

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 February 2024

DOCKET NUMBER: AR20230007474

APPLICANT REQUESTS:

- medical retirement instead of reassignment to the Retired Reserve due to medical disqualification for retention in the U.S. Army Reserve (USAR)
- personal appearance before the Board via video or telephone

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 3349-SG (Physical Profile Record)
- Memorandum from the USAR Medical Management Center, subject: Notification of Medical Disqualification, 25 November 2019
- Statement of Understanding and Election of Options – Acknowledgement of Notification of Medical Unfitness for Retention
- DA Form 5016 (Chronological Statement of Retirement Points), 1 September 2020
- DA Form 4187 (Personnel Action)
- two DA Forms 4856 (Developmental Counseling Form)
- several email messages

FACTS:

1. The applicant states he was discharged due to medical disqualification after 21 years of service, which includes a deployment to Iraq in 2005. His chain of command initiated a Medical Evaluation Board (MEB), and he was issued retirement orders due to medical disqualification. He is allergic to bee stings and has been since 2003. He was told he would be medically retired. He is also in the process of being evaluated and treated for post-traumatic stress disorder (PTSD) resulting from his deployment to Iraq. By being retired based on years/points as opposed to medically retired, he is unable to maintain Tricare medical coverage at a reasonably affordable cost.
2. The applicant enlisted in the USAR on 24 September 1999. He served in Iraq from 4 November 2005 to 12 October 2006.

3. A DA Form 3349-SG (Physical Profile Record) shows the applicant was issued permanent physical profiles on 13 April 2017 for mild decreased visual acuity (bilateral) and on 24 October 2019 for an undisclosed condition. Section 5 of this form (Medical Instructions to Unit Commander) shows the applicant's eyes condition precluded assignment to duties that required optimal vision. Section 5 also mentions that the sting of flying insects can result in life threatening reaction and that Soldiers who require specialty therapy are non-deployable for a minimum of three years. Section 5 further shows the applicant had been on profile for the above condition(s) for over 12 months and would be referred to the Disability Evaluation System (DES) as Non-Duty Physical Evaluation Board (ND-PEB) under Army Regulation 40-501 (Standards of Medical Fitness) paragraph 3-41e (miscellaneous conditions and defects).
4. A memorandum from the USAR Medical Management Center, dated 25 November 2019, subject: Notification of Medical Disqualification) notified the applicant that it was determined he no longer met the Army medical standards for retention in accordance with Army Regulation 40-501. He was also informed that based on this determination, he was required to choose to be discharged or request a Physical Disability Evaluation System (PDES) board. If he chose the PDES board, he was advised to ensure any applicable lines of duty (LOD) determinations were completed and approved. He was further advised there were no LODs on record for his condition.
5. On 16 March 2020, the applicant completed a Statement of Understanding and Election of Options and requested reassignment to the Retired Reserve, with early qualification for eligibility to receive retired pay at age 60, based on having at least 15 years of qualifying service but less than 20 years. He did not request referral to the PDES for final determination of his medical fitness for retention and/or separation per Army Regulation 40-501, chapter 9.
6. The applicant provided his DA Form 5016, dated 1 September 2020, showing he completed 18 years of qualifying service for non-regular retirement. However, an updated DA Form 5016, obtained from the applicant's record in the U.S. Army Human Resources Command (AHRC) Soldier Management Service – Web Portal (SMS-Web), shows he completed 20 years qualifying service.
7. The applicant's Notification of Eligibility for Retired Pay at Non-Regular Retirement (20-Year Letter) is dated 21 October 2021. This letter notified him that having completed the required years of qualifying Reserve service, he is eligible for retired pay upon reaching age 60.
8. On 8 August 2022, the applicant submitted a DA Form 4187 requesting transfer to the Retired Reserve effective 1 May 2023.

9. The applicant's orders reassigning him to the Retired Reserve are not available. His record in the AHRC SMS-Web confirms he is a member of the USAR Retired Reserve.

10. The applicant provided two DA Forms 4856 and a series of email messages pertaining to his reassignment to the Retired Reserve process.

11. 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/or 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. On his DD Form 149, he indicates that PTSD is related to his request. He states:

“Veteran was discharged due to medical disqualification after 21 years of service with a deployment to Iraq in 2005. The chain of command initiated a medical evaluation board who issued retirement due to medical disqualification. He is allergic to bee stings and has been since 2003.

I was told I would be medically retired. I am also in the process of being evaluated and treated for PTSD from my deployment to Iraq. By being retired by years/points as opposed to medically retired I am unable to maintain my Tricare medical coverage at a reasonably affordable cost.”

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. A Soldier Management System (SMS) screen shot shows the drilling USAR Soldier has been transferred to the USAR Retired Reserve.

d. The applicant was placed on a duty limiting permanent physical profile for non-duty related severe insect sting allergy on 24 October 2019. The profile stated the applicant was non-deployable and could not live and function, without restrictions, in any geographic or climatic area without potentially worsening his condition. The profile states:

“NON-DEPLOYABLE. The sting of flying insects can result in a life-threatening reaction. These flying insects can be found throughout the world and across all combatant commands. Soldier should have immediate access to an epinephrine autoinjector at all times, particularly in the warm months when these insects are more active. Secondary to the risk for a reaction, Soldiers who require specialty therapy are nondeployable for a minimum of 3 years and will medically need referral to a medical evaluation board if noncompliant. After completion of 3 years of specialty therapy, the Soldier’s individual risk, capabilities, and limitations are to be evaluated by a military allergist. The assigned duty location should include access to a clinic which can provide specialty allergy treatment.

