

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 July 2024

DOCKET NUMBER: AR20230004178

APPLICANT REQUESTS: removal of an alleged hearing test conducted on 25 October 1985. Also, a 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)
- Applicant affidavit

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 this error has caused an injustice in pursuing benefits for hearing loss sustained during active military duty. Upon receipt and review of records to pursue disability benefits, an error in his medical records was found requiring correction since it created an injustice. He had no idea there were any errors until he received said records. In an affidavit by the applicant, he stated:
 - a. He received a medical discharge due to 'bilateral tibial stress periostitis', as confirmed by his DD Form 214 (Certificate of Release or Discharge from Active Duty) and service records.
 - b. His record contains a manifest error, specifically, with regards to an alleged hearing test conducted on 25 October 1985. He never had a hearing test on this date.
 - c. He developed serious anxiety and post-traumatic stress disorder to have anything placed over his ears and/or upon his face and head due to the traumatic events (i.e., gas chamber event, ear drum punctured by medical personnel) sustained earlier in his military service.

d. He had only one hearing test completed in his military career, conducted at Military Entrance Processing Station in Detroit, Michigan on 21 February 1984, as part of the delayed entry program.

3. The applicant enlisted in the Regular Army on 2 May 1984.

4. Standard Form 88 (Report of Medical Examination) shows on 25 October 1985, an examination was conducted for the purpose of a medical evaluation board. The form shows in item 70 (Hearing) and item 71 (Audiometer) a hearing test was also conducted during the examination.

5. On 20 December 1985, a Physical Evaluation Board (PEB) convened. He was rated 10 percent for bilateral tibial stress periostitis. The PEB recommended he be separated from the service with severance pay with a combined rating of 10 percent.

6. On 24 February 1986, he was discharged from the Army under the provisions of Army Regulation (AR) 635-40 (Physical Evaluation for Retention, Retirements, or Separation), paragraph 4-24e (3), due to physical disability with severance pay. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 1 year, 9 months, and 4 days net active service this period.

7. By regulation, AR 15-185 (ABCMR) 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.

8. 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 removal of a hearing test (audiogram) from his medical record.

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 May 1984 and was discharged with \$3,140.40 of disability severance pay on 24 February 1986 under provisions in

paragraph 4-24e(3) of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (13 December 1985).

d. While audiogram results were reported on his medical evaluation board Report of Medical Examination, no audiogram per se was found in the supporting documentation.

e. The Privacy Rule, part of the Health Insurance Portability and Accountability Act (HIPAA), gives patients, with few exceptions, the right to inspect, review, and receive a copy of their medical records and billing records that are held by health plans and health care providers covered by the Privacy Rule. This includes the ability to request corrections or amendments to these records when a patient believes information in their medical or billing record is incorrect.

f. The Privacy Rule provides individuals with this right to have their protected health information (PHI) amended in a manner that is fully consistent with the Correction Principle in the Privacy and Security Framework (See 45 C.F.R. § 164.526). The health care provider or health plan must respond to this request, and if it created the information, it must amend inaccurate or incomplete information. If the provider or plan does not agree to the request, the patient has the right to submit a statement of disagreement that the provider or plan must add to the record.

g. It is the opinion of the ARBA Medical Advisor there is no action for the Board to take.

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 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 review of the applicant's petition, available military records and medical review, the Board concurred with the advising official finding there is no action for the Board to take. The opine noted, the applicant has the right to submit a statement of disagreement that the provider or plan must add to the record. The Board determined there is insufficient evidence to support the applicant's contentions for removal of an alleged hearing test conducted on 25 October 1985. Therefore, the Board denied relief.

2. This board is not an investigative body. The Board determined despite the absence of the applicant's records, they agreed the burden of proof rest on the applicant, however, he did not provide any supporting documentation and his service record has insufficient evidence to support the removal of his alleged hearing test.

3. 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.

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 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.

[REDACTED]

[REDACTED]

[REDACTED]

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 (AR) 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 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.

3. AR 40-66 (Medical Record Administration and Healthcare Documentation) prescribes policies for preparing and using medical reports and records for Soldiers receiving medical treatment or evaluation in an Army military treatment facility.

a. Paragraph 1-6 pertains to medical record ownership. It states Army medical records are the property of the Government. Thus, the same controls that apply to other Government documents apply to Army medical records. Army medical records, other than those of Reserve Components, will remain in the custody of the Medical Treatment Facilities at all times. Reserve Component records will remain in the custody of the appointed Service Treatment Record custodian. The Armed Forces Health Longitudinal Technology Application (AHLTA) record will remain in the custody of the U.S. Army Medical Department (AMEDD) and Department of Defense via electronic storage, and hardcopy of the treatment records will be retired to the National Personnel Records Center in accordance with the records dispositions schedule in Army Regulation 25-400-2 (The Army Records Information Management System (ARIMS)).

b. Chapter 3 (Preparation of Medical Records) states that unless authorized by this regulation, only documents prepared by authorized AMEDD personnel will be filed in Army medical records. This restriction does not prohibit the use of other documents created by attending physicians and dentists outside AMEDD (Navy, Air Force, civilian, and so forth) or the filing of other documents as summaries or brief extracts. If such documents are filed, their source and the physician or dentist under whom they were prepared must be identified.

c. Medical record entries will be made in all inpatient, outpatient, service treatment, dental, Army Substance Abuse Program, and occupational health records by the healthcare provider who observes, treats, or cares for the patient at the time of observation, treatment or care. No healthcare practitioner is permitted to complete the documentation for a medical record on a patient unfamiliar to him or her. In unusual

extenuating circumstances (for example, death of a provider), local policy will ensure that all means have been exhausted to complete the record.

4. AR 600-8-104 (Army Military Human Resource Records (AMHRR) Management) prescribes Army policy for the creation, utilization, administration, maintenance, and disposition of the AMHRR or the Official Military Personnel File (OMPF), which is reflective of a Soldier's permanent record stored in the Interactive Personnel Electronic Records Management System (iPERMS).

a. Appendix B-1 (AMHRR Required Documents) lists documents required for filing in the AMHRR and/or iPERMS.

b. Documents required for filing in the OMPF include those in the following folders: Performance, Service, Restricted, Flight, Medical, State/territory and in the AMHRR additional folders in iPERMS, which include the following primary folders: Department of the Army photograph, Combat-Related Special Compensation (CRSC)/Traumatic Servicemember's Group Life Insurance (TSGLI), Finance, Finance restricted, Deployment/mobilization, Administrative, Personnel records review, and Finance records review.

c. Within the OMPF Service Folder, the document named "APPRSEPS" with the document title, "Case Files for Approved Separations" is a required document for filing within the AMHRR/OMPF.

d. A document properly filed in the AMHRR is considered to be permanently filed and cannot be removed unless it meets the criteria in paragraph 3-7 of this regulation, wherein Soldiers and Human Resource Managers conduct an annual review of Soldiers' personnel and finance records using the record review tool in iPERMS to upload required documents and update entries on the record brief.

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//