

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 February 2024

DOCKET NUMBER: AR20230004517

APPLICANT REQUESTS:

- issuance of a DD Form 214 (Certificate of Release or Discharge from Active Duty) for his period of active service while in the Disability Evaluation System
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 214 for the period 9 November 2005 to 30 March 2006
- DA Form 3947 (Medical Evaluation Board (MEB) Proceedings)
- 81st Regional Support Command Orders Number 140229, 22 July 2009 (active duty orders)
- DA Form 199 (Physical Evaluation Board (PEB) Proceedings)
- memorandum, subject: Request for Retention on Active Duty for Processing of MEB/PEB for (applicant), 1 September 2009
- Headquarters (HQ), 412th Engineer Command Orders Number 09-336-0003, 2 December 2009
- HQ, 412th Engineer Command Orders Number 09-337-0003, 3 December 2009
- Defense Finance and Accounting Service (DFAS) Summary of Retired Pay Account
- letter from the U.S. Army Human Resources Command (AHRC)

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 he was on active duty as a Reservist when he suffered a career ending disability. His unit placed him on incapacitation pay orders to cover the loss of

his civilian income. The entire ordeal lasted over two years and ended up with an MEB and PEB. The PEB found him unfit due to service-connected conditions. He was subsequently issued orders keeping him on active duty until his medical retirement. After his retirement and rehabilitation, he went back to school using the Post 911 GI Bill benefits. He still has time available but after he applied, the VA stated that he is only eligible for 50% of the benefit because his DD Form 214, as reported to them by the Army Personnel Department, does not indicate a medical retirement. He provided them a copy of his DA Form 199, but he was told that it was not acceptable and only a DD Form 215 (Correction to DD Form 214) was acceptable.

3. The applicant's DA Form 2A (Personnel Qualification Record) shows he enlisted in the U.S. Army Reserve on 1 November 2005.
4. The applicant entered initial active duty for training (IADT) on 9 November 2005 and completed required training for award of military occupational specialty, Crane Operator. He was honorably released from ADT 30 March 2006 and transferred back to his Reserve unit. His DD Form 214 for this period shows he completed 4 months and 22 days of active eservice.
5. On 20 June 2009, an MEB recommended the applicant's referral to a PEB due to medical conditions that did not meet retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness).
6. On 22 July 2009, 81st Regional Support Command, published Orders Number 140229, ordering the applicant to active duty training for 73 days with a reporting date of 20 July 2009. He would be attached to the 412th ADT Operational Training
7. According to the applicant's DA Form 5016 (Chronological Statement of Retirement Points) he entered active duty for training on 20 July 2009.
- 8 On 13 August 2009, an informal PEB found the applicant unfit for further military service and recommended his permanent disability retirement.
9. On 1 September 2009, the PEB Liaison Officer (PEBLO) requested the applicant's retention on active duty for the purpose of MEB/PEB processing. The reason for the request was that the applicant's ETS (expiration of term of service) was 30 September 2009. For medical processing, his expected date/release of medical care or for MEB/PEB processing is 30 December 2009.
10. HQ, 412th Engineer Command Orders Number 09-336-00003, dated 2 December 2009, as amended by HQ, 412th Engineer Command Orders Number 09-337-00003, dated 3 December 2009, directed the applicant's reassignment to the Retired Reserve,

effective 15 December 2009, by reason of medically disqualified for active duty as a result of service connected disability.

11. The applicant's DA Form 5016 shows he completed 3 years, 1 month, and 15 days of qualifying service for non-regular retirement. There were no active duty points between

BEGINNING DATE YR MO DAY (1)	ENDING DATE YR MO DAY (2)	MILITARY PERSONNEL CLASS (3)	STATUS OR COMPONENT (4)	INACTIVE DUTY POINTS (5)	EXTENSION COURSE POINTS (6)	MEMBERSHIP POINTS (7)	ACTIVE DUTY POINTS (8)	QUALIFYING FOR RETIREMENT YRS MO DAYS (9)	TOTAL POINTS CREDITABLE (10)
[REDACTED]									

12. The applicant provided:

- a. His DFAS Summary of Retired Pay Account showing his date of physical disability retirement as 15 December 2009.
- b. A letter from AHRC pertaining to his request for correction of his DD Form 214.

BOARD DISCUSSION:

1. The Board determined 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 warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.
 - a. The evidence shows the applicant enlisted in the USAR on 1 November 2005. He served on ADT from 9 November 2005 to 30 March 2006 and transferred back to his Reserve unit. Years later, he began experiencing pain due to a line of duty injury. On 20 June 2009, an MEB referred him to a PEB due to medical conditions that did not meet retention standards. Because his injury was in line of duty, he entered the disability system from the U.S. Army Reserve and was found medically unfit.
 - b. While he was in the disability system, his higher headquarters published orders placing him, again on ADT, for 73 days beginning on 20 July 2009. While he was on

ADT, an informal PEB convened on 13 August 2009 and found him unfit. His disposition was determined to be permanent disability retirement. He retired due to disability on 15 December 2009.

c. By regulation, a DD Form 214 is issued to Reserve Component Soldiers separated for cause or physical disability regardless of the length of time served on active duty. The applicant served on active duty from 20 July 2009 to 15 December 2009 and was separated due to disability. Therefore, the Board agreed he should have been issued a DD Form 214 for this period of active duty.

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 is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by issuing the applicant a DD Form 214 covering the period 20 July 2009 to 15 December 2009.

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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. 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 635-5 (Separation Documents), in effect at the time, prescribed the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It established standardized policy for the preparation and distribution of the DD Form 214. It states:

a. The DD Form 214 is a synopsis of the Soldier's most recent period of continuous active service. It provides a brief, clear-cut record of active Army service at the time of release from active duty, retirement, or discharge.

b. A DD Form 214 will be prepared for Reserve Component Soldiers separated for cause or physical disability regardless of the length of time served on active duty.

3. 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 2-11 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.

//NOTHING FOLLOWS//