

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 January 2024

DOCKET NUMBER: AR20230003829

APPLICANT REQUESTS: physical disability retirement in lieu of transfer to the Retired Reserve.

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 3349 (Physical Profile Record), 25 April 2022
- DD Form 2870 (Authorization for Disclosure of Medical or Dental Information), 28 July 2022
- U.S. Army Medical Command (MEDCOM) Form 756 (Medical Record – Consent Form), 28 July 2022
- Demographics form, 28 July 2022
- two DA Forms 5016 (Chronological Statement of Retirement Points), 28 July 2022 and 17 August 2022
- Statement of Understanding and Election of Options – Acknowledgement of Notification of Medical Unfitness for Retention, 1 August 2022
- U.S. Army Human Resources Command (AHRC) memorandum, 2 September 2022
- DD Form 2656 (Data for Payment of Retired Personnel), 15 February 2023

FACTS:

1. The applicant states:

a. His retirement was supposed to be a medical retirement. Once he was diagnosed with type II Diabetes, he was contacted on a Sunday about the diagnosis and told that it would automatically start the Medical Evaluation Board (MEB) process. He was sent the forms and filled them out as advised by his case worker. At the time of his diagnosis, he had completed over 19 years of service and was advised by his case manager to select option A on his Election of Options form, as an MEB was already begun. His election, along with his point sheet and 20-year letter would be attached to his paperwork for the MEB in order to process his medical retirement.

b. When he received his orders and tried enrolling in Tricare, he was told he was ineligible and was processed as a regular retirement. He was told by email there was no MEB process started on him, which is false. He filed MEB counseling, adhered to a physical profile, and turned in all his issued gear and equipment while awaiting his retirement orders. He has a condition prohibiting him from reenlisting, going to the field or attending annual training, and is no longer able to perform basic Soldier functions as a result of that medical condition, how does that not qualify for a medical retirement?

2. After 8 years, 7 months, and 11 days of honorable active service in the U.S. Marine Corps, and an additional 6 years and 1 day of active service in the Regular Army, the applicant enlisted in the U.S. Army Reserve (USAR) on 8 January 2016.

3. A physical profile is used to classify a Soldier's physical disabilities in terms of six factors as follows: "P" (Physical capacity or stamina), "U" (Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric) and is abbreviated as PULHES. Each factor has a numerical designation: 1 indicates a high level of fitness, 2 indicates some activity limitations are warranted, 3 reflects significant limitations, and 4 reflects one or more medical conditions of such a severity that performance of military duties must be drastically limited. Physical profile ratings can be either permanent or temporary.

3. The applicants Physical Profile Record shows -

a. The applicant received a permanent physical profile rating of 2 in factor L on 15 August 2017, for lower back injury/pain.

b. He received a permanent physical profile rating of 2 in factor L on 15 May 2020, for Army Combat Fitness Test (ACFT) modification (L).

c. He received a permanent physical profile rating of 3 in factor P on 25 April 2022, for diabetes, uncontrolled/episodes of low blood sugar.

d. He was limited in multiple ACFT events and should be assigned to within 30 minutes transport time to a facility capable of providing intensive care services, should not deploy overseas, should not work in an environment where access to water is rationed or the working environment temperature exceeds 90 degrees Fahrenheit. He was also restricted to performing no guard duty, working on scaffolding, or operating heavy equipment, among other restrictions.

4. The applicant signed a DD Form 2870 on 28 July 2022, authorizing all military treatment facilities and Department of Veterans Affairs (VA) facilities to release his patient information to the Army Reserve Medical Management Center. He also signed a

MEDCOM Form 756 on the same day authorizing his medical information to be sent and received by electronic mail.

5. Two DA Forms 5016, dated 28 July 2022 and 17 August 2022, both show the applicant was credited with 20 years, 7 months, and 13 days of qualifying service for retirement.

6. The applicant completed and signed a Statement of Understanding and Election of Options – Acknowledgement of Notification of Medical Unfitness for Retention on 1 August 2022, which shows:

a. He acknowledged receipt of the Notification of Medical Unfitness for Retention and available options [which is not in the applicant's available records for review by the Board].

b. He understood that counseling was available through the Office of Soldiers' Counsel.

c. He understood if he chose Physical Disability Evaluation System (PDES), he must remain in a drilling status within the limits of his profile with no adverse actions in order to continue in the PDES board process.

d. He understood he did not meet the Army's medical retention standards and that he must choose one of the four available options, among options A-D.

e. He elected option A, indicating he had 20 qualifying years (good years) and requested reassignment to the Retired Reserve and once his action was processed, he would provide all the required forms.

f. He did not elect option D, requesting referral to the PDES for a final determination of his medical fitness for retention and/or separation per Army Regulation 40-501 (Standards of Medical Fitness).

