

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 December 2023

DOCKET NUMBER: AR20230004414

APPLICANT REQUESTS: Correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show he was medically retired in lieu of honorably discharged under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), chapter 4, due to completion of required active service. He also requests a personal appearance with the Board, via a video or telephone conference call.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214
- Department of Veterans Affairs (VA) Rating Decision
- Automated Neuropsychological Assessment Metrics (ANAM) Performance Report

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, in effect, he is being compensated by the VA for injuries he sustained jumping out of an aircraft when his parachute did not open properly. He sustained post-traumatic stress disorder (PTSD) and a traumatic brain injury (TBI). He requests an amendment of his DD Form 214 to show he was medically retired due to his injuries.
3. The available evidence shows the applicant completed a period of active service from 19 February to 11 April 2013 (1 month and 23 days). This period of service is characterized by the VA as under honorable conditions in a VA Rating Decision. The complete details and discharge documents for this period of service are unavailable.

4. DD Form 2807-2 (Medical Prescreen of Medical History Report) completed on 2 October 2013, shows in item

a. 2a (Have you ever had or do you now have)

- (26) the applicant was discharged from military service for medical reasons – Yes
- (41) broken bone requiring surgery to repair – Yes
- (59) cracked bone or fracture - Yes

b. 2b (Explain all “YES” answers to questions (1) – (75) above)

- (26) Failed medical/physical/procurement standards; applicant had left ankle fracture while in basic training and sent home to recover
- (41) Age 14, Orthopedic and sports medicine, Windsor, NY, broke 4th metacarpal on right hand; no pins, plates, or screws
- (59) left ankle fracture; had physical therapy and had to wear a cast for 2 months; no issues

5. DD Form 2808 (Report of Medical Examination) completed on 21 November 2013, shows a PULHES of 1-1-3P-1-1-1 was assigned. He was qualified for service. Item 86 shows a waiver was granted.

A physical profile, as reflected on the applicant's Clinical Record is derived using six body systems: "P" = physical capacity or stamina; "U" = upper extremities; "L" = lower extremities; "H" = hearing; "E" = eyes; and "S" = psychiatric (abbreviated as PULHES). Each body system has a numerical designation: 1 meaning 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.

6. A Clinical Record, dated 5 January 2014, shows there was a request for a dual waiver of reenlistment eligibility (RE) code for medical reasons and a permanent medical disqualification was reviewed and approved. Additionally, this document shows:

- Enter Recommended Comment: Waiver is approved
- Medical Fail Reason: 34
- DD2808 PULHES: 113111
- ICD-9 Codes: 719.43
- Waiver Approved PULHES: 111111

7. On 19 February 2014, the applicant enlisted in the Regular Army, for a period of 3 years, in pay grade E-1. He held military occupational specialty (MOS) 11B (Infantryman). His enlisted record brief shows he was assigned to Fort Benning, GA, from 19 February to 19 July 2014 and to Fort Bragg, NC, from 20 July 2014 to 24 May 2017.

8. A DD Form 214 confirms, on 10 June 2017, he was honorably released from active duty under chapter 4, AR 635-200 (Active Duty Enlisted Administrative Separations), due to completion of required active service and was transferred to the U.S. Army Reserve (Reinforcement), in pay grade E-4. He completed 3 years, 3 months, and 22 days of net active service during this period. He also completed 1 month and 23 days of prior active service. His awards are listed as the National Defense Service Medal, Global War on Terrorism Service Medal, Noncommissioned Officer Professional Development Ribbon, Army Service Ribbon, and Parachutist Badge.

9. On 16 February 2023, the applicant filed a DD Form 2860 (Claim for Combat-Related Special Compensation (CRSC)). This document shows while assigned to Delta Company, 82nd Airborne Division, Fort Bragg, NC, he suffered a TBI. In his own words he described the event surrounding his disability by stating while on a routine combat jump, his plan was to ruck home. Upon exiting the aircraft after about 4 seconds, he looked up and his parachute did not open all the way, he was not slowing down. All he could do was brace for impact. Upon impacting the ground, he was knocked unconscious. The wind got a hold of his partially opened parachute, the risers wrapped around his neck, and dragged him. His captain stopped him from being dragged and performed Cardiopulmonary Resuscitation (CPR) on him. He was rushed the hospital and was told he had suffered a TBI incident.

