

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 January 2023

DOCKET NUMBER: AR20230003833

APPLICANT REQUESTS:

- referral of his medical records to the Physical Disability Evaluation System (PDES) for a final determination of medical fitness for retention
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 3349-SG (Physical Profile Record)
- email from a Physical Evaluation Board (PEB) Liaison Officer (PEBLO), dated 9 June 2022, subject: Medical Board Notification
- 5 pages of medical records
- Statement of Understanding and Election of Options – Acknowledgement of Notification of Medical Unfitness for Retention, dated 21 March 2023

FACTS:

1. The applicant states:

a. He believes he selected the wrong option, option B (reassignment to the Retired Reserve – 15 but less than 20 qualifying years) on his election of options form. He was not informed or advised correctly, so he chose the wrong option. He would like the form corrected to show option D (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) and Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation). At the time, he was filling out the paper for a medical board, not early retirement. He would like to change his option in order to continue his service in the U.S. Army Reserve (USAR).

b. Currently he has 21 years of total service but only 17 qualifying years for non-regular retirement. He would like to continue to serve his country in the USAR. He likes serving his country and being a member of the USAR. His diabetes condition is under control with medication and the condition does not affect the performance of his duties.

2. The applicant enlisted in the Army National Guard (ARNG) on 25 July 2001. He was discharged from the ARNG and transferred to the USAR on 24 July 2007. He again enlisted in the ARNG on 30 December 2008 and was discharged from the ARNG and transferred to the USAR on 7 August 2009.

3. A DA Form 3349-SG shows that on 20 May 2022, the applicant was issued a permanent physical profile due to diabetes mellitus (oral medication – well controlled). The form contains in section 5 (Medical Instructions to Unit Commander) the following entry:

Soldier will have geographic deployment limitations. The Soldier may have an elevated risk of heat injury in environments where access to water is rationed, restricted or the working environment temperature exceeds 90F. The Soldier must have a duty schedule that permits regularly scheduled meals, self-care, adequate handwashing, and the taking of snacks as needed. Separate rations are authorized for routine consumption. Disruptions in the meal schedule or snack access may impair judgment and result in a loss of coordination. Duties that would have increased risk would include fall risks or working on moving machinery.

4. The applicant provided an email he received on 9 June 2002 from his PEBLO informing him that his physician indicated he was required to be evaluated by a medical board. He was also informed he was required to attend a Medical Evaluation Board (MEB) briefing and a briefing provided by the Office of the Staff Judge Advocate.

5. The applicant's medical evaluation proceedings are not available.

6. On 2 August 2023, the applicant was issued a Notification of Eligibility for Retired Pay at Age 60 (15-Year Letter). The letter informed him that as a member of the Selected Reserve who has been medically disqualified from further service, and has attained at least 15 years but less than 20 years of qualifying service, he is eligible to apply for retired pay and benefits upon attaining age 60.

7. Orders issued on 26 September 2023, directed the applicant's assignment to the USAR Retired Reserve, effective 13 October 2023, by reason of retirement – voluntary. The orders show he was credited with 17 years of qualifying service for retirement.

8. The applicant provided medical records showing he was diagnosed with diabetes mellitus (onset 23 September 2022) and hyperlipidemia (onset 31 October 2022). He also provided a Statement of Understanding and Election of Options – Acknowledgement of Notification of Medical Unfitness for Retention, dated 21 March 2023, in which he elected referral to the PDES for a final determination of his medical fitness for retention (option D).

9. 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/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 a reversal of his election to transfer to the retired reserves and reinstatement into the USAR for the purpose of entering the DES for a non-duty related physical evaluation board (NDR PEB). He states:

"I believe I have selected the wrong option, OPTION B on my 5980. I was not informed or advised correctly, so chose the wrong option. I would like to be corrected to option D, 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 AR635-40, Chapter 4. At the time I was filling out the paper for Med Board, not early retirement. I would like to change my answer to continue my service in the US Army Reserves .

c. The Record of Proceedings outlines the applicant's military service and the circumstances of the case. Orders on 26 September 2023 show he was to be transferred to the Retired Reserve effective 13 October 2023. It states the reason as "Retirement - Voluntary."

d. On 20 May 2022, the applicant was placed on a duty limiting permanent physical profile for "Diabetes Mellitus – Oral Medication (Well Controlled)."

e. A 21 November 2022 memorandum from the Army Reserve Medical Management Center informed him of the medical disqualification and listed his four options:

"(1) In order to elect Option A: Army Reserve Military Retirement, you must have twenty (20) or more credible years of service. This is NOT a Medical Retirement and any benefits eligible to you will be received at age 60 - minus qualified Active-Duty years after 2008. Reference the Reduced Retirement Age HRC Memo enclosure.

