

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 August 2024

DOCKET NUMBER: AR20230005628

APPLICANT REQUESTS:

- reconsideration of his previous request for a medical discharge
- Issuance of his DD Form 214 (Certificate of Release or Discharge from Active Duty)

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

- DD Form 149 (Application for Correction of Military Record)
- Letter, re: Legally Blind, 26 January 1999
- Letter, re: Layoff, 15 August 2001
- DA Form 87 (Certificate of Training)

FACTS:

1. Incorporated herein by reference are military records, which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR1999016269 on 26 April 1999.

2. The applicant states his honorable discharge should be changed to medical discharge based on a case in January 2023. He came out of the service blind. On his application, he annotated other mental health as an issue/condition related to his request.

a. The applicant notes that he was blind when he left the Army in 1990, but about a month prior to his separation and after the unit's return from Germany, Chief Warrant Officer Four F__ C__, Safety Officer, told him to file an appeal because of his total blindness. Captain (CPT) P__ also agreed and placed the applicant on special services until the end of the applicant's duties; during night drills, the applicant remained in the buildings. Additionally, the applicant was 100 miles away from his duty station and was unable to drive the distance.

b. The Department of Veterans Affairs (VA) had to receive authorization from the applicant's unit to treat him; Dr. B__ at the VA eye clinic treated the applicant from October 1988 until January 2023.

c. In support of his request, the applicant provides:

- DA Form 87, dated in April 1985, verifying the applicant's successful completion of critical tasks for the Basic Noncommissioned Officer Course
- Letter from an organization that provides work opportunities for blind members of the applicant's community; the letter, dated in January 1999, affirms the applicant is legally blind
- Letter, dated in August 2001, announcing layoffs at the applicant's place of employment

3. A review of the applicant's service record shows the following:

a. On 26 April 1978, the applicant enlisted into the U.S. Army Reserve (USAR) for 6 years. On 26 May 1978, he entered initial active duty for training to complete his initial entry training. On 6 October 1978, he was honorably released him from active duty and returned him to the USAR. His DD Form 214 (Report of Separation from Active Duty) shows he completed 4 months and 11 days of active service.

b. On 12 February 1984, the applicant immediately reenlisted in the USAR for another 6 years. Effective 9 October 1985, the applicant's command reassigned him to the USAR Control Group (Annual Training) because of unsatisfactory participation. U.S. Army Reserve Personnel Center (ARPERCEN) Orders, dated 18 May 1988, transferred the applicant back to the USAR, effective 21 May 1988.

c. On 5 April 1990, the command requested the applicant's discharge, based on the applicant reaching his expiration term of service (ETS). Effective 9 April 1990, Fourth U.S. Army and Fort Sheridan Orders honorably discharged the applicant from the USAR.

d. On 17 February 1998, the applicant petitioned the ABCMR, requesting medical disability due to glaucoma.

(1) The applicant argued he was not blind before he entered the military but became blind by the date of his discharge.

(2) On 28 January 1999, the VA provided the Board with a copy of the applicant's service treatment records (STR) (41 pages), which had been a part of the applicant's VA claims file. The records included documents showing a glaucoma diagnosis, on 16 August 1988. Additionally, in an undated letter from the applicant to his

command, the applicant apologized for missing drills but stated he had "Open Angle Glaucoma," and his vision was poor.

(3) On 3 February 1999, two Army Review Boards Agency medical advisors provided an advisory opinion, wherein they affirmed that, after a complete review of all available medical records pertaining to the applicant's condition, they noted the following:

(a) "Statements and evaluations by military and civilian ophthalmologists show that the applicant's condition does not meet the standards of AR (Army Regulation) 40-501 (Standards of Medical Fitness), para(graph) 3-15a (Eyes – Active or Progressive Organic Disease or Degeneration) and d (Glaucoma). No MEB was indicated nor requested by the treating physicians."

(b) "There is no medical reason to change the applicant's discharge status."