7. An AHRC memorandum, dated 2 September 2022, notified the applicant of his eligibility for retired pay at non-regular retirement (20-year letter). He was advised he completed the required years of qualifying Reserve service, was eligible for retired pay upon reaching age 60, and that he must submit his application for retirement to AHRC 9 months prior to his 60th birthday.

8. Department of the Army Order 0004006545, dated 10 February 2023, reassigned the applicant to the Retired Reserve effective 10 March 2023, due to mandatory retirement. He was credited with 20 years, 7 months, and 13 days of qualifying service toward retirement.

9. A DD Form 2656, shows the applicant completed and signed the form on 15 February 2023, providing his personal data for payment of retired personnel. He indicated he was a member or former member of the Reserve component with non-regular retirement and that he was a participant in the disability retirement plan.

10. 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 requesting in essence referral to the Disability Evaluation System (DES) and a subsequent military retirement for his diabetes, the condition for which he was medically disqualified and subsequently discharged from the USAR. He states in part:

“Retirement was supposed to be medical retirement. Once I was diagnosed with Diabetes type II, I was contacted on a Sunday about diagnosis and that it would automatically start the MEB process due to the severity of diagnosis. I was sent the forms and filled them out as advised by case worker.

At the time of diagnosis, I had completed 19+ years of service. I advised case manager of time in service and was advised to select option A as MEB was already started and would attach my point sheet and 20-year letter to the MEB in order to process me as medically retired.

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. Orders published on 10 February 2023 show the former drilling USAR Solider was assigned to the USAR Retired Reserve effective 10 March 2023.

d. While a drilling member, the applicant was placed on a duty limiting permanent profile for non-duty related “Diabetes; uncontrolled/episodes of low blood sugar” on 25 April 2022.

e. The applicant was notified there was no evidence this condition was duty related, was medically disqualifying, and he was presented with a list of options.

OPTION A. I have twenty (20) years of qualifying years (good years) and request reassignment to the Retired Reserve per AR 140-10, Chapter 6.

OPTION B. I have at least fifteen (15) , but less than twenty (20), qualifying years and request reassignment to the Retired Reserve with early qualification of eligibility to receive retired pay at age 60 IAW Title 10 USC, Section 12731(b).

OPTION C. I have less than fifteen (15) qualifying years and request an Honorable Discharge from the U.S. Army Reserve.

OPTION D. I request referral to the Physical Disability Evaluation System (PDES) for a final determination of my medical fitness for retention and/or separation per AR 40-501, Chapter 3 and AR 635-40, Chapter 4.

f. Option D is for Soldiers who desire to remain in the Army and results in a non-duty related physical evaluation board (NDR PEB). These boards allow Reserve Component (RC) Service Members who are not currently on a call to active duty of more than 30 days and who are pending separation for non-duty related medical conditions but desire to remain in their component to enter the Disability Evaluation System (DES) for a determination of fitness. The NDR PEB affords these Soldiers the opportunity to have their fitness for duty determined under the standards that apply to Soldiers who have the statutory right to be referred to the DES for a duty related medical condition.

g. The applicant selected option A when he completed the elections from on 1 August 2022:

Statement of Understanding and ELECTION OF OPTIONS
Acknowledgement and Election of Medical Unfitness for Retention
 Case Identifier: Name: [REDACTED] [REDACTED] Last 4 SSN: [REDACTED]

Initial all Statements of Understanding:

1. [REDACTED] I acknowledge receipt of the Notification of Medical Unfitness for Retention and available options.
2. [REDACTED] I understand that counseling is available through the Office of Soldiers' Counsel at usarmy.gordon.medcom-eamc.mbx.meb-counsel@mail.mil
3. [REDACTED] I understand that if I choose PDES I must remain in a drilling status within the limits of my profile with no adverse actions in order to continue in the PDES Board process.
4. [REDACTED] I understand that it is my responsibility to comply with all medical documentation requests and suspense dates.
5. [REDACTED] I understand I do not meet the Army's medical retention standards, and that I must choose one of the following options.

