IN THE CASE OF: [redacted]

BOARD DATE: 14 December 2023

DOCKET NUMBER: AR20230005523

APPLICANT REQUESTS: in effect,

- a medical separation or retirement in lieu of separation for expiration term of service (ETS)
- appearance before the Board via video or telephone

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 29 May 1989
- DD Form 2808 (Report of Medical Examination) page 2
- HTLC-III Antibody Testing Acknowledgement, 16 Mar 1986
- SF 600 (Chronological Record of Medical Care), 3 June 1986
- Narrative Summary, 19 October 1987
- Medical Record Report, 20 October 1987
- History & Physical, 28 September 1988
- Medical Record - Operative Report, 28 September 1988
- DA Form 2173 (Statement of Medical Examination and Duty Status), 28 September 1988
- Pathology Report, 30 September 1988
- Inpatient Treatment Record Cover Sheet, 4 October 1988
- Discharge Summary, 4 October 1988
- [redacted] Medical Center, [redacted], 4 October 1988
- Reference Audiogram, 1 December 1988
- DA Form 3349 (Physical Profile), 23 January 1989
- Department of Veterans Affairs (DVA) letter, 11 February 2023

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 injured on a jump in September 1988. After his injury, he had a vein graft taken out of his right leg to be put in his left arm. He was placed on light duty until his ETS from the service in May 1989. He never went to a medical review board for a medical rating. He was never sent to see a psychiatrist to see how he was feeling. He left the service not as medical but as a regular Soldier. He would like a medical rating from the Army and be discharged as a disabled Soldier. He feels that this correction should be made because, he served his country, and when he was injured with a lot of time left on his enlistment, he was let go without any compensation from the Army. He had to fight like hell with Veterans Affairs because they told him in the beginning that the Army did not give him any rating, so the VA gave him 10%, and made him prove that he deserved more. He always felt bad about the situation and that he could not do anything about it. He has always felt that he was done an injustice, he prays that the Board sees the same.

3. The applicant's service records are not available for review. An exhaustive search was conducted to locate the service records, but they could not be found. The only documents available were the documents provided by the applicant. These documents are sufficient for the Board to conduct a fair and impartial review of this case.

4. The applicant underwent a physical examination on an undisclosed date and was found qualified for service. His PULHES reflects 111111.

> A physical profile is used to classify a Soldier's physical disabilities in terms of six factors or body systems, as follows: "P" (Physical capacity or stamina), "U" (Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric) and is abbreviated as PULHES. Each factor has a numerical designation: 1 indicates 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.

5. The applicant enlisted in the Regular Army on 30 May 1986. He held military occupational specialty 94B (Food Service Specialist).

6. A Medical Record Report shows on 19 October 1987 the applicant was seen for:

a. Chief Complaint and History of Present Illness: This 24-year-old active-duty black male who was referred from outlying dental clinic for evaluation of right mandibular pain secondary to trauma which occurred on 16 October 1987. The patient presented to the emergency on the evening of 16 October 1987 after being hit in the side of the face

multiple times in an altercation. The patient was referred to the [redacted] on 19 October 1987 with mandibular fracture. He was admitted at that time for definitive surgical care of his right mandibular angle fracture.

b. Physical Examination shows significant physical findings are that of mild edema on the right side of his face with abrasions on the right and left sides of his face and right ear and forehead. His neck is supple with normal range of motion. There is some mild subconjunctival ecchymosis of the right eye. Oral examination reveals a mild decreased range of motion with tenderness over the right ramus area. There is a slight open bite and pain upon mastication. Teeth #'s 24 and 25 show fight tips on the incisal edges. The remainder of his physical examination is totally within normal limits.

c. Impression was he was a healthy black male with a right mandibular angle fracture. He was admitted to the [redacted] on 19 October 1987 at which time he underwent history and physical examination and was counseled for the need for surgical treatment of his fracture via closed reduction. On 20 October 1987, the patient was evaluated and counseled by the Anesthesia Service for his general anesthetic procedure and on 20 October 1987 in the main operating room at Womack Army Hospital, the patient underwent closed reduction utilizing maxillomandibular arch bars and maxillomandibular fixation with closed reduction of his fracture without difficulty. The patient tolerated the procedure well and there were no apparent surgical or anesthetic complications. Intraoperatively, the patient received two million units of IV Pen Gone dose only. On the evening following surgery, the patient was doing well, sitting up, and taking oral fluids without difficulty. Over the next several days, the patient continued to show good progress. His occlusion remained stable, his Intermaxillary fixation (IMF) was firm, and he was transferred to the Medical Hold Company where he was followed regularly as an outpatient by the [redacted]. On 15 October 1987, the patient returned to the [redacted]. His maxillomandibular fixation was released and he was able to function within normal limits except some mild decreased range of motion secondary to the immobilization. On return to the clinic on 25 November 1987, the patient showed a good range of motion, occlusion was stable, his maxillomandibular arch bars were removed at that time, and he was then discharged to duty per profile.

d. His diagnosis was right mandibular angle fracture. His procedure was closed reduction utilizing arch bars and maxillomandibular fixation. His disposition was discharged to duty per profile C, D, and U times 30 days in good condition. Diet was regular. Activity was per profile. There were no medications prescribed. He will be followed regularly as an outpatient in the [redacted] Clinic.

