

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 9 July 2024

DOCKET NUMBER: AR20230004656

APPLICANT REQUESTS: in effect, his NGB Form 22 (National Guard Bureau Report of Separation and Record of Service) Block 23 (Authority and Reason) changed from Medically Unfit for Retention per Army Regulation (AR) 40-501(Medical Services- Standards of Medical Fitness), Chapter 3 (Medical Fitness Standards for Retention and Separation, Including Retirement) to something else.

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

- DD Form 149 (Application for Correction of Military Record)
- VA Form 21-10210 (Lay/Witness Statement)
- VA Form 20-0995 (Decision Review Request: Supplemental Claim)
- NGB Form 22 (National Guard Bureau - Report of Separation and Record of Service)

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 his NGB Form 22 states that he was medically unfit for retention per AR 40-501, Chapter 3. He was put out of the Army because of an injury to his knee while preparing for deployment at Fort Hood, TX. Veterans Affairs (VA) will not consider him for benefits, because he was told that he did not complete his six-year term. He would have completed his six-year obligation if he was not discharged honorably for the injury he received. He is requesting that his reason for discharge be changed.

3. The applicant provides:

a. VA Form 21-10210 in which he stated to VA his claim was denied because he did not go to his compensation & pension exam. His car broke down on his way to the exam, and he had no other way to get there. He now has reliable transportation and is willing to attend any appointments the VA schedules for him.

(1) The doctor that examined him must have thought he was just trying to get out of the deployment, because he (the doctor) wrote statements that just were not accurate. He did have a knee injury as a child, but it was not as serious as it was described. He just needed 4 or 5 stitches, and it healed fine.

(2) He passed his entrance military physical with no issues. He was able to complete basic training and advanced individual training (AIT) with no problems, even though he did intense physical training (PT) every day, including a 12-mile ruck march just before graduation from basic. In fact, he got recognized for completing the 2-mile run in under 12 minutes at AIT. He has never had a problem with his knee until he got to Fort Hood. While he was preparing to deploy, he had to do PT on uneven ground, and his knee started hurting. Clearly, this condition was aggravated beyond its natural progression by military service.

(3) Ever since this incident, he has had pain in his left knee that limits his range of motion and his ability to walk, stand, drive, climb stairs, etc. Please schedule any necessary exams to support his claim and grant service connection as soon as possible.

b. VA Form 20-0995 showing he filed a supplemental claim for compensation on 2 September 2022, for left knee condition.

4. The applicant underwent a medical examination for the purpose of enlistment on 25 September 2001. He was found qualified for enlistment. He denied any serious illness or injuries. He stated he was in good health.

5. The applicant enlisted in the Louisiana Army National Guard (LAARNG) on 25 September 2001.

6. He entered a period of active-duty training (ADT) on 21 October 2001. He was honorably released from ADT on 5 April 2002, after completion of required active service and returned to his LAARNG unit. His DD Form 214 shows he completed 5 months and 15 days net active service this period.

7. DD Form 220 (Active Duty Report) shows he was ordered to active duty by Orders 115-257 dated 24 April 2004 (not available in his records) on 18 May 2004. He was released back to his LAARNG unit on 13 June 2004 after 22 days of service.

8. His available service record is void of the specific facts and circumstances surrounding his discharge action. His NGB Form 22 shows he was honorably released from the LAARNG on 28 January 2005, in accordance with National Guard Regulation (NGR) 600-200 (Enlisted Personnel Management), paragraph 8-26j (1), for being

medically unfit for retention per AR 40-501, chapter 3. He completed 3 years, 4 months, and 4 days net service this period.

9. Orders 041-033, dated 10 February 2005, shows the applicant was discharged from the ARNG on 28 January 2005 under authority NGR 600-200, paragraph 8-26j (1).

10. NGR 600-200, in effect at the time, set forth the basic authority for the personnel management of enlisted personnel of the ARNG. Paragraph 8-26j (1) stated a Soldier would be discharged from the ARNG for being medically unfit for retention standards. It also stated commanders who suspected that a Soldier might not be medically qualified for retention would direct the Soldier to report for a complete medical examination.

11. 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 Department of Veterans Affairs (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.

12. 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 (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 requesting, in essence, a referral to the Disability Evaluation System. He states:

“I was put out {of} the Army because of an injury to my knee while preparing for deployment at Fort Hood in Killeen, Texas.”