10. On 23 February 2023, his CRSC Claim was denied. He was advised he must be in a retired status receiving military retirement pay to be eligible for CRSC consideration.

11. The applicant provided:

a. An ANAM Performance Report, dated 3 November 2015, showing he was injured in a fall.

- He was dazed, confused, saw stars, knocked out - 1 to 20 minutes; he did not remember the injury, head injury, concussion symptoms, or other symptoms
- Symptoms right after injury included headaches, nausea/vomiting, sensitivity to bright light and noise, balance problems/dizziness, ringing in the ears, sleep problems, and memory problems

b. A VA Rating Decision, dated 24 January 2022, showing he was granted a combined disability rating of 100 percent (%) for the following service-connected Gulf War conditions:

- PTSD with panic attacks - Non-Combat/Other Stressor Verification, 50% (percent) from 18 February 2021, Confirmed and Continued Evaluation
- Migraine Headaches, Static Disability, 30% from 11 June 2017
- Left Hip Strain, (Flexion), Static Disability, 30% from 20 September 2021
- Right Hip Strain, (Flexion), Static Disability, 30% from 20 September 2021
- Cervical Strain with Myofascial Pain Syndrome with Intervertebral Disc Syndrome (IVDS), Static Disability, 20% from 11 June 2017, Confirmed and Continued Evaluation
- Right Ankle, Lateral Collateral Ligament Sprain, Chronic, Recurrent Associated with Left Ankle Sprain with Osteoarthritis and Laxity Secondary, Static Disability, 20% from 13 September 2021
- Right Hip Strain (Impairment of the Thigh), Static Disability, 10% from 11 June 2017, and 20% from 20 September 2021
- Left Hip Strain (Claimed as Bilateral Hip Condition), Incurred Static Disability, 10% from 11 June 2017, and 20% from 20 September 2021
- Left Knee Patellofemoral Pain Syndrome, Static Disability, 10% from 11 June 2017, and 20% from 20 September 2021
- Right Knee Patellofemoral Pain Syndrome, Static Disability, 10% from 11 June 2017 and 20% from 20 September 2021
- Right Upper Extremity Radiculopathy (Middle and Lower Radicular Group Nerves) Associated with Cervical strain with Myofascial Pain Syndrome with IVDS, Secondary Static Disability, 20% from 4 October 2021
- Left Upper Extremity Radiculopathy (Middle and Lower Radicular Group Nerves) Associated with Cervical strain with Myofascial Pain Syndrome with IVDS, Secondary Static Disability, 20% from 4 October 2021
- Left Ankle Sprain with Osteoarthritis and Laxity, Incurred Static Disability, 10% from 11 June 2017, Confirmed and Continued Evaluation
- Lumbosacral Strain with IVDS, Incurred Static Disability, 10% from 11 June 2017, Confirmed and Continued Evaluation
- Tinnitus, Incurred Static Disability, 10% from 11 June 2017
- Left Knee Instability Associated with Left Knee Patellofemoral Pain Syndrome, Secondary Static Disability, 10% from 20 September 2021
- Right Knee Instability Associated with Left Knee Patellofemoral Pain Syndrome, Secondary Static Disability, 10% from 20 September 2021
- Bilateral Hearing Loss, Incurred Static Disability, 10% from 11 June 2017 and 10% from 20 September 2021
- Left Lower Extremity Radiculopathy (Sciatic Nerve) Associated with Lumbosacral Strain with IVDS, Secondary Static Disability, 10% from 4 October 2021

- Right Lower Extremity Radiculopathy (Sciatic Nerve) Associated with Lumbosacral Strain with IVDS, Secondary Static Disability, 10% from 4 October 2021
- Temporomandibular Disorder (TMD) with Bruxism Associated with PTSD with Panic Attacks, Secondary Static Disability, 10% from 4 October 2021
- Right Hip Strain (Extension), Incurred Static Disability, 0% from 20 September 2021
- Left Hip Strain (Extension), Incurred Static Disability, 0% from 20 September 2021

12. There is no evidence nor did the applicant provide evidence of a permanent physical profile that led to a Medical Evaluation Board. The applicant's submissions were provided to the Board in their entirety.

