

5. The applicant's available records contain Special Orders Number 223, issued by the U.S. Army Transition Station, Fort Sheridan, IL, on 10 November 1958, directing his release from assignment, not by reason of physical disability, and his transfer to the U.S. Army Reserve Control Group (Annual Training or Reinforcement) effective 10 November 1958. The orders show the authority for his released from assignment as Army Regulation 635-200 (Personnel Separations – General Provisions for Discharge and Release), SPN (separation program number) 201 (expiration of term of service (ETS)).

6. The applicant's Certification of Military Service shows he was honorably released from active duty on 10 November 1958 in the rank of private first class.

7. The applicant provided a letter from the NPRC informing him the NPRC has no authority to review or approve amendments or corrections of military records and that they were forwarding his DD Form 149 to the Army Review Boards Agency (ARBA).

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 health care and benefits, likely from the Department of Veterans Affairs. He states he sustained burns and a left leg injury while in Service and:

“Records have been lost or destroyed. Service member was denied treatment for over 50 years.”

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His Certification of Military Service certificate shows he entered the Regular Army on 2 November 1956 and was honorably released from active duty on 10 November 1958 under the provisions provided in chapter AR 635-200, Personnel Separations – General Provisions for Discharge and Release (14 January 1958). The separation program number of 201 denotes expiration of term of service.

d. No medical documentation was submitted with the application or in the supporting documentation.

e. Review of the applicant's records in JLV show he is not service connected but has been receiving care through the Veterans Hospital Administration since October 2022.

f. Based on the information currently available, it is the opinion of the ARBA medical advisor that no change be made to the applicant's service record. As the Veterans Benefits Administration operates under authority granted by Congress to the Department of Veterans Affairs (Title 38), its activities are executed under a different set of laws than those of the Department of Defense and the Military Services (Title 10). The, the ABCMR under 10 USC § 1552, has no authority over or the ability to direct actions of the Department of Veterans Affairs.

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. The Board noted that the applicant's complete record is not available for review and that he receives care from the Veterans Hospital Administration. The Board further noted that documentation available for review does not show supporting medical documentation provided with the application or in the supporting documentation. After due consideration of the applicant's request, the Board found in the absence of authorizing regulatory or statutory guidance, the evidence presented is insufficient to warrant a recommendation for relief.

3. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation) establishes the Physical Disability Evaluation System (PDES) 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 or her office, grade, rank, or rating. It provides that a Medical Evaluation Board is convened to document a Soldier's medical status and duty limitations insofar as duty is affected by the Soldier's status. A decision is made as to the Soldier's medical qualifications for retention based on the criteria in Army Regulation 40-501.

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 service.

b. The mere presence of impairment does not of itself justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the member reasonably may be expected to perform because of his or her office, rank, grade, or rating. The Army must find that a service member is physically unfit to reasonably perform his or her duties and assign an appropriate disability rating before he or she can be medically retired or separated.

c. When a member is being processed for separation for reasons other than physical disability (e.g., retirement, resignation, relief from active duty, administrative separation, ETS, etc.), his or her continued performance of duty, until he or she is referred to the PDES for evaluation for separation for reasons indicated above, creates a presumption that the member is fit for duty.

4. Army Regulation 15-185 (ABCMR) provides Department of the Army policy, criteria, and administrative instructions regarding an applicant's request for the correction of a military record. Paragraph 2-9 states 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 evidence.

5. 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 ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//