

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 March 2024

DOCKET NUMBER: AR20230006351

APPLICANT REQUESTS: correction of his records to show he was permanently retired due to physical disability.

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

- DD Form 293 (Application for Review of Discharge from the Armed Forces of the United States) in lieu of DD Form 149 (Application for Correction of Military Record)
- 5 pages of medical records

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 "SPN (Separation Program Number) Code 271-Permanently retired by reason of physical disability. He requests a change to honorable and change reason For separation
3. The applicant enlisted in the Army National Guard (ARNG) on 17 April 2008. He was discharged from the ARNG on 5 November 2008 for enlistment in the Regular Army. He entered active duty in the Regular Army on 6 November 2008. He was released from active and transferred to the U.S. Army Reserve (USAR) on 5 November 2012.
4. The applicant served on active duty in support of Operation Enduring Freedom from 15 November 2014 to 20 June 2015.
5. The applicant's Noncommissioned Officer Evaluation Report (NCOER) covering the period 21 May 2015 to 18 April 2016, his last NCOER on record, shows he did not perform the Army Physical Fitness Test during the rated period due to a physical profile. The NCOER also shows the rater indicated the applicant's profile did not hinder abilities or performance.

6. Orders issued on 6 April 2016 directed the applicant's honorable discharge from the USAR effective 16 April 2016 under the authority of Army Regulation 135-178 (ARNG and USAR Enlisted Administrative Separations).

7. The applicant provided 5 pages of medical records showing a list of active (medical) problems. These medical documents do not contain the patient's identification.

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 in essence requesting a referral to the Disability Evaluation System (DES). He does not give a reason or identify a medical condition or conditions he believes should have been referred to the DES prior to his 16 April 2016 honorable discharge from the USAR.

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. Orders published by the 63rd Regional Support Command show the applicant was honorably discharged from the USAR on 16 April 2016 under authority of AR 135-178, Enlisted Administrative Separations (18 March 2014). The orders do not cite an authorizing paragraph or chapter.

d. MEDCHART contains a permanent non-duty limiting physical profile for "Left knee pain" effective 11 December 2014. No other conditions were listed on the profile. The applicant was marked as capable of performing all the functional activities required of all Soldiers, including live in an austere environment. The profile simply allowed the applicant to perform an alternate aerobic event in lieu of the 2-mile run event for his Army Physical Fitness Test (APFT). No further permanent profiles were issued.

e. He completed his final Periodic Health Assessment (PHA) in on 27 November 2014. The only issue noted was his knee pain of which the applicant wrote "much relief with physical therapy." When asked twenty-three questions in the review of symptoms, he answered "No" to all questions of "Do you have or have you ever had ...?" except for his left knee pain. The provider commented "Weekly symptoms – 1-2 times a week – does not take meds. Currently doing physical therapy. X-ray normal." The behavioral

health screen was negative. The provider documented the applicant had no limitations in his physical profile and was declared fully deployable to an austere environment within the next 6 months.

f. His final NCO Evaluation Report (SGT) was completed due to his upcoming separation and covered 21 May 2015 thru 18 April 2016. It shows he did not take an APFT that period because he was on profile, the rater stating "profile does not hinder abilities or performance." He met height/weight standards. His senior rater blocked him "Highly Qualified" (second on a scale of 1-4) opining: "Promote with peers, always looked for opportunities to mentor and train junior Soldiers. SGT [Applicant] was a great asset to the Brigade and HHC during his tenure with the Unit."

g. The submitted medical documentation is a medical problem list from his time in service. It lists a number of musculoskeletal issues, urticaria, and adjustment disorder.

h. Paragraph 3-1 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (20 March 2012) states: "The mere presence of an 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 Soldier reasonably may be expected to perform because of their office, grade, rank, or rating."

i. Review of his records in JLV shows he has been awarded multiple VA service-connected disability ratings. However, the DES compensates an individual only for service incurred medical 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; 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 Agency Medical Advisor that a referral of 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.

a. The applicant is applying to this Board requesting a referral to the Disability Evaluation System (DES). He does not give a reason or identify a medical condition or

conditions he believes should have been referred to the DES prior to his 16 April 2016 honorable discharge from the USAR. The evidence shows Orders issued on 6 April 2016 ordered his honorable discharge from the USAR effective 16 April 2016 under the authority of AR 135-178. The orders do not cite an authorizing paragraph or chapter.

b. 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. The Board reviewed and agreed with the medical reviewer’s finding that since the applicant’s records do not contain temporary or permanent physical profiles, and no documentation supporting a medical condition that warranted his referral to the disability evaluation system.

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 for correction of the records of the individual concerned.

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[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 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.
3. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation) establishes the Army Disability Evaluation System (DES) 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. The regulation states:
 - 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, reduction in force, relief from active duty, administrative separation, ETS, etc.), his or her continued performance of duty, until he or she is referred to the DES for evaluation for separation for reasons indicated above, creates a presumption that the member is fit for duty.
4. Section 1556 of Title 10, U.S. 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 ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//