(4) On 9 February 1999, the applicant submitted a rebuttal to the medical advisory opinion, in which he contended the lack of follow-up medical treatment records was because his commander (CPT P__) was waiting for orders from higher headquarters, and his commander was unable to approve the applicant's treatment by the VA.

(a) The applicant maintained his medical condition was "not under control while I was in military service." "The doctor in Germany gave me medication for my eyes and asked me to get a follow-up appointment. I went to my civilian ophthalmologist until the date of E.T.S. Since that time, I have had laser surgery and a cut above my eyes to bring down eye pressure. I have tunnel vision at this time and I am going blind."

(b) "I think this is a reason to change my status to medical honorable discharge for open angle glaucoma while diagnosed in military service, which kept me from joining for 12 more years."

(5) On 29 April 1999, the Board considered all of the evidence and voted to deny relief.

(a) The Board stated, "A complete review of all medical records indicates the applicant's condition was diagnosed and treated appropriately and under control while in military service." Additionally, "Statements and evaluations by military and civilian ophthalmologists show the applicant's condition did not require separation from the Army based on the standards of AR 40-501, paragraphs 3-15a and d. This is supported by the Medical Advisor to the Army Boards Review Agency." Further, the treating physicians never indicated the need for a medical evaluation board.

(b) "In order to justify correction of a military record, the applicant must show to the satisfaction of the Board, or it must otherwise satisfactorily appear, that the record is in error or unjust. The applicant has failed to submit evidence that would satisfy the aforementioned requirement."

4. 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 in essence requesting a referral to the Disability Evaluation System (DES) stating he was blind at the time he left the Army. He has indicated that Other mental health conditions are related to his request.

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. Orders published by the Fourth United States Army and Fort Sheridan show he honorably discharged on 9 April 1990 under provisions in AR 135-178. The orders do not cite a chapter or paragraph.

d. The applicant's period of Service predates the EMR.

e. On a 16 April 1988 Report of Medical History, the applicant stated he was in "good health" and had eye trouble. The provider noted the applicant's issue as having blurry vision late in the day or early evening. On the accompanying Report of Medical Examination, the applicant was noted to have 20/30 uncorrected (i.e., without glasses) distant vision bilaterally and 20/40 uncorrected near vision bilaterally.

f. A copy of his retirement points statement shows no inactive and just 1 active-duty day from 26 April 1985 thru 25 April 1989.

g. Paragraph of AR 40-501, Standards of Medical Fitness (1 July 1987), states that poor vision is a cause for referral to the DES when:

"Vision which cannot be corrected with spectacle lenses to at least: 20/60 in one eye and 20/60 in the other eye, or 20/50 in one eye and 20/80 in the other eye, or 20/40 in one eye and 20/100 in the other eye, or 20/30 in one eye and 20/200 in the other eye, or 20/20 in one eye and 20/800 in the other eye."

h. There is no probative evidence the applicant's vision failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his separation. Thus, there was no cause for referral to the Disability Evaluation System.

i. A 28 August 2003 VA optometry consult shows the applicant underwent enucleation (removal) of his right eye after a traumatic injury in 2002. It also states he had been using Travatan drops in his left eye to treat glaucoma and "Sometimes misses drops." The provider noted the applicant had advanced glaucoma and was legally blind.

j. JLV shows he has been awarded a single VA service-connected connected disability rating of 100% for loss of field of vision effective April 2002. This was also his first rating for this condition. He has no diagnosed mental health condition in JLV.

k. 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.

l. It is the opinion of the ARBA Medical Advisor that a referral to his case to the DES 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 enlisted in the U.S. Army Reserve on 26 April 1978, reenlisted on 12 February 1984, and was discharged on 9 April 1990.

a. Medical Discharge: The Board also considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's finding no probative evidence the applicant's vision failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his separation. Thus, there was no cause for referral to the Disability Evaluation System. Furthermore, there is no evidence that any additional medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge. Therefore, the Board determined that neither an increase in his military disability rating nor a referral of his case to the DES is warranted.

b. DD Form 214: Deny. Aside from his initial active duty for training from 26 May 1978 to 6 October 1978, for which he was issued a DD Form 214, the Board found no evidence he performed any other periods of active duty of 90 more continuous days which would have warranted the issuance of a second DD Form 214.