13. 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.

14. 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.

15. Title 38, U.S. Code, 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.

16. AR 40-501 (Standards of Medical Fitness) states Soldiers with conditions listed in Chapter 3, who do not meet the required medical standards will be evaluated by a medical evaluation board (MEB). Possession of one or more of the conditions listed in this chapter does not mean automatic retirement or separation from service. Physicians are responsible for referring Soldiers with conditions listed in Chapter 3 to an MEB.

17. AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation), states 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.

18. AR 635-200 states a Soldier will be separated upon expiration of enlistment or fulfillment of service obligation. Personnel who are physically unfit for retention (see AR 40–501, chapter 3) but who were accepted for, or continued in, military service per AR 635–40, will not be separated because of expiration term of service (ETS) unless processing for separation because of physical disability is waived.

19. 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, his previous ABCMR denial, 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 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). On his DD Form 149, he notes that PTSD and TBI are conditions related to his request. He states:

“I was medically discharged from the ARMY due to my injuries from jumping out of an aircraft and my parachute not opening all of the way.”

c. The Record of Proceedings outlines the circumstances of the case. His DD 214 for the period of Service under consideration shows he entered the Regular Army on 19 February 2014 and was honorably discharged on 10 June 2017 under provisions provided in chapter 4 of AR 635-200 (19 December 2016) after having completed his required active service. It shows no periods of service in a hazardous duty pay area.

d. The EMR show the applicant was brought in a privately owned vehicle to the Womack Army Medical Center (Ft. Bragg) on 23 June 2015 following a parachute landing fall injury:

“Pt [patient] is a 21-year-old male ambulatory to triage with steady gait. Pt states had static jump about 2 hours ago landed and hit head positive LOC [loss of consciousness] with vomiting x 4. Pt is alert and oriented x 3, speaking clear, no acute distress noted. Pt complaining of headache with nausea. Pt states he does not recall incident. Pt ambulating with steady gait.”

e. His evaluation included CT scans of the head and neck which were both negative. The provider documented a normal examination and the applicant was discharged with a diagnosis of “head contusion.”

f. He was evaluated at the Concussion Care Clinic on 15 July 2015 at which time he stated he was having headaches 2-3 times per week. Other than the headaches, the neurological review of symptoms was negative, there were no abnormal findings upon examination, and he was diagnosed with post-concussive headaches.

“POST-TRAUMATIC HEADACHE: No concussion symptoms except occipital headache occurring 2-3 times a week. Is able to PT [physical training] without a headache. Sexual intercourse without headache. Headaches resolve quickly with Naproxen. Encouraged to continue to use Naproxen for headaches as needed. Reviewed headache strategies and discussed headache triggers.

Normal neuro exam and no apparent neurocognitive deficits. Discharged from Concussion Care Clinic. Follow-up with PCM [primary care manager] as needed for headaches. Cleared of TBI ... Released without limitations.”

g. The applicant's other significant issue was left ankle pain due to a fracture he had sustained during basic combat training in his first enlistment. He was evaluated by an orthopedic foot and ankle specialist on 27 September 2016 after which he was diagnosed with left ankle pain and chronic instability. The surgeon noted the applicant was functioning at a “fairly high” level and wanted to complete his tour.

“HISTORY OF PRESENT ILLNESS: The patient is a 22-year-old service member who has a history of left ankle pain and multiple sprains for over 4 years. He states that he first injured his ankle when he was in basic training. He received a discharge from basic training and did physical therapy. He has worn a brace.

He reentered the Army. He has had persistent left ankle pain and sprains. He has been able to do almost all of his MOS [military occupational specialty] duties except run consistently. He did physical therapy while in civilian status. His pain is lateral and sometimes it radiates. It is activity related and relieved by rest. Today, his pain is 1 out of 10.

