

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 January 2024

DOCKET NUMBER: AR20230006969

APPLICANT REQUESTS: medical retirement instead of honorable discharge from the U.S. Army Reserve (USAR).

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

- DD Form 149 (Application for Correction of Military Record)
- Orders D-05-831659, 5 May 1998
- copy of his Personal Health History/Immunization Record
- 22-page document titled: Response and Supporting Documents for the U.S. Department of Veterans Affairs (VA), dated 15 November 2011
- information paper titled: The Glorious History of the 138th [Army Security Agency Company]

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, in effect:

a. He should have been medically retired. He did not reenlist in 1998 and as he looks back, he realized he was clearly not in control of any single thought. He lost all emotions and the ability to focus on multiple simple human tasks. After returning from Operation Desert Storm, he sat and stared for hours each day for about six months. In 2011, he finally decided to go to the VA for evaluation and the VA has tried since then to find a reason for his confusion, pressure in the head, and symptoms known today as Gulf War Syndrome. His medical issues are clearly neurological and psychological.

b. He would have served for 20 years if not for his medical issues, likely resulting from his service in support of Operation Desert Storm and the Gulf War Syndrome. The major issues affecting his ability to perform as required in any military specialty were:

- loss of organizational and multi-tasking ability
- harder to motivate brain function
- memory loss of short term tasks specific to organization and family needs
- anxiety
- debilitating spastic colon and hives

3. The applicant enlisted in the Regular Army on 23 March 1979. He was released from active duty and transferred to the 138th Army Security Agency Company (Aviation), a USAR unit, on 12 June 1987.

4. The applicant's record shows he served on active duty in support of Operations Desert Shield/Storm from 11 November 1990 to 10 April 1991.

5. Orders issued on 26 October 1994 directed the applicant's transfer to the USAR Personnel Center (Reinforcement) by reason of voluntary transfer.

6. A Standard Form 88 (Report of Medical Examination) shows the applicant underwent a periodic health examination on 27 July 1996 and he was found qualified for retention.

7. Orders issued by the USAR Personnel Command on 5 May 1998 directed the applicant's honorable discharge from the USAR effective 5 May 1998.

8. The applicant provided a 22-page document titled: Response and Supporting Documents for the VA, dated 15 November 2011, which appears to be part of his VA service-connected disability compensation claim. In this document, he discusses his military medical and assignments history and the resulting service-connected medical conditions.

9. 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 has applied to the ABCMR requesting in essence a referral to the Disability Evaluation System (DES). On his DD Form 149, he indicated that other mental issues are related to his request. He states:

“Evaluation of what should have been a medical retirement. Upon not reenlisting in 1998, I look back now as of 2022 and see I was clearly not in control of any clear single thought (Much worse as time went by)

In 2011, I was finally convinced to go to the VA for evaluation and the VA has since this year (2011) tried to find a reason for my confusion, pressure in my head, and no less than the total of symptoms known today as Gulf War Syndrome. As of 2021, they might be getting close, and it is clearly both Neurological and Psychological based upon advancements in these two areas of care within the VA System.”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. Orders published by the 81st United States Army Reserve Command show the applicant was voluntarily transferred to the United States Army Personne Center (Reinforcement) effective 26 October 1994. He was honorably discharged from this activity on 5 May 1998 under provisions provided in AR 135-178, Army National Guard and Army Reserve – Enlisted Administrative Separations. The orders do not cite an authorizing paragraph or chapter nor provide a narrative reason for his discharge.

d. The applicant underwent a 5-year medical evaluation for retention on 27 July 1996. On the Report of Medical Examination, the physician documented a normal examination except for some mild high frequency hearing loss bilaterally. The applicant appears to have mentioned a one-year history of residuals from an insect bite for which the physician recommended referral to dermatology. He found the applicant qualified for retention. The accompanying Report of Medical History was not available for review.

e. The applicant provided a self-authored list of medical conditions, symptoms, and evaluations. However, no contemporaneous medical documents were submitted with the application.

f. There is no evidence the applicant had any medical condition which would have failed the medical retention standards of chapter 3, AR 40-501, Standards of Medical Fitness, prior to his discharge; or which prevented the applicant from reenlisting in the Army. 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 his office, grade, rank, or rating prior to his discharge.

g. JLV show he has been awarded four VA service-connected disability ratings effective 7 October 2011: Irritable colon (10%), Urticaria (10%), Tinnitus (10%), and Impaired Hearing (0%).

h. The DES compensates an individual only for 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. That role and authority is granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

i. It is the opinion of the ARBA medical advisor 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 Board carefully considered the applicant's contentions, the military record, and applicable regulatory guidance. The Board considered the applicant's period of service. The Board noted that the applicant voluntarily transferred to the United States Army Personnel Center (Reinforcement) effective 26 October 1994 and honorably discharged from that activity. Documentation shows he underwent a medical evaluation for retention and determined to be qualified for retention. The Board found insufficient documentation that the applicant had a medical condition that would have failed medical retention standards or a condition that would have disallowed further service. After due consideration of the applicant's request, the Board determined the evidence presented insufficient to warrant a recommendation for relief and a referral to the Disability Evaluation System 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 and referral of his case to the Disability Evaluation System.

█

█ █

█

█

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. Title 10, U.S. Code, 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 Department of Defense Directive 1332.18 and Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation).

3. 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.

4. 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, discharge, 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.

5. 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//