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 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 to amend the decision of the ABCMR set forth in Docket Number AR1999016269 on 26 April 1999.

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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, USC, section 1556 (Ex Parte Communications Prohibited) 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 applicant's (and/or their counsel) prior to adjudication.

2. AR 40-501, in effect at the time, included specific guidance on medical conditions that failed medical retention standards and also outlined policies and procedures for determining whether USAR Soldiers were medical qualified for retention.

a. Chapter 3 (Medical Fitness Standards for Retention and Separation, Including Retirement). This chapter provided a list of medical conditions and physical defects that could render a Soldier unfit for continued military service. Paragraph 3-15 (Eyes) stated:

(1) Subparagraph a (Active Eye Disease). Active eye disease, or any progressive organic disease, regardless of the stage of activity, which is resistant to treatment and affects the distant visual acuity or visual fields so that:

- Distant visual acuity does not meet the standard of vision that cannot be corrected with spectacle lenses or an eye has been enucleated
- The diameter of the field of vision in the better eye is less than 20 degrees

(2) Subparagraph d (Glaucoma). If resistant to treatment or affecting visual fields or if side effects of required medication are functionally incapacitating.

b. Paragraph 9-4 (Responsibility for Medical Fitness). Reservists had the responsibility to maintain their medical fitness and were required to undergo periodic medical examinations.

c. Paragraph 9-12 (Standards of Medical Fitness – Standards for Periodic Medical Examinations). Reservists had to meet the standards set in chapter 3.

d. Paragraph 9-15 (Disposition of Medically Unfit Reservists) stated:

a. Normally, USAR Soldiers who failed to meet medical retention standards were either discharged or, if qualified, transferred to The Retired Reserve. Reservists who are found unfit could also request continuance in an active USAR status.

b. In such cases, physical disability incurred in either military or civilian status was deemed acceptable and the condition did not have to have been incurred only in the line

of duty. Requests for continuation in an Active Reserve (COAR) status had to be forwarded to ARPERCEN for approval.

3. AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation), in effect at the time, established the Physical Disability Evaluation System (PDES), and implemented chapter 61 (Retirement or Separation for Physical Disability), Title 10, U.S. Code. The regulation set forth policies, responsibilities, and procedures that governed the evaluation for physical fitness of Soldiers who may be unfit to perform their military duties because of physical disability. Chapter 8 (Reserve Components) provided additional guidance specifically for USAR members who were not on extended active duty for more than 30 days.

a. Paragraph 8-2b (Applicability – Disability from Disease). A disabling condition could be the result of a disease rather than an injury. If so, the member was ineligible for disability processing under provisions of this regulation unless a medical authority had determined the disease resulted from a service-connected injury incurred as a result of performing any of the following:

- Active Duty or active duty for training under a call or order that specified a period of 30 days or less
- Inactive duty training
- Active duty for training under a Title 10, U.S. Code authority that permitted the orders of a member to active duty for training for 45 days or less to satisfy Ready Reserve training requirement

b. Paragraph 8-4 (Medical Processing). A commander or other proper authority who believed that a member not on extended active duty was unable to perform the duties of his office, grade, rank, or rating because of physical disability could refer that member for medical evaluation, per chapter 9, AR 40-501. The member could be referred into the Physical Disability Evaluation System only if his/her injury or disease met the requirements of paragraph 8-2 above.

4. AR 635-5 (Separation Documents), in effect in 1990, prescribed policies and procedures for the preparation of the DD Form 214 (Certificate of Release or Discharge from Active Duty). It stated the DD Form 214 was only prepared for members of the USAR when they were separated from active duty upon completion of initial active duty for training following the issuance of an MOS; for periods of 90 days or more of continuous active duty; or for physical disability when executed under the provisions of AR 635-40.

//NOTHING FOLLOWS//