

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 January 2024

DOCKET NUMBER: AR20230003356

APPLICANT REQUESTS: in effect, an upgrade of his general, under honorable conditions discharge from the U.S. Army Reserve.

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs list of service-connected disabilities
- DA Form 4856, Developmental Counseling Form
- May 2007 Orders to Active Duty
- DA Form 3349, Physical Profile (Temporary)
- Medical Records Related to Concussion

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states:

a. In July 2007, he was injured with a serious concussion from an accident during a training incident on orders. He was seen at the local medical group and diagnosed with a concussion in line of duty (ILOD). He was verbally told that he had post-concussion/post-concussive syndrome. He received a profile, and the doctor told him he thought he should not finish his orders and stay home to recover. He was falling over repeatedly. He was missing gaps of time and was extremely disoriented. His unit gave him a counseling saying that they would periodically check in on him over the following days. They never did. He was forgotten about and left to sit home by himself with his brain injuries. He could not drive, and they never took him to his follow up appointments at Hanscom Air Force Base, MA. In early 2008, retention contacted him saying that he would be separated, and he would be unable to physically out process. He received a separation document via mail in April 2008 saying that that he was separated due to not attending drill from 7/07 until 3/08. All his medical records went missing for about a

decade until recovered by a LOD specialist at the medical group. He now receives 40% for TBI and 60% for diplopia and floaters due to retina gel detachment from the severe concussion.

b. He was issued a COE (Certificate of Eligibility) for a home in 2018 and was not able to use it. He tried to have a new one issued but he was told he needed his discharge corrected to provide him with a new COE due to a new regulation. He knows this will not be completed in time, but it would help him to secure a home for himself and his children if this is corrected.

3. Review of the applicant's available service records shows:

a. He enlisted in the U.S. Army Reserve on 8 November 2004. He agreed to serve 6 years in the Selected Reserve and 2 years in the Individual Ready Reserve. He enlisted into the 401st Chemical Company (Smoke Generation) and training in military occupational specialty (MOS) 25U, Signal Operations Support Specialist.

b. A DD Form 214 (Certificate of Release or Discharge from Active Duty) is not available in the record and is not provided by the applicant. However, other evidence shows he entered active duty for training from 29 November 2004 to 29 June 2005, presumably for MOS training.

c. His record contains a DA Form 2173 (Statement of Medical Examination and Duty Status), dated 14 July 2005, that shows on or about 28 March 2005, at Fort Gordon, GA, "Soldier was doing PT (physical training) with the company when he started having pain in both legs. SM (service member) went on sick call and diagnosed with shin splint; other details unknown at this time." This for also shows:

- The applicant received a 10-day temporary profile for pain and had a follow up appointment
- Headquarters, U.S. Army Garrison, Fort Gordon, GA approved his injury as in line of duty

c. On 22 August 2005, Headquarters, 94th Regional Readiness Command 05-234-00077 reassigning the applicant (within major command), 401st Chemical Company, Combat Support, MOS 25U. This reassignment is listed as for the convenience of the government.

d. On 21 March 2006, Headquarters, 94th Regional Readiness Command 06-080-00005 reassigning the applicant from 401st Chemical Company, Combat Support, to Regional Readiness (Trainees, Transients, Holdees, and Students (TTHS)) [TTHS represent Reserve Soldiers not assigned to units]. This reassignment is listed as involuntary, for the convenience of the government.

e. On 4 May 2007, Headquarters, 94th Regional Readiness Command 07-124-00009 reassigning the applicant from the TTHS back to his troop program unit, 401st Chemical Company, Combat Support. This reassignment is listed as involuntary, for the convenience of the government.

f. The applicant provides a DA Form 3349, Physical Profile, (Temporary), signed by the issuing provider on 2 August 2007 but not signed by the approving authority. The injury is listed as: concussion. [Medical documents show the concussion was caused by a motor vehicle accident.]

g. The complete facts and circumstances surrounding his discharge are neither available nor provided by the applicant. However, on 27 March 2008, Headquarters, 412rg Engineer Command published Orders 08-087-00009 ordering the applicant discharged from the U.S. Army Reserve by authority of Army Regulation (AR) 135-178 (Enlisted Administrative Separations), effective 27 March 2008. Type of Discharge: Under Honorable Conditions (General).

4. 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.

5. 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 a discharge upgrade and, in essence, a referral to the Disability Evaluation System (DES) for a traumatic brain injury he claims to have sustained while in a qualified duty status. He states:

"In July 2007, I was injured with a serious concussion from an accident during a training incident on orders. I was seen at the local medical group & diagnosed with a concussion in LOD [line of duty] & was verbally told that I had post-concussion/post concussive syndrome. I received a profile & the Dr. told me he thought I should not finish my orders & stay home & recover.

