

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 August 2024

DOCKET NUMBER: AR20230002736

APPLICANT REQUESTS: reconsideration of his previous request for physical disability separation or retirement and any applicable back pay due to him.

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs letter, 9 December 2022
- Freedom of Information Act (FOIA) or Privacy Act (PA) request
- Medical records
- Personnel Qualification Record (PQR) – Part I
- DA Form 2-1 (PQR – Part II)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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 AR20200008990 on 15 April 2021.

2. The applicant states in the previous decision letter, the reason for denial was that there were no medical records available to render justification for a medical retirement. There are medical records now available to render an informative decision.

3. The applicant provides FOIA or PA request for his records as well as medical records (238 pages) in support of his claim.

4. The applicant enlisted in the Regular Army on 21 August 1979. He held military occupational specialty 57E (Laundry and Bath Specialist).

5. The applicant's records contain multiple DA Form 4187(s) (Personnel Action), reflecting the following duty status changes:

- Hospital to absent without leave (AWOL) on 25 February 1980

- AWOL to dropped from the rolls (DFR) on 25 March 1980
  - DFR to attached on 24 June 1980, when he was apprehended by military authorities in St. Paul, MN
6. DD Form 458 (Charge Sheet) shows court martial charges were preferred on 2 July 1980; the applicant was charged with absenting himself from his organization without authority from 25 February 1980 until 24 June 1980.
7. DA Form 31 (Request and Authority for Leave) shows the applicant requested and was placed in an excess leave status effective 8 July 1980 through an indefinite date, pending approval of his request for discharge. The form stipulates if his request for discharge is approved, he will be discharged while in a leave status and separation documents will be forwarded to his leave address. It further states his leave status will terminate on the effective date of his discharge. In the event he is ordered to return for further processing, he must have sufficient funds to defray all expenses in connection with travel to and from Fort Knox, KY.
8. The applicant's request for discharge is void of his available records for review.
9. Additional DA Form 4187(s) in the applicant's records reflect the following duty status changes:
- excess leave to AWOL on 19 August 1980
  - AWOL to DFR on 17 September 1980
  - DFR to attached on 6 December 1980, when he was apprehended by civilian authorities in St. Paul, MN, and returned to military authorities
10. A second DD Form 458 shows the applicant was charged on 16 December 1980, with absenting himself from his organization without authority from 19 August 1980 until 6 December 1980.
11. A second DA Form 31 shows the applicant requested and was again placed in an excess leave status effective 18 December 1980 through an indefinite date, pending approval of his application for discharge.
12. The applicant's records contain a statement, signed by himself and counsel on 18 December 1980, while the applicant was assigned to the Personnel Confinement Facility at Fort Knox, KY, declaring he was advised by his defense counsel that the Government did not receive the necessary documentation and/or records with which to obtain a conviction by court-martial, due to the time required to request and mail the records. He was advised that counsel cannot completely advise him without these records; nevertheless, he waived all defenses and willingly voluntarily declared he was AWOL from 19 August 1980 through 6 December 1980. He further declared that his

military defense counsel explained all the legal and social ramifications of the type of discharge he may receive.

13. The applicant's discharge packet is void of his available records for review.

14. The applicant's original DD Form 214 shows he was discharged under other than honorable conditions on 17 February 1981, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10, for conduct triable by court-martial. He was credited with 10 months and 11 days of net active service, with lost time from 25 February 1980 through 23 June 1980 and from 19 August 1980 through 5 December 1980 and 104 days of excess leave from 8 July 1980 through 18 August 1980 and from 18 December 1980 through 17 February 1981. It also shows:

- Item 26 (Separation Code): JFS
- Item 27 (Reenlistment Code): 3 & 3B

15. The applicant applied to the ADRB on 6 April 1992 requesting a discharge upgrade. The ADRB proceedings show the following:

a. The applicant claimed he was wrongfully discharged because he had been locked in a mental hospital in 1979. His records show he has more than 160 days of AWOL, but he was locked away by the Army at Fort Sam Houston, TX. The Army made him sign a paper to leave the Army or force him to go to jail for 10 years while he was still under medication.

b. The Board accepted the issue of discharge inequity because of the applicant's documented history of mental illness. The Board noted from the evidence of record and the applicant's testimony that he had been hospitalized in a mental hospital prior to his entrance into the service. The record reflects the applicant was hospitalized 3 weeks after he arrived at his first permanent duty assignment. He was later transferred to Brook Army Medical Center, Fort Sam Houston, TX, for further evaluation and disposition. During his hospitalization, the applicant went AWOL as he felt he was being persecuted by the Army.

c. After 119 days AWOL, he was apprehended and returned to military control. The applicant consulted legal counsel, requested chapter 10 discharge, and was placed on excess leave. One month later, the Army sent the applicant a letter via registered mail informing him that his leave and request for discharge had been suspended and he was to report to Fort Knox, KY no later than 16 August 1980 or he would be declared AWOL. The Army was going to give the applicant a Medical Evaluation Board (MEB) in lieu of administrative discharge via chapter 10 of Army Regulation 635-200. The applicant testified he did not receive the letter and the file shows the applicant did not sign the registered receipt.

d. Four months later, the applicant was again apprehended and returned to military control. The applicant again requested a chapter 10 discharge. The ADRB, being convinced that the reason for discharge and the characterization of service were inequitable due to the documented psychiatric illness of the applicant, voted on 7 June 1994 to upgrade his discharge to honorable and change the reason to Secretarial Authority.

