

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 January 2024

DOCKET NUMBER: AR20230006688

APPLICANT REQUESTS:

- a medical retirement in lieu of discharged with severance pay
- consideration of unspecified additional unfitting conditions
- retirement as a Staff Sergeant (SSG)/E-6 with 8 years of service
- date of discharged changed to 6 July 2004 by adding an additional 30 days

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 3349 (Physical Profile), dated 10 September 2003
- DD Form 2807-1 (Report of Medical History), dated 29 September 2003
- DD Form 2808 (Report of Medical Examination), dated 29 September 2003
- DA Form 3349, dated 23 January 2004
- Orders 135-0121, dated 14 May 2004

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 National Defense Authorization Act for Fiscal Year 2008 authorized the Department of Defense to establish a Physical Disability Review Board (PDRB) to review certain disability claims and make recommendations to the Boards for Correction of Military Records. The PDRB reviewed the applicant's case on 6 June 2004 and recommended no re-characterization of the separation or modification of his disability rating previously assigned. On 25 September 2014, the Deputy Assistant Secretary of the Army (Army Review Boards) reviewed the PDRB's recommendation and accepted the recommendation. This decision was final. Recourse within the Department of Defense or the Department of the Army is exhausted. Thus, the Board will not consider the applicant's request for any change concerning the condition of vasovagal syncope (fainting spells).

3. The applicant states his medical evaluation was conducted/initiated with an incomplete permanent profile that only included one signature and it was missing a permanent profile included in his records after his discharge that was valid. The missing permanent profile predates the Medical Evaluation Board (MEB) profile and recommended MEB for differing reasons that should have been considered.
4. The applicant enlisted in the Army Reserve on 14 January 1993. He completed active duty for training from 1 June 1993 to 5 August 1993 and 10 June 1994 to 21 July 1994. He was discharged from the Army Reserve for immediate enlistment in the Regular Army on 21 January 1997. He reenlisted in the Regular Army on 5 April 2000.
5. A DA Form 3349, dated 10 September 2003, shows the applicant was assigned a physical profile of 211111 for vasovagal exertional lightheadedness.

A physical profile, as reflected on a DA Form 3349 (Physical Profile) or DD Form 2808, is derived using six body systems: "P" = physical capacity or stamina; "U" = upper extremities; "L" = lower extremities; "H" = hearing; "E" = eyes; and "S" = psychiatric (abbreviated as PULHES). Each body system has a numerical designation: 1 meaning 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.

6. The applicant underwent a medical examination on 29 September 2003. His DD Form 2807-1 shows he reported he was on the medication metoprolol.
 - a. He reported a history of the following:
 - severe back pain when laying down
 - knee pain/weakness – treated with therapy
 - dizziness or fainting spells – treated in Emergency Room 15 August 2003
 - frequent memory loss
 - car sickness when a passenger
 - chest pain during a run for Army Physical Fitness Test (APFT)
 - frequent heart palpitations
 - abnormal heartbeat
 - stress/anxiety – treated with counseling
 - suicidal idealization in 1999 at Fort Jackson, SC
 - b. Notes attached to the DD Form 2807-1 states he has a likely disqualifying medical condition, referred for review and likely MEB. The corresponding DD Form 2808 shows the applicant was found not qualified for service and assigned a physical profile of 211111.

7. A DA Form 3349, dated 23 January 2004, shows the applicant was placed on a permanent profile of 311111 for vasovagal Syncope - fainting spells. He was restricted from deployment to locations without adequate medical care and working at heights where sudden loss of consciousness would cause danger to self or others. The applicant indicates this profile is incomplete, presumably because the approving authority's signature is missing.

8. Orders 135-0121, issued 14 May 2004, shows the applicant was authorization of disability severance pay in pay grade SSG based on 7 years, 11 months, 5 days of service with a 10 percent disability rating. His condition was deemed to not have been received in the line of duty as a direct result of armed conflict or caused by an instrumentality of war as defined by law. His directed date of discharge shows 6 June 2004.

10. The applicant was honorably discharged on 6 June 2004 under the provision of Army Regulation (AR) 635-40 (Physical Evaluation for Retention, Retirement, or Separation), paragraph 4-24b(3) for disability, severance pay. His DD Form 214 shows his rank as SSG and pay grade as E-6 with an effective date of 1 May 2002. He was credited 7 years 4 months 16 days net active service this period and 3 months 17 days total prior active service.

11. The applicant did not provide evidence or justification as to why his date of discharge should be changed to 6 July 2004 or how he is owed an additional 30 days.

12. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). In essence, the applicant believes his medical discharge occurred before records were available, he feels were pertinent to evaluating his medical condition fully. He is in pursuit of physical disability retirement. The case was previously reviewed by the Physical Disability Board of Review (PDBR) with board date 05Jun2014.

b. The applicant's record was summarized in the ABCMR ROP. Of note, he served in the Regular Army from 21Jan1997 and was discharged 06Jun2004 by way of medical discharge processing under authority of AR 635-40, para 4-24B(3). His MOS was 13M MLRS (Multiple Launch Rocket System Repairer). He was separated with severance pay for a medical disability at 10%. His service was characterized as honorable.

c. There were very few in-service treatment records available for review. The applicant's Medical Evaluation Board (MEB) and 25Feb2004 Informal Physical Evaluation Board (IPEB) Proceedings were not available for this review. The PDBR proceedings and service treatment records in JLV served as a basis for most of the medical facts of the case.

d. 29Sep2003 Report of Medical History. He was working as a recruiter at the time. Relevant symptoms reported included chest pain during the physical training run test, frequent palpitations, and abnormal heart rate. He also reported hospitalization for excessive dizziness in Kingston, NY on 15Aug2003. His heart examination was normal as well as the blood pressure and pulse rate. The P2 physical profile was noted. He was determined to not be qualified for service.

e. 23Jan2004 permanent P3 physical profile for Vasovagal Syncope-Fainting Spells showed all functional activities were prohibited. He was not permitted to work at heights where sudden loss of consciousness would cause danger to self or others. It should be noted that vasovagal syncope is also referred to as neurocardiogenic syncope.

f. 24Nov2004 Family Practice Reynolds ACH. Applicant was seen for refill of Metoprolol 50mg ½ tablet daily (a beta blocker). Diagnosis: Vasovagal Syncope.

g. 18Apr2005 Primary Care Initial Visit. The applicant provided history that he had not experienced any episodes of syncope since 2003.

h. 07Mar/06Apr2006 Cardiology Consult. This was the first cardiology consultation after discharge from service. The specialist noted the following history: In March 2003 the applicant developed new onset severe episode of chest pain with running; in July 2003 during the tilt table test he developed hypotension, bradycardia and near syncope; and he had experienced one episode of syncope (November 2003) while sitting in a reclining chair at home after heavy exertion moving boxes. During the Exercise Stress Test, the baseline ECG (electrocardiogram) was normal. Exercise time was approximately 10 minutes. The test was terminated because he became dizzy. He achieved a level of 13 METS. This score was similar to the 14 METs achieved while in service. They diagnosed Neurocardiogenic Autonomic Dysfunction of Unknown Etiology. They recommended the applicant continue Metoprolol. The applicant was advised against severe exercise and dehydration. His prognosis was good.

i. 05Jun2014 PDBR. The proceedings contained a very detailed discussion of the applicant's symptoms, his diagnosis, and VASRD rating criteria under relevant discharge codes. The narrative indicated the applicant had an episode of near syncope during physical training (March 2003, no care was sought); one episode of prolonged near syncope (August 2003, hospitalized); and one episode of syncope at home (November 2003, unwitnessed, length of period of unconsciousness was unknown, no

care was sought). The Vasovagal Syncope diagnosis was based on a positive tilt test result. Rating criteria included normal stress test with 14 METs achieved; and an echocardiogram showing normal chamber size and normal ventricular ejection fraction at 65%. The PDBR proceedings included the VA C&P description of symptoms (two months prior to separation): “Easy fatigue when doing physical labor” which “occur intermittently, as often as five or more times a day, with each occurrence lasting 1-5 seconds.

j. The PDBR also included a summary of possible ratings:

- PEB rating 8299-8210 (analogous rating) Vasovagal Syncope at 10%
- VA Rating 7099-7011 (analogous rating) Ventricular Arrhythmias, Sustained at 10%
- 7010 Supraventricular tachycardia: The 10% rating is for an episode confirmed by ECG, with one to four treatment interventions per year; or, confirmed by ECG with either continuous use of oral medications to control or use of vagal maneuvers to control. 30% is five or more treatment interventions per year. For rating purposes, a treatment intervention occurs whenever a symptomatic patient requires intravenous pharmacologic adjustment, cardioversion, and/or ablation for symptom relief. It should be noted the Metoprolol 50mg one ½ tablet daily stayed constant while in service from the onset of treatment in July 2003).
- 7011 Ventricular arrhythmias (sustained). Under §4.100, criteria for using diagnostic code 7011: The 10% rating is based on the need for continuous medication. 30% is based on the presence of cardiac hypertrophy or dilatation. Ventricular arrhythmia was not documented nor did the echocardiogram show thickened muscle or enlarged chambers.
- 8210 Tenth (pneumogastric, vagus) cranial nerve. Incomplete paralysis of moderate severity is 10%. Incomplete paralysis of severe severity is 30%.
- 8999-8911 Petit Mal Epilepsy for disabilities manifested primarily by syncope (analogous to major seizure) and presyncope (analogous to minor seizure). The ARBA Medical Adviser concurs with the PDBR, vague or inconsistent description of episodes made rating under this code problematic.