Please initial your choice: (SELECT ONE)

[REDACTED] **OPTION A. I have twenty (20) years of qualifying years (good years) and request reassignment to the Retired Reserve per AR 140-10, Chapter 6. Once requested by the AR-MMC NCO who processes this action, I will work with my unit to provide the following required forms by a new (30) day suspense.**

1. DA Form 5016 showing 20 creditable years and/or 20-year letter.
2. DA Form 4651 request for Reserve Component Assignment or Attachment.
3. DA Form 4856 from Commander.
4. DA Form 4856 from Retention NCO.

h. The applicant received his Notification of Eligibility for Retired Pay at Non-Regular Retirement (20-Year Letter) on 2 September 2022. His Data for Payment of Retired Personnel (DD Form 2656) shows he applied for a non-regular retirement on 15 February 2023.

i. No medical documentation was submitted with the application. There are no diabetes related clinical encounters or diagnoses in the EMR. Laboratory results show he had a mildly elevated fasting blood glucose on 19 March 2014 (113 with a reference range of 74-106) but a normal hemoglobin A1c of 4.8 (reference range 4.0 – 5.6). A repeat blood glucose obtained in March 2016 was normal (86).

j. There is no probative evidence the applicant's medically disqualifying diabetes was incurred during or permanently aggravated by his military service. It is therefore not eligible for referral to the DES for duty related processing.

k. There are no Veterans Hospital Administration related encounters or diagnoses. There are no VA service connected disabilities.

l. There is no evidence the applicant had any duty incurred medical condition(s) which would have failed the medical retention standards of chapter 3, AR 40-501 prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System for duty related processing.

m. The DES compensates an individual only for service incurred medical 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.

n. It is the opinion of the Agency Medical Advisor that neither a referral of his case to the DES or the granting of a medical retirement is warranted.

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, military record, and regulatory guidance. Documentation available for review does not reveal sufficient in-service evidence that the applicant had a diagnosis of a duty-related or medically disqualifying condition that would be qualifying for referral to the DES for consideration of a physical disability retirement in lieu of transfer to the Retired Reserve. After due consideration of the applicant’s 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 a referral of his case to the DES consideration of a physical disability retirement in lieu of transfer to the Retired Reserve is not warranted.

2/26/2024

X

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 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 (Discharge Review Board (DRB) Procedures and Standards) and Army Regulation 635-40 (Disability 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 a Medical Evaluation Board (MEB); when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an Military Occupational Specialty (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 Physical Evaluation Board (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 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.

a. 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. 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.

3. Army Regulation 40-501 provides information on medical fitness standards for induction, enlistment, appointment, retention, and related policies and procedures. Soldiers with conditions listed in chapter 3 who do not meet the required medical standards will be evaluated by an MEB and will be referred to a PEB as defined in Army Regulation 635-40 with the following caveats:

a. U.S. Army Reserve (USAR) or Army National Guard (ARNG) Soldiers not on active duty, whose medical condition was not incurred or aggravated during an active duty period, will be processed in accordance with chapter 9 and chapter 10 of this regulation.

b. Reserve Component Soldiers pending separation for In the Line of Duty injuries or illnesses will be processed in accordance with Army Regulation 40-400 (Patient Administration) and Army Regulation 635-40.

c. Normally, Reserve Component Soldiers who do not meet the fitness standards set by chapter 3 will be transferred to the Retired Reserve per Army Regulation 140-10 (USAR Assignments, Attachments, Details, and Transfers) or discharged from the Reserve Component per Army Regulation 135-175 (Separation of Officers), Army Regulation 135-178 (ARNG and Reserve Enlisted Administrative Separations), or other

applicable Reserve Component regulation. They will be transferred to the Retired Reserve only if eligible and if they apply for it.

d. Reserve Component Soldiers who do not meet medical retention standards may request continuance in an active USAR status. In such cases, a medical impairment incurred in either military or civilian status will be acceptable; it need not have been incurred only in the line of duty. Reserve Component Soldiers with non-duty related medical conditions who are pending separation for not meeting the medical retention standards of chapter 3 may request referral to a PEB for a determination of fitness in accordance with paragraph 9–12.

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 percent. 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 percent.

5. Title 10, U.S. Code, section 1556 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 Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//