16. The applicant was issued a second DD Form 214, covering his period of service from 21 August 1979 through 17 February 1981, which shows:

- Item 24 (Character of Service): Honorable
- Item 25 (Separation Authority): AR 635-200, Chapter 5, Sec II
- Item 26 (Separation Code): JFF
- Item 27 (Reentry Code): 3
- Item 28 (Narrative Reason for Separation): Directed by Secretary of the Army

17. In his previous request (AR20200008990) on 15 April 2021, the Board considered his application under procedures established by the Secretary of the Army and determined the evidence presented was sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by referring his records to the Office of The Surgeon General for review to determine if the disability evaluation he received from the Army accurately depicted his conditions as they existed at the time.

a. If a review by the Office of The Surgeon General determines the evidence supports amendment of his disability evaluation records, the individual concerned will be afforded due process through the Disability Evaluation System for consideration of any additional diagnoses (or changed diagnoses) identified as having not met retention standards prior to his discharge.

b. In the event that a formal PEB becomes necessary, the individual concerned will be issued invitational travel orders to prepare for and participate in consideration of his case by a formal PEB. All required reviews and approvals will be made subsequent to completion of the formal PEB.

c. Should a determination be made that the applicant should be retired for disability, these proceedings serve as the authority to issue him the appropriate separation retroactive to his original separation date, with entitlement to all back pay and allowances and/or retired pay, less any entitlements already received.

d. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to changing the narrative reason for separation.

18. On 5 November 2021, a MEB Physician stated the information provided was reviewed but unfortunately no medical records are available to identify the behavioral health diagnoses for the veteran's pre-military hospitalization or during his military service. SM was not processed through a medical disability from what records are available. The hospitalization history is not discounted but rather there is not sufficient evidence presented to determine the diagnoses whether the Behavioral Health diagnoses were EPTS (existing prior to service) or worsened/improved with military treatment/service or contributed to the AWOL status of the veteran. In summary, there is currently insufficient evidence to convene a medical board at this time.

19. On 8 November 2021, the Office of the Surgeon General endorsed the opinion provided by Dr. J.F. of the Fort Hood Medical Evaluation Board (MEB) section regarding concerns presented by the applicant. Medical evidence based on the review of the applicant's medical records indicate that a medical evaluation board (MEB) was not warranted at the time of his separation.

20. The Army rates only conditions determined to be physically unfitting at the time of discharge, which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career. The VA does not have authority or responsibility for determining physical fitness for military service. The VA may compensate the individual for loss of civilian employability.

21. Title 38, U.S. Code, 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.

22. Title 38, CFR, Part IV is the VA's schedule for rating disabilities. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge. As a result, the VA, operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform his duties. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

23. AR 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. 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.

#### 24. 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 (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or 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 in essence requesting a referral to the Disability Evaluation System (DES).

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 for the period of Service under consideration shows he entered the Regular Army on 21 August 1979 and received an honorable discharge on 17 February 1981 under the provisions provided in Section II of Chapter 5 in AR 635-200, Personnel Management – Enlisted Personnel (1 March 1978): Directed by the Secretary of the Army.

d. In his prior case boarded 15 April 2021 (AR20200008990), the board granted him a discharge upgrade and directed his case be referred to the Office of The Surgeon (OTSG) General for review and possible entrance into the DES for his mental health condition. The OTSG declined to enter the applicant into the DES stating there were no supporting medical documents.

e. For this application, the applicant has submitted 238 pages of contemporaneous medical records showing he was both diagnosed with and hospitalized for chronic schizophrenia and that it had existed prior to service. From one of the Clinical Records:

“This is the fourth psychiatric hospitalization for this 23-year-old twice-married black male USA AD [United States Army active duty] PV1 with five months' continuous active service when admitted to the Womack AH [Army hospital, Ft. Bragg, NC on 28 Jan 80, and transferred to the BAMC [Brook Army Medical Center] Psychiatry Service, arriving 12 Feb 80, with a diagnosis of schizophrenia, chronic undifferentiated type.