7. A Medical Record History and Physical shows the applicant was admitted on 28 September 1988, with a chief complaint of injury to the left arm. He was referred to Womack Army Hospital for arteriography, following an injury to the arm last night. The

patient was hooked up to the static line for a jump from a C-130, when the left arm became entangled as he went to jump, that caused the cord to then wrap around the mid biceps region. The patient did make the jump and landed uneventfully. He was then taken to Womack Hospital, where he was evaluated and admitted for observation overnight. Apparently, the hand function was felt to be intact. Initially he was described as having an ulna, pulse present and radial by doppler. Apparently, it was felt that the hand was otherwise viable. There were no apparent neural problems. The impression was left brachial artery injury, probably secondary to disruption.

8. An Operative Report shows the applicant was admitted on 28 September 1988 for preoperative diagnosis of Thrombosis of the left brachial artery secondary to external trauma and probable intimal disruption. He had reverse saphenous vein interposition graft in the left brachial artery. The operative report details the operation (provided in its entirety for the Board's review).

9. A DA Form 2173 shows on 28 September 1988, the applicant was injured during a static line jump. The injury was to his left arm while participating in jump at Sicily drop zone Fort Bragg, NC. The applicant was injured participating in a jump on 28 September 1988. His static line wrapped around his arm as he was exiting the aircraft. He was transported to Womack hospital. The injury was considered to have been incurred in the line of duty.

10. A Pathology Report shows a diagnosis of Left brachial artery: Segment of focally transmurally defective thrombosed muscular artery. (The Pathology report is provided in its entirety for the Board's review).

11. The applicant was discharged from the hospital on 4 October 1988. His Final Discharge Diagnosis: Static line injury to the left arm, with thrombosis of the mid portion of the left brachial artery.

12. The applicant provides an audiogram conducted on 1 December 1988.

13. DA Form 3349 shows the applicant was issued a permanent profile for no airborne operations. His profile shows a 2 in the Upper Extremities portion. The profile was approved on 31 January 1989.

14. The applicant was honorably released from active duty and transferred to U.S. Army Reserve Control Group (Reinforcement) on 29 May 1989, due to ETS. His DD Form 214 shows he completed 3 years net active service this period. Other pertinent parts shows:

- Item 25 (Separation Authority): Army Regulation 635-200, chapter 4
- Item 26 (Separation Code): LBK

- Item 27 (Reenlistment Code): 1

15. The applicant provides a letter from the DVA showing he was rated at 100% permanent and total since 27 December 2017 with his effective date of the last change to his current award being 1 December 2022.

16. 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.

17. 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.

18. Title 38, Code of Federal Regulations, Part IV is the VA 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.

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

> "I was injured on a jump in September 88. After my injury, I had a vein graft taking out of my right leg to be put in my left arm. I was placed on light duty until I ETS'd [Expiration – term of service] out of the service in May 1989. I never went to a medical review board for a medical rating. I was never sent to see a psychiatrist to see how I was feeling. I left the service not as a medical but as a

> regular soldier. I would like a medical rating from the army and discharge as a disabled soldier."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 shows he entered the regular Army on 30 August 1986 and was honorably discharged on 29 August 1989 after having completed his required active service under provisions provided in chapter 4 of AR 635-200, Active Duty Enlisted Administrative Separations (26 May 1989). His reentry code of RE-1 denotes he was fully qualified to reenlist.

d. A 10 November 1988 Statement of Medical Examination and Duty Status (DA 2173) states the applicant was injured during a jump:

> SPC [Applicant] was injured participating in a jump on Sicily DZ [drop zone] on 28 September 88. SPC [Applicant]'s static line wrapped around his arm as he was exiting the aircraft. He was transported to WOMAC [Womack Army Medical Center located on Fort Liberty].

e. An Inpatient Treatment Record Cover Sheet shows the applicant sustained a left brachial artery disruption which was treated with a reverse saphenous vein interposition graft.

f. On 31 January 1989, the applicant was removed from jump status with an otherwise non-duty limiting permanent physical profile for "Brachial Artery Repair." The only limitation was "No Airborne Operations." The applicant was otherwise fully mission capable as food service specialist.

g. The supporting documents contain no items related to mental health care and his period of Service predates AHLTA.

h. There is no probative evidence the applicant had a physical or mental health condition which failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his voluntary separation; or which prevented him from reenlisting. 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 her office, grade, rank, or rating prior to his discharge.

i. JLV shows he has been awarded multiple VA service-connected connected disability ratings, including ratings for PTSD and several related to his left upper extremity. 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 and consequently prematurely ends their career. 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.

j. It is the opinion of the ARBA Medical Advisor that a referral to his case to the DES is not warranted.

BOARD DISCUSSION:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of requests for changes to separations. The Board concurred with the conclusion of the ARBA Medical Advisor that the evidence does not show that the applicant had any medical or psychiatric conditions that warranted his referral to the Disability Evaluation System prior to his release from active duty. Based on a preponderance of the evidence, the Board determined his release from active duty by reason of reaching the expiration of his term of service was not an error or unjust.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
[redacted]	[redacted]	[redacted]	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.

2/15/2024

X [redacted]

CHAIRPERSON

[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 that 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. 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.

4. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations, and mitigating factors, when taking action on applications from former service members administratively discharged under other than honorable conditions, and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

5. 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; sexual harassment. Boards were directed 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. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for that misconduct which led to the discharge.

6. AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation) governs the evaluation of physical fitness of Soldiers who may be unfit to perform their military duties because of physical disability. It states that according to accepted medical principles, certain abnormalities and residual conditions exist that, when discovered, lead to the conclusion that they must have existed or have started before the individual entered the military service. Examples are manifestation of lesions or symptoms of chronic disease from date of entry on active military service (or so close to that date of entry that the disease could not have started in so short a period) will be accepted as proof that the disease existed prior to entrance into active military service.

7. 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 type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-

martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief based on 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. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//