(2) In order to qualify for Option B: Early Army Reserve Military Retirement, you must have fifteen (15), but less than twenty (20), credible years of service. This is NOT a Medical Retirement and any benefits eligible to you will be received at

age 60 minus qualified Active-Duty years after year 2008. Reference the Reduced Retirement Age HRC Memo enclosure.

(3) Final discharge under election Option C: Honorable Discharge, is available in the event you have less than fifteen (15) credible years of service.

(4) Finally, election Option D: PDES, is also commonly referred to as the Non-Duty Physical Evaluation Board (NDPEB). This is NOT a Medical Evaluation Board (MEB). The main purpose of this election is for a board to make a final determination of your medical fitness for retention and/or separation. The NDPEB does not make any determination of benefits of any kind.”

f. On 19 December 2022, the applicant election option B:

ACH **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). 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 15 to 20 creditable years.
2. DA Form 4651 request for Reserve Component Assignment or Attachment.
3. DA Form 4856 from Commander.
4. DA Form 4856 from Retention NCO.
5. DA Form 4187 requesting early retirement.]

g. The applicant was not transferred to the Retired Reserve for almost 10 months after his voluntary election.

h. It is opinion of the ARBA Medical Advisor that his voluntary transfer to the Retired Reserve was appropriate and that a referral of his case to the Disability Evaluation System is not warranted.

i. **** Note **** - The applicant’s Notification of Disqualification and his Elections were both uploaded into ACTS as additional evidence.

BOARD DISCUSSION:

1. The applicant's request for a personal appearance hearing 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 hearing 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. The applicant contends he was not properly counseled and, as a result,

selected the wrong option on his 5980. Documentation available for review shows the applicant was afforded proper evaluation and attendance at a legal brief, IDES briefing and a mandatory MEB and JAG briefing. A Statement of Understanding and Election of Options acknowledgement shows the applicant's initials attesting to his understanding of the statements and reflects he selected Option D, a request for referral to the PDES for final determination of his fitness for determination. After due consideration of the case the Board determined the evidence presented insufficient to warrant a recommendation for 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.

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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 40-501 provides information on medical fitness standards for induction, enlistment, appointment, retention, and related policies and procedures. Chapter 3 gives the various medical conditions and physical defects which may render a Soldier unfit for further military service and which fall below the standards required. These medical conditions and physical defects, individually or in combination, are those that:

- a. Significantly limit or interfere with the Soldier's performance of their duties.

b. May compromise or aggravate the Soldier's health or well-being if they were to remain in the military Service. This may involve dependence on certain medications, appliances, severe dietary restrictions, or frequent special treatments, or a requirement for frequent clinical monitoring.

c. May compromise the health or well-being of other Soldiers.

d. May prejudice the best interests of the Government if the individual were to remain in the military Service.

2. Army Regulation 40-501, also states in:

a. Paragraph 9-10, normally, Reservists who do not meet the fitness standards set by chapter 3 will be transferred to the Retired Reserve or discharged from the USAR. They will be transferred to the Retired Reserve only if eligible and if they apply for it. Reservists who do not meet medical retention standards may request continuance in 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. Reservists 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.

b. Paragraph 9-12, Reserve Component (RC) Soldiers with non-duty related medical conditions who are pending separation for failing to meet the medical retention standards of chapter 3 of this regulation are eligible to request referral to a PEB for a determination of fitness. Because these are cases of RC Soldiers with nonduty related medical conditions, MEBs are not required, and cases are not sent through the PEBLOs at the medical treatment facilities. Once a Soldier requests in writing that his or her case be reviewed by a PEB for a fitness determination, the case will be forwarded to the PEB and will include the results of a medical evaluation that provides a clear description of the medical condition(s) that cause the Soldier not to meet medical retention standards.

3. Army Regulation 635-40, paragraph 4-34 (RC non-duty related process) states the RC non-duty related process is established by policy. It affords RC Soldiers not on call to active duty of more than 30 days and who are pending separation by the RC for non-duty related medical conditions to enter the DES for a determination of fitness and whether the condition is duty related. A line of duty (LOD) investigation resulting in a finding of not in LOD is not required when it is clear that the disqualifying disability is non-duty related. Referral to the RC non-duty related process is upon the request of the RC Soldier. If the Soldier does not request referral, they are subject to separation for medical disqualification under RC regulations.

4. Army Regulation 635-40, chapter 5, section I (Policies for Determining Fitness and Permanence and Stability of Unfitting Conditions) states that in making a determination of unfitness, the following criteria may be included in the assessment:

a. The medical condition represents a decided medical risk to the health of the Soldier or to the welfare of other Soldiers were the Soldier to continue on active duty or in an active Reserve status.

b. The medical condition imposes unreasonable requirements on the Army to maintain or protect the Soldier.

c. The Soldier's established duties during any remaining period of Reserve obligation.

5. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)) provides Department of the Army policy, criteria, and administrative instructions regarding an applicant's request for the correction of a military record. Paragraph 2-11 states 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.

6. 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 Army Board for Correction of Military Records (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//