e. The United States Army Reserve Command’s Army Reserve Medical Management Center notified the applicant in a memorandum 25 November 2019 that this condition was disqualifying for continued military service. The applicant was provided with four options; Transferring to the Retired Reserve if he had 20 qualifying years of service; receiving a 15 year notice of eligibility for a non-regular retirement due to being discharged for a non-duty related medical condition yet having between 15 and 20 years of qualifying service and subsequently transferred to the Retired Reserve; honorable discharge if he had less than 15 years of qualifying service; or to request a non-duty related physical evaluation board, or NDR PEB, for a determination of medical fitness.

f. The applicant elected for a 15-year notice of eligibility on made his election on 16 March 2020.

g. He received his Notification of Eligibility for Retired Pay at Non-Regular Retirement (20-Year Letter) on 27 October 2021.

h. On 8 August 2022, he requested retirement with transfer to The Retired Reserve to be effective 1 May 2023.

i. There is no evidence the applicant’s insect sting allergy was incurred during or permanently aggravated by his military service, i.e., duty related. As such, he was not eligible for referral to the duty related side of the DES.

j. The applicant notes that he had his insect allergy since 2003. His change from medically qualified to disqualified may have been due to the changes of personnel policy in 2017 and 2018 requiring full deployability for retention. For example, paragraph 5-4e(2) of AR 635-40, Disability Evaluation for Retention, Retirement, or Separation (19 January 2017) states that except for Medical Corps and General

Officers, "... the PEB will find Soldiers unfit who are medically disqualified for worldwide deployment in a field or austere environment."

k. No mental health documents were submitted with the application.

l. His final three NCO Evaluation Reports show he was a successful Soldier. On his final NCO Evaluation Report, an annual with a thru date of 31 May 2022, his senior rater marked him "Highly Qualified" and wrote for the applicant's "Overall Potential:"

"SSG {Applicant} has been a paragon of pragmatic professionalism. Should he choose not to ETS, he demonstrates great potential with critical thinking skills above his current grade. Keep in leadership and challenging assignments. Send to schools at first opportunity. Promote with Peers."

m. There is no evidence the applicant had a duty related mental health or other 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.

n. JLV shows he has one VA service-connected disability rating: 50% for major depressive disorder. 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.

o. It is the opinion of the ARBA medical advisor that a referral of his case to the DES is unwarranted.

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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising official finding referral of the

applicant's case to the DES is without merit. The opine found no evidence the applicant had a duty related mental health or other medical condition which would have failed the medical retention standards prior to his discharge. Thus, finding no cause for referral to the Disability Evaluation System.

2. The Board determined there is insufficient evidence to support the applicant's contention for a medical retirement instead of reassignment to the Retired Reserve due to medical disqualification for retention in the U.S. Army Reserve (USAR). Furthermore, the Board determined there is no evidence the applicant's insect sting allergy was incurred during or permanently aggravated by his military service, i.e., duty related. As such, he was not eligible for referral to the duty related side of the DES. Based on the preponderance of evidence and medical opine, the Board denied relief.

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.

2/22/2024

X [REDACTED]

CHAIRPERSON
[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, 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 (Disability Evaluation for Retention, Retirement, or Separation).

2. Army Regulation 40-501 provides information on medical fitness standards for induction, enlistment, appointment, retention, and related policies and procedures. Chapter 3 gives the various medical conditions and physical defects which may render a Soldier unfit for further military service and which fall below the standards required. These medical conditions and physical defects, individually or in combination, are those that:

a. Significantly limit or interfere with the Soldier's performance of their duties.

b. May compromise or aggravate the Soldier's health or well-being if they were to remain in the military Service. This may involve dependence on certain medications, appliances, severe dietary restrictions, or frequent special treatments, or a requirement for frequent clinical monitoring.

c. May compromise the health or well-being of other Soldiers.

d. May prejudice the best interests of the Government if the individual were to remain in the military Service.

3. Army Regulation 40-501, also states in:

a. Paragraph 9-10, normally, Reservists who do not meet the fitness standards set by chapter 3 will be transferred to the Retired Reserve or discharged from the USAR. They will be transferred to the Retired Reserve only if eligible and if they apply for it. Reservists with non-duty related medical conditions who are pending separation for not meeting the medical retention standards of chapter 3 may request referral to a PEB for a determination of fitness.

b. Paragraph 9-12, Reserve Component (RC) Soldiers with non-duty related medical conditions who are pending separation for failing to meet the medical retention standards of chapter 3 of this regulation are eligible to request referral to a PEB for a determination of fitness. Because these are cases of RC Soldiers with non-duty related medical conditions, MEBs are not required. Once a Soldier requests in writing that his or

her case be reviewed by a PEB for a fitness determination, the case will be forwarded to the PEB and will include the results of a medical evaluation that provides a clear description of the medical condition(s) that cause the Soldier not to meet medical retention standards.

4. Army Regulation 635-40, paragraph 4-34 (RC non-duty related process) states the RC non-duty related process is established by policy. It affords RC Soldiers not on call to active duty of more than 30 days and who are pending separation by the RC for non-duty related medical conditions to enter the DES for a determination of fitness and whether the condition is duty related. An LOD investigation resulting in a finding of not in LOD is not required when it is clear that the disqualifying disability is non-duty related. Referral to the RC non-duty related process is upon the request of the RC Soldier. If the Soldier does not request referral, they are subject to separation for medical disqualification under RC regulations.

5. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)) provides Department of the Army policy, criteria, and administrative instructions regarding an applicant's request for the correction of a military record. Paragraph 2-11 states applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

6. 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//