I was falling over repeatedly. I was missing gaps of time & was extremely disoriented. My unit gave me a counseling saying that they would periodically check in on me over the following days. They never did. I was forgotten about & left to sit home by myself with my brain injuries. I could not drive, & they never took me to my follow up appointments at Hanscom Air Force Base.

In early 2008, retention contacted me saying that I would be separated & I'd be unable to physically out-process. I received a separation doc via mail in APR 2008 saying that that I was separated due to me not attending drill from 7/07 until 3/08.

All my medical records went missing for about a decade until recovered by a LOD specialist at the medical group. I now receive 40% for TBI & 60% for diplopia and floaters due to retina gel detachment from the severe concussion."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. Discharge orders published by the 412th Engineer Command on 27 March 2008 show he was discharged with an under honorable conditions (general) characterization of service on 27 March 2008 under provisions provided in AR 135-178, Enlisted Administrative Separations (19 July 2005). The orders neither cite an authorizing chapter or paragraph nor provide a narrative reason for separation.

d. A 2 August 2007 AHLTA encounter shows the applicant presented for a line of duty after being involved in a motor vehicle accident (MVA) six days earlier:

"PT (patient) was in MVA 6 days ago. Single vehicle accident car rolled over several times. No alcohol involved. PT without LOC [loss of consciousness]. Ambulating at scene after extricating himself. Was taken to ER. ER notes reviewed. PT was cleared in ER and released home. Pt states he remembers going to ER, but not leaving. Since date of injury, PT with intermittent symptoms of dizziness, dry mouth, eyes watering, slurred speech, knee pain, back/neck/shoulder pain. Currently doing OK in clinic.

e. The applicant was diagnosed with a concussion, placed on a 30-day limited duty, administrative duties only, profile for a concussion, are referred to orthopedics for chronic shoulder instability.

f. A 6 August 2007 Developmental Counseling Form (DA form 4856) shows the applicant was restricted to quarters, to report to work on Thursday, and to perform light duty upon his return to work.

g. Neither the applicant's separation packet nor documentation addressing his involuntary administrative separation was submitted with the application or uploaded into iPERMS.

h. There are no duty limiting permanent physical profiles or other probative evidence indicating the applicant had a permanent service incurred medical condition failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his voluntary discharge; or which prevented his from attending inactive duty for training and/or maintaining contact with his chain of command prior to his voluntary discharge. Thus, there was no cause for referral to the Disability Evaluation System. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of her office, grade, rank, or rating prior to her discharge.

i. JLV shows the applicant was awarded multiple VA service-connected disability rating in 2018 for a multitude of conditions, to include loss of eye, chronic adjustment disorder, and migraine headaches. However, the DES only compensates an individual for service incurred medical condition(s) which have been determined to disqualify him or her from further military service and consequently prematurely ends their career. 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.

j. It is opinion of the ARBA Medical Advisor that his apparent discharge for unsatisfactory participation was appropriate and that a referral of his case to the Disability Evaluation System is not warranted. As for the applicant's request for a discharge upgrade, given that the complete facts and circumstances surrounding his discharge are neither available nor provided by the applicant, no decision regarding medical mitigation/discharge upgrade can be made at this time.

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 contentions, the military record, and regulatory guidance. Documentation available for review shows that the applicant was in a motor vehicle accident and subsequently diagnosed with a concussion, restricted to quarters and upon returning to work, perform light duty. Further documentation available for Board

consideration of the request, does not reflect a duty limiting profile or documentation of a permanent service incurred medical condition that would have disallowed the applicant to reasonable perform his duties and he provide any for consideration by the Board. After due consideration of the request, the Board determined the evidence presented does not meet the burden of proof in determining the existence of an error or injustice and a recommendation for relief 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
█	:	█	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 and an upgrade to his character of service is not warranted.

2/9/2024

X Mario R. Beckles

CHAIRPERSON
Signed by: BECKLES.MARIO.RALPH.1099491775

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, 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 also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation (Army National Guard and Reserve - Enlisted Administrative Separations) establishes policies, standards, and procedures governing the administrative separation of certain enlisted Soldiers of the Army National Guard/Army National Guard of the United States and the U.S. Army Reserve.

a. At separation, the following types of characterization of service or description of separation are authorized under this regulation: Separation with characterization of service as honorable, general (under honorable conditions), or under other than honorable conditions. Separation with an uncharacterized description of service when separated in an entry level status.

b. An honorable characterization is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

c. General (under honorable conditions). If a Soldier's service has been honest and faithful, it is appropriate to characterize that service as general, under honorable conditions. Characterization of service as general (under honorable conditions) is warranted when significant negative aspects of the Soldier's conduct or performance of duty outweigh positive aspects of the Soldier's military record.

3. 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. 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.

4. Title 38, U.S. Code 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 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.

//NOTHING FOLLOWS//