DIAGNOSES: Left ankle pain and chronic instability.

PLAN: The patient is still at a fairly high functional level right now and he wants to complete his tour. He said his only limitation now is with running. He can still perform airborne operations. I prescribed a brace for him, TriLok type, and also a physical therapy referral. I think he could benefit from therapy focusing on strengthening the left peroneus brevis. If his symptoms do not improve in 6 weeks, then he should follow up with me and consider more advanced imaging studies and further evaluation.”

h. The applicant completed a Periodic Health Assessment on 15 March 2017. Other than his left ankle pain, the applicant denied any additional current physical or mental health issues. He was released without limitations.

i. He underwent his pre-separation examination on 18 April 2017: "SM [service member] complains of chronic left ankle and is getting treated with physical therapy and currently on profile. SM denies any other medical complaints at this time." No additional medical issues were identified and he was cleared to separate from the Army.

j. No mental health specific encounters were identified.

k. There is no evidence the applicant had any duty incurred medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his voluntary separation. 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 his office, grade, rank, or rating prior to his voluntary separation.

l. Review of his records in JLV shows he has been awarded multiple VA service-connected disability ratings, including PTSD 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. 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.

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

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. Evidence of record shows that the applicant completed a Periodic Health

Assessment on 15 March 2017. Other than his left ankle pain, the applicant denied any additional current physical or mental health issues and released without limitations. Evidence further shows the applicant denied any other additional medical concerns. In the absence of any further identified medical issues, he was cleared to separate from the Army. After due consideration the request, the Board agreed that in the absence of a duty incurred medical condition that would have failed medical retentions standards in accordance with applicable regulatory guidance, there is no basis for a referral to the Disability Evaluation System. The Board further agreed that the evidence did not support the applicant's contention that he was unable to reasonably perform the duties of his office, grade, rank, or rating prior to his voluntary separation. After due consideration of the case, the Board determined the evidence presented did 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.



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. In pertinent part, it states that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR will decide cases based on the evidence of record.
3. AR 635-40 (Disability Evaluation for Retention, Retirement, or Separation), in effect at the time, established the Army Physical Disability Evaluation System according to the provisions of Title 10, USC, Chapter 61, Retirement or Separation for Physical Disability, and Department of Defense Directive 1332.18 (Disability Evaluation System). It set 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. When a member is being processed for separation for reasons other than physical disability (e.g., retirement, resignation, reduction in force, relief from active duty, administrative separation, discharge, etc.), continued performance of assigned duty (until he or she is referred to the Army Physical Disability Evaluation System for evaluation) creates a presumption that the member is fit for duty. The presumption of fitness may be overcome if the evidence establishes that:

(1) The Soldier was, in fact, physically unable to perform adequately the duties of his or her office, grade, rank or rating for a period of time because of disability. There must be a causative relationship between the less than adequate duty performance and the unfitting medical condition or conditions.

(2) An acute, grave illness or injury or other significant deterioration of the Soldier's physical condition occurred immediately prior to, or coincident with processing for separation or retirement for reasons other than physical disability and which rendered the Soldier unfit for further duty.

c. 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.

4. Title 10, U.S. Code, Section 1201, provides for the physical disability retirement of a service member who has at least 20 years of service or a disability rating of at least 30%. 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%.

5. AR 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel. Chapter 4 states a Soldier will be separated upon expiration of enlistment or fulfillment of service obligation. Personnel who are physically unfit for retention (see AR 40-501, chapter 3) but who were accepted for, or continued in, military service per AR 635-40, will not be separated because of ETS unless processing for separation because of physical disability is waived.

6. Title 38, U.S. Code, Section 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.

7. Title 38, U.S. Code, Section 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.

8. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD, traumatic brain injury, sexual assault, or sexual harassment. Boards are to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based, in whole or in part, on those conditions or experiences.

9. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NRs) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds. This guidance does not mandate relief, but rather provides standards and principles to guide BCM/NRs in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

//NOTHING FOLLOWS//