

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 February 2024

DOCKET NUMBER: AR20230007296

APPLICANT REQUESTS: a medical retirement vice being separated due to completion of his required active service.

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), 17 March 2014
- Listing of rated disabilities
- Department of Veterans Affairs (DVA) letter, 2 April 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 indicates his request is related to Post-Traumatic Stress Disorder (PTSD) and he states he is requesting an upgrade of his discharge to a medical retirement because he was unable to reenlist due to disabilities preventing him from completing the Army Physical Fitness Test and was unable to pursue a medical evaluation board at the time for reasons unknown to him. He was given half separation pay, a separation code JGH, and RE code 3. These codes indicate his medical conditions were known prior to his expiration term of service but he was not given the opportunity to undergo a medical board. He has since been given a 100 percent VA disability rating. He received these disabilities during his honorable service, which unfortunately hindered his ability to continue his service in the Army. Despite the challenges posed by his disabilities, he remains deeply committed to his country and the honor of serving in the Armed Forces. Had he not been disabled; he would have eagerly continued to don his uniform and serve his country to the best of his abilities. He strongly believes that upgrading his discharge to medical retirement would provide him with a more just outcome, given his medical conditions and the circumstances of his discharge. It would also allow him to access benefits that are not available with an

honorable discharge. Please consider the service-connected disabilities he has been diagnosed with, specifically bilateral planter fasciitis, left knee tendonitis with patellofemoral syndrome, and lumbosacral strain with right lower extremity radiculopathy. These disabilities have significantly impacted his physical abilities, to the extent that he was unable to complete the running portion of the physical training test while honorably serving. His PTSD prevented him from pursuing anything other than what he was being told.

3. The applicant underwent a medical examination for the purpose of enlistment on 3 May 2006. He had no reportable deficiencies and was found qualified for service.

4. He enlisted in the Regular Army on 27 July 2006. He held military occupational specialty 31B, Military Police. He served in Iraq from 6 September 2009 – 15 August 2010.

5. Orders 346-0002, issued by Installation Management Command, Europe on 12 December 2013, shows the applicant was to be separated from the Army on 17 March 2014. He was entitled to one-half separation pay.

6. His DD Form 214 shows he was honorably discharged on 17 March 2014 in accordance with Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), chapter 4, for completion of his required active service. He completed 7 years, 7 months, and 21 days net active service this period. He received \$10,935.02 separation pay. His DD Form 214 also shows:

- Item 26 (Separation Code): JGH
- Item 27 (Reentry Code): 3
- Item 28 (Narrative Reason for Separation): Non-Retention on Active Duty

7. A DD Form 215 (Correction to DD Form 214) was completed correction item 18 (Remarks) deleting separation pay--\$10,935.02 and adding separation pay--\$11,044.22.

8. There are no records of a medical/physical evaluation board proceedings nor did the applicant provide any.

9. The applicant provides:

- Rated disabilities showing all his rated disabilities with effective dates ranging from 26 September 2016 – 29 December 2020
- Department of Veterans Affairs (DVA) letter, 2 April 2023 showing he has 100 percent combined service-connected disabilities considered to be permanent and totally disabled effective 29 December 2020

10. 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.

11. 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.

12. Title 38, CFR, Part IV is the VA's schedule for rating disabilities. The DVA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge. As a result, the DVA, 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 DVA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

13. 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. He states in part:

“I am requesting a discharge upgrade to Medical Retirement because I was unable to reenlist due to disabilities preventing me from completing the Army Physical Fitness test and was unable to pursue a medical evaluation board at the time for reasons unknown to me. I was given half separation pay, a separation code JGH, and RE [reentry] code 3. These codes indicate my medical conditions were known prior to my ETS [expiration term of service] but I was not given the opportunity to med board. I have since been given a 100% VA disability rating.”

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His signed DD 214 for the period of Service under consideration shows he entered the regular Army on 27 July 2006 and was honorably

discharged on 17 March 2014 under provisions in chapter 4 of AR 635-200, Active Duty Enlisted Administrative Separations (17 December 2009): Non-retention on active duty. It shows he received \$11,044.22 in separation pay.

d. The separation code JGH does not signify a medical discharge or medical conditions but denotes Non-Retention On Active Duty. He received an RE 3 code not for any medical condition but because with his involuntary separation of non-retention on active duty he was no longer fully qualified for reentry into the Army. Soldiers separated from the Army due to physical disability are given and RE code of 4 – Ineligible for reentry.