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His Report of Separation and Record of Service (NGB Form 22) shows he entered the Army National Guard on 25 September 2001 and received an honorable discharge from the Louisiana Army National Guard (LAARNG) 28 January 2005 under authority provided in paragraph 8-26j(1) of NGR 600-200, Enlisted Personnel Management (1 March 1997): Medically unfit for retention per AR 40-501 (Standards of Medical Fitness).

d. The applicant's pre-entrance Report of Medical History and Report of Medical examination show he was in good health, without significant medical history or conditions.

e. No medical documentation was submitted with the application and there are no encounters in the EMR. Neither the applicant's separation packet nor documentation addressing the medical disqualifying condition(s) was in the supporting documentation or iPERMS.

f. JLV shows he has been awarded several VA service-connected disability ratings in September 2022 and February 2023 related to his knees. However, the DES compensates an individual only for service incurred 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. That role and authority is granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

g. There is no probative evidence the applicant had one or more duty incurred conditions which were the cause of his medical disqualification for further military service. Thus, there is no cause for a referral to the DES.

h. It is the opinion of the Agency Medical Advisor that a referral of his case to the Disability Evaluation System is not warranted.

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 applicant's contentions, the military record, and regulatory guidance were carefully considered. The applicant's service record is void of the specific facts and circumstances surrounding his discharge action. His NGB Form 22 shows he was honorably released from the LAARNG on 28 January 2005, in accordance with NGR 600-200 for being medically unfit for retention per AR 40-501, chapter 3. The Board found no error or injustice in his available separation processing. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewer. The Board concurred with the medical reviewer's finding no probative evidence the applicant had one or more duty incurred conditions which were the cause of his medical disqualification for further military service. Thus, the Board determined there is no cause for a referral to the disability evaluation system.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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.

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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. National Guard Regulation (NGR) 600-200 (Enlisted Personnel Management) prescribes the criteria, policies, processes, procedures and responsibilities to classify; assign; utilize; transfer within and between states; provides Special Duty Assignment Pay; separation; extension/reenlistment, and appoint to and from Command Sergeant

Major, Army National Guard (ARNG) and Army National Guard of the United States (ARNGUS) enlisted Soldiers.

a. The approval authority to separate Soldiers from the State ARNG is the State Adjutant General. The Adjutant General is delegated authority to: Separate Soldiers from Reserve of the Army status, except as noted, and convene administrative separation boards.

b. The separation of a Soldier from the ARNG is a function of state military authorities in accordance with states laws and regulations. However, due to the dual status of the Soldier as a Reserve of the Army, use characterization of and limitations on service descriptions contained in AR 135-178 (Army National Guard and Army Reserve – Separation of Enlisted Personnel), chapter 2, section III in determining the type of separation and character of service to be issued.

c. ARNG Enlisted Soldiers may be discharged for being medically unfit for retention per AR 40-501, chapter 3. Commanders, who suspect that a Soldier may not be medically qualified for retention, will direct the Soldier to report for a complete medical examination per AR 40-501. If the Soldier refuses to report as directed, see paragraph 6-36t below. Commanders who do not recommend retention will request the Soldier's discharge. When medical condition was incurred in line of duty, the procedures of AR 600-8-4 will apply. Discharge will not be ordered while the case is pending final disposition. This paragraph also includes those Soldiers who refuse or are ineligible to reclassify into a new MOS or ineligible for non-regular retirement.

3. Army Regulation (AR) 40-501 (Standards of Medical Fitness) provides that for an individual to be found unfit by reason of physical disability, he or she must be unable to perform the duties of his or her office, grade, rank or rating. Performance of duty despite impairment would be considered presumptive evidence of physical fitness.

4. AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation) states that when a commander or other proper authority believes that a Soldier not on extended active duty is unable to perform the duties of his or her grade or rank because of physical disability, the commander will refer the Soldier for medical evaluation according to AR 40-501. AR 635-40 also states that under the laws governing the Army Physical Disability Evaluation System, Soldiers who sustain or aggravate physically unfitting disabilities must meet several line of duty criteria to be eligible to receive retirement and severance pay benefits. One of the criteria is that the disability must have been incurred or aggravated while the Soldier was entitled to basic pay or was the proximate cause of performing active duty or inactive duty training.

5. AR 135-178, establishes policies, standards, and procedures governing the administrative separation of enlisted members from the Army National Guard of the

United States and the United States Army Reserve. A discharge for the purpose of complete separation from military service terminates the member's statutory military obligation on the effective date of the discharge.

6. Title 38, U.S. Code, sections 1110 and 1131, permits the VA to award compensation for medical conditions incurred in or aggravated by active military service. The VA, however, is not empowered by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual may have a medical condition that is not considered medically unfitting for military service at the time of processing for separation, discharge, or retirement, but that same condition may be sufficient to qualify the individual for VA benefits based on an evaluation by that agency.

7. Section 1556 of Title 10, United States Code, 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//