After completing AIT [advanced individual training] at Ft Lee, VA he was assigned to Ft Bragg, NC. He arrived there on 5 Jan 80. On 26 Jan 80, he requested

psychoactive medication from the CMHA, namely, Stelazine, 5 mg that he had been taking twice a day going back to 1975, when he was first admitted to the Mississippi State Hospital.

He apparently had been taking his Stelazine, up to the third week in BCT [basic combat training, when he ran out of it. On 28 Jan 80, he was brought over by unit personnel for a psychiatric evaluation. At that time, he was admitted to the hospital and indicated that he had been confined at the Mississippi State Hospital for three weeks in 1975. At that time, he had suffered a complete nervous breakdown, felt confused, had difficulty concentrating, and had racy thoughts. He was placed on Stelazine and kept taking it until approximately two months prior to the current hospitalization. He indicated that during the last week he had been having auditory hallucinations of a male voice, frequently felt confused, had difficulty concentrating, and had many somatic complaints.”

f. JLV shows he has a single VA service-connected disability rating, a 100% rating for Psychosis, Schizophrenia Paranoid effective 23 August 1993.

g. There is clear and unmistakable evidence the applicant had schizophrenia prior to his entrance into the Army and that his condition failed medical enlistment standards at the time of his induction. Paragraph 2-32 of AR 40-501, Standards of Medical Fitness (29 January 1974:

#### 2-32. Psychoses

The causes for rejection for appointment, enlistment, and induction are-

Psychosis or authenticated history of a psychotic illness other than those of a brief duration associated with a toxic or infectious process.

h. Paragraph 2-9 of AR 600-33, Line of Duty Investigations (15 July 1980:

“2-9. Mental and emotional disorders. The MTF must identify, evaluate, and document mental and emotional disorders. These disorders are considered "In Line of Duty" unless they existed before service and were not aggravated by it.”

i. There the applicant's condition presented only after he ran out of medication, and there is no probative evidence it was permanently aggravated by his military service; and because it had existed prior to service, he is not eligible for referral to the DES.

j. It is the opinion of the ARBA medical advisor that a referral of his case to the DES is unwarranted.

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 counsel’s statement, 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 further review of the applicant’s petition, available military records and medical review, the Board concurred with the advising official finding referral of the applicant’s case to the DES is unwarranted. The opine noted, there is no probative evidence it was permanently aggravated by his military service; and because it had existed prior to service, he is not eligible for referral to the DES. The Board found insufficient evidence to support the applicant’s contentions for physical disability separation or retirement and any applicable back pay due to him. Based on the preponderance of evidence and advising opine, the Board agreed reversal of the previous Board determination is without merit and relief is denied.

2. The Board determined DES compensates an individual only for service incurred condition(s) which have been determined to disqualify him or her from further military service. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION



BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR20200008990 on 15 April 2021.



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 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 DOD 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.

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.

2. Army Regulation (AR) 635-40 (Disability 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.

c. Paragraph 4-10 provides that Medical Evaluation Boards (MEBs) are convened to document a Soldier's medical status and duty limitations insofar as duty is affected by the Soldier's status. A decision is made as to the Soldier's medical qualification for retention based on criteria in Army Regulation 40-501 (Standards of Medical Fitness),

Chapter 3 (Medical Fitness Standards for Retention and Separation, Including Retirement). If an MEB determines the Soldier does not meet retention standards, the board will recommend referral of the Soldier to a PEB.

d. Paragraph 4-12 provides that each case is first considered by an informal PEB. Informal procedures reduce the overall time required to process a case through the disability evaluation system. An informal board must ensure that each case considered is complete and correct. All evidence in the case file must be closely examined and additional evidence obtained, if required. In addition, in all informal cases, the PEB Liaison Officer of the medical treatment facility having control of the Soldier will be the counselor for the Soldier. As such, the PEB Liaison Officer is primarily concerned with the Soldier's interests. The Soldier will be made fully aware of the election options available to him or her, the processing procedures, and the benefits to which he or she will be entitled if separated or retired for physical disability.

3. AR 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 10 provides that a member who had committed an offense or offenses for which the authorized sentence included a punitive discharge could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges were preferred. Although an honorable or general discharge could be directed, an Undesirable Discharge Certificate would normally be furnished to an individual who was discharged for the good of the service.

4. Title 10, USC, Section 1201 provides for the physical disability retirement of a member who has either 20 years of service or a disability rating of 30% or greater.

5. Title 10, USC, Section 1203 provides for the physical disability separation of a member who has less than 20 years of service and a disability rating at less than 30%.

6. 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.

a. The Army rates only conditions determined to be physically unfitting at the time of discharge which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career.

b. The VA does not have authority or responsibility for determining physical fitness for military service. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge, to compensate the individual for loss of civilian employability. As a result, the VA, operating under different policies, may award a disability rating where the Army did not find the member to be

unfit to perform her duties. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

7. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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//