application and requested administrative action. On the DA Form 199, Section X: Soldier's Election, the applicant selected and signed for the option to Transfer to the Retired Reserve.

c. A Soldier who elects to be transferred from the Active Guard/Reserve Program to the Retired Reserve for a nonregular retirement must be transferred to the Individual

Ready Reserve for no less than 24 hours prior to being transferred to the Retired Reserve.

d. Additionally, after consultation with the Office of the Human Resources Command Surgeon General, it was determined that the applicant was not issued a Temporary or Permanent Discharge Retirement List order, which means he is not eligible for a Medical Retirement. The discharge order issued in this matter is accurate and in accordance with Army Regulations and Policy.

4. On 27 September 2023, the advisory opinion was provided to the applicant to allow him an opportunity to respond. He did not respond.

BOARD DISCUSSION:

1. The applicant's request for a personal appearance was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance before the Board is not necessary to serve the interest of equity and justice in this case.

2. 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 contentions, the military record, and regulatory guidance. Documentation available for review shows a properly completed and signed DA Form 199-1 reflecting that the Physical Evaluation Board found the applicant unfit and recommended a rating of 20% and that the applicant be separated with severance pay. Documentation further shows that as the applicant was not issued either a temporary or permanent discharge list order, he is ineligible for medical retirement. After due consideration of the applicant's request, the Board agreed that the discharge order was accurate and in accordance with applicable Army Regulation and U. S. Code, there is no basis upon which to grant relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined 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.

 Revoked certificate

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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. Army Regulation (AR) 635-8 (Separation Processing and Documents) prescribes the transition processing function of the military personnel system. It states:

a. Block 6 (Reserve Obligation Termination Date). This is the completion date of the statutory MSO incurred by a Soldier on initial enlistment or appointment in the Armed Forces. The law requires a Soldier with no previous military service who enlisted or was appointed on or after 1 June 1984 to serve a period of 8 years. The MSO starts on the date of initial enlistment or appointment in the USAR to include the delayed entry program. For a Soldier discharged, dismissed, released from custody and control of the Army or dropped from the Army rolls, or with an expired MSO enter "0000 00 00." Soldiers within 90 days of their MSO termination date at separation are considered to have completed their MSO.

b. Block 27 (RE Code) AR 601-210 (Regular Army and Reserve Components Enlistment Program) determines reentry eligibility and provides regulatory guidance on reentry codes.

2. AR 601-210 (Regular Army and Reserve Components Enlistment Program) table 3-1 (U.S. Army reentry eligibility codes) states:

a. RE-1: Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army.

b. RE-3: Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation or disqualification is waiverable.

c. RE-4: Applies to: Person separated from last period of service with a nonwaiverable disqualification.

d. RE-4R: Applies to: A person who retired for length of service with 15 or more years active federal service.

3. Title 10, United States Code (USC), 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 and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with Department of Defense Directive 1332.18 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 an MEB; when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an MOS Medical Retention Board; 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 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.

4. AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation). 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. Paragraph 3-2 states 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. Paragraph 3-4 states 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.

5. Title 10, USC, 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, USC, section 1203, provides for the physical disability separation of a member on active duty or ordered to active duty for greater than 30 days who has less than 20 years of service and a disability rating of less than 30 percent.

6. AR 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//