e. Neither the applicant's separation packet nor documents addressing the reason(s) for his non-retention on active duty and involuntary administrative separation were submitted with the application nor uploaded into iPERMS.

f. The applicant's pre-entrance Report of Medical Examination shows he was in good health, without significant medical history or conditions. No additional medical documentation was submitted with the application.

g. Review of the applicant's EMR shows he was treated for a variety of minor medical issues during his career and there were no mental health encounters. His most significant issue was plantar fasciitis of the right foot for which he was given a non-duty limiting permanent physical profile in July 2013. The provider wrote:

"Soldier has ongoing issue with his right foot plantar fasciitis which was evaluated again today. He was provided with a permanent profile preventing him from running for PT [physical training] which seems to be the biggest reason for the exacerbation of his right foot plantar fasciitis. He was encouraged to seek physical therapy again."

h. This profile simply allowed the applicant to limit his running during PT and to perform an alternate aerobic event in lieu of the 2-mile run event for his Army Physical Fitness Test (APFT).

i. The applicant was seen for his separation health examination on 2 December 2013:

"Patient presents for/with ETS physical - Patient indicated no pain, no nausea, vomiting, diarrhea, or fever - Pt did indicate that in the last year he has had some additional sinus congestion."

j. The provider documented his plantar fasciitis as well as tendonitis in a shoulder, elbow, and knee. He found the applicant qualified for separation.

k. There is no evidence the applicant had any duty incurred medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge. 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.

l. JLV shows he has been awarded multiple VA service-connected disability ratings, including PTSD, migraine headaches, and flat foot condition. 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.

m. It is the opinion of the ARBA 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. The evidence of record shows the applicant was separated due to completion of his required active service. The Board reviewed and agreed with the medical reviewer's finding no evidence the applicant had any duty incurred medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge. 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. The Board determined that the applicant's referral of his case to the disability evaluation system is not warranted.

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. 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, under the operational control of the Commander, U.S. Army Human Resources

Command (HRC), is responsible for administering the PDES 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.

a. Soldiers are referred to the PDES when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in a medical evaluation board, when they receive a permanent medical profile, P3 or P4, and are referred by an MOS Medical Retention Board, when they are command-referred for a fitness-for-duty medical examination, and when they are referred by the Commander, Human Resources Command.

b. The PDES assessment process involves two distinct stages: the MEB and the 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 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 are either 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 retirement payments 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. 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 (Physical Evaluation for Retention, Retirement, or Separation) establishes the Physical Disability Evaluation System (PDES) 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 an MEB 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. 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.

a. Paragraph 2-1 provides that 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.

b. Paragraph 2-2b(1) provides that 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 PDES for evaluation for separation for reasons indicated above) creates a presumption that the member is fit for duty. Except for a member who was previously found unfit and retained in a limited assignment duty status in accordance with chapter 6 of this regulation, such a member should not be referred to the PDES unless his or her physical defects raise substantial doubt that he or she is fit to continue to perform the duties of his or her office, grade, rank, or rating.

c. Paragraph 2-2b(2) provides that when a member is being processed for separation for reasons other than physical disability, the presumption of fitness may be overcome if the evidence establishes that the member, in fact, was physically unable to adequately perform the duties of his or her office, grade, rank, or rating even though he or she was improperly retained in that office, grade, rank, or rating for a period of time and/or acute, grave illness or injury or other deterioration of physical condition that occurred immediately prior to or coincidentally with the member's separation for reasons other than physical disability rendered him or her unfit for further duty.

d. Paragraph 4-10 provides that MEBs are 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 qualification for retention based on criteria in Army Regulation 40-501, chapter 3. If the MEB determines the Soldier does not meet retention standards, the board will recommend referral of the Soldier to a PEB.

e. Paragraph 4-12 provides that each case is first considered by an informal PEB. Informal procedures reduce the overall time required to process a case through the disability evaluation system. An informal board must ensure that each case considered is complete and correct. All evidence in the case file must be closely examined and additional evidence obtained, if required.

5. Title 10, U.S. Code, section 1201, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30 percent. Title 10 U.S. Code, section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating of less than 30 percent.

6. Title 38, U.S. Code, sections 1110 and 1131, permits the VA to award compensation for medical conditions incurred in or aggravated by active military service. The VA, however, is not empowered by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual may have a medical condition that is not considered medically unfitting for military service at the time of processing for separation, discharge, or retirement, but that same condition may be sufficient to qualify the individual for VA benefits based on an evaluation by that agency.

7. Section 1556 of Title 10, United States 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 Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//