k. Cardiology specialists after discharge made the same assessment of the applicant’s heart condition as providers while in service: Neuro-cardiogenic autonomic dysfunction. In addition, the severity of the condition remained effectively stable from onset in 2003 for at least 2 years after discharge from service. The VA granted service connection for the applicant’s heart condition at 10%, and JLV search today showed the rating is currently 10%.

l. The applicant’s case was adjudicated prior to the Army’s physical disability processing transition to the Integrated Disability Evaluation System (IDES). It is compelling that while the PEB and VA separately rated the cardiac condition under two

different VASRD discharge codes, the PEB and the VA both determined the severity of the condition to be at the level of 10% rating. If the applicant's MEB had indeed been rushed, there was no evidence found that could reasonably support that a longer evaluation period would have changed the separation with severance pay disposition and resulted in a higher rating for the heart condition. In the ARBA Medical Review's opinion, there was no evidence of an error or injustice occurred in the rating outcome. Recommend no change to the narrative reason for separation.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's contentions, the military record, and regulatory guidance. The applicant was afforded medical evaluation prior to discharge and determined to have a medical condition that disallowed further service. The Board noted that both the PEB and VA determined his disability rating at 10%. As he was determined to be unfit for military duty in accordance with applicable regulatory guidance and U.S. Code, based on his condition, he was properly discharged and compensated.
2. The Board further considered the remaining requested corrections to the applicant's record. Documentation available for review or that provided by the applicant did not reveal any additional unfitting conditions, justification to show he served for 8 years in lieu of 7 years or evidence to warrant correction to his length of service.
3. After due consideration of the applicant's request, the Board determined the evidence presented does not meet the burden of proof in determining the existence of an error or injustice and a recommendation for relief is not warranted.

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 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, United States 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 Army Board for Correction of Military Records (ABCMR) determines it would be in the interest of justice to do so.

2. AR 635-5 (Personnel Separations – Separation Documents) prescribes the separation documents that must be prepared for soldiers on retirement, discharge, release from active duty service, or control of the Active Army. It establishes standardized policy for preparing and distributing the DD Form 214 (Certificate of Release or Discharge from Active Duty).

a. Block 12.b. (Separation Date This Period): The Soldier's transition date. This date may not be the contractual date if Soldier is separated early, voluntarily extends, or is extended for makeup of lost time, or retained on active duty for the convenience of the Government.

b. Block 12c (Net Active Service this period): Amount of service this period, computed by subtracting item 12a from 12b. Lost time under 10 USC 972 and non-creditable time after ETS, if any, are deducted.

c. Block 12.e (Total Prior Inactive Service): From previously issued DD Forms 214 and/or ERB/ORB, enter the total amount of prior inactive service, less lost time, if any. DEP time that began on or after 1 January 1985 is not creditable service for pay purposes and will not be entered in this block. However, it is creditable service for completing the statutory MSO, and will be entered in block 18.

d. Block 12.f (Foreign Service): From the ERB/ORB, enter the total amount of foreign service completed during the period covered in block 12.c.

3. Title 10, USC, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in an MEB; when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an MOS Medical Retention Board; and/or they are command-referred for a fitness-for-duty medical examination.

b. The disability evaluation assessment process involves two distinct stages: the MEB and PEB. The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service

member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the severity of the disability and length of military service. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

c. The mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of his or her office, grade, rank, or rating. Reasonable performance of the preponderance of duties will invariably result in a finding of fitness for continued duty. A Soldier is physically unfit when a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

3. Title 38 USC, section 1110 (General - Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

4. Title 38 USC, section 1131 (Peacetime Disability Compensation - Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

5. AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation) establishes the Army Disability Evaluation System 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 office, grade, rank, or rating. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or

separation for disability. Once a determination of physical unfitness is made, all disabilities are rated using the Department of Veterans Affairs Schedule for Rating Disabilities (VASRD).

a. Paragraph 3-2 states 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 military service.

b. Paragraph 3-4 states Soldiers who sustain or aggravate physically-unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

(1) The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

(2) The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

6. AR 40-501 (Standards of Medical Fitness) governs medical fitness standards for enlistment, induction, appointment (including officer procurement programs), retention, and separation (including retirement). The Department of Veterans Affairs Schedule for Rating Disabilities (VASRD). VASRD is used by the Army and the VA as part of the process of adjudicating disability claims. It is a guide for evaluating the severity of disabilities resulting from all types of diseases and injuries encountered as a result of or incident to military service. This degree of severity is expressed as a percentage rating which determines the amount of monthly compensation.

7. Section 1556 of Title 10, USC, 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//