

IN THE CASE OF: ██████████

BOARD DATE: 29 February 2024

DOCKET NUMBER: AR20230007853

APPLICANT REQUESTS:

- a physical disability discharge in lieu of a discharge for failure to maintain acceptable standards for retention
- a personal appearance before the Board via video/telephone

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

DD Form 149 (Application for Correction of Military Record)

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 he was discharged from active duty with an honorable discharge under the expeditious discharge program. He was assaulted and shot while on leave and was released due to complications from the assault. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows failure to maintain acceptable standards. He was never written up and was an honor graduate from advanced individual training (AIT). He maintained high standards while serving.
3. The applicant underwent a medical examination on 19 November 1981 for enlistment purposes. His Standard Form (SF) 93 (Report of Medical History) shows he reported he was in excellent health. The corresponding SF 88 (Report of Medical Examination) shows he was qualified for enlistment with a physical profile of 111111.

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.

4. The applicant enlisted in the Regular Army on 22 December 1981. He completed his required training and was assigned to Fort Stewart, GA effective 14 May 1982.

5. A SF 600 (Heath Record - Chronological Record of Medical Care) entry dated 21 July 1982 shows the applicant was seen after sustaining superficial wounds to his right chest and right upper arm from a gunshot 4 days earlier. There was no internal damage and no stitches placed.

6. The applicant was notified on 26 August 1982 his Commanding Officer was initiating action to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), paragraph 5-31 (Expeditious Discharge Program) citing he had proven unable to adapt to the military regimentation.

7. The applicant acknowledged notification of the pending separation activity the same day and elected not to submit statements on his own behalf. He was given the option to undergo a medical examination for separation and indicated he did not desire a separation medical examination.

8. The separation proceedings were approved on 29 September 1982.

9. The applicant was honorably released from active duty and transferred to the Ready Reserve on 7 October 1982 under the provisions of AR 635-200, paragraph 5-31h(1) for failure to maintain acceptable standards for retention.

10. The applicant was honorably discharged from the Ready Reserve on 16 December 1987.

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 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 in essence requesting a referral to the Disability Evaluation System. He states:

“I was discharged and released from active duty with honorable discharge. I was released on Expeditious Discharge. I was assaulted and shot while on leave. Was released due to complications from assault.”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. The applicant’s DD 214 shows he entered the regular Army on 22 November 1981 and was discharged on 10 July 1982 under the separation authority provided by paragraph 5-31h(1) of AR 635-200, Personnel Separations - Enlisted Personnel (1 May 1982): Expeditious Discharge Program (EDP) – Failure to maintain acceptable standards for retention.

d. The applicant’s pre-entrance Report of Medical History and Report of Medical Examination show that other than color deficient vision, the applicant was in good health without significant medical history or conditions.

e. A Chronological Record of Medical Care (SF 600) dated 21 July 1982 show the applicant was seen for “gun shot wound left breast 4 days ago and right forearm.” The provider documented “two small irregular wounds on right upper inner arm and one below the left breast approximately 3 inches long.” He diagnosed the applicant with superficial gunshot wounds and recommended he keep them clean.

f. As part of his separation under the EDP, he was offered and then declined a separation medical examination.

g. Review of his records in JLV shows he is not registered with the VA for healthcare.

There is no evidence the applicant had a medical condition which would have failed the medical retention standards of chapter 3, AR 40-501, Standards of Medical Fitness; or which contributed to his inability to adapt to the military. Thus, there was no cause for referral to the DES prior to his discharge. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of her office, grade, rank, or rating prior to his discharge.

h. It is the opinion of the Agency Medical Advisor that a referral of his case to the DES is unwarranted.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation and the findings and recommendation of the medical advisor, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's narrative reason for separation.

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.

5/20/2024

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, 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 (AR) 635-200 (Personnel Separations - Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 5 sets forth the conditions under which enlisted personnel may be discharged, released from active duty or active duty for training, or released from military control, for the convenience of the Government.

b. Paragraph 5-31 (Expeditious Discharge Program (EDP)) in effect at the time, applied to all Active Army personnel, including ARNGUS and USAR personnel ordered to active duty who have completed at least 6 months but not more than 36 months of continuous active duty on their first enlistment at the time the member's immediate commander formally recommends discharge under this paragraph.

(1) The purpose of this policy was to provide for the expeditious elimination of substandard, nonproductive Soldiers before board or punitive action became necessary. All members separated under this paragraph will be released from active duty and transferred to the IRR to complete their service obligation, except those whom the separation authority determines, for some specific reason, have no potential for useful service under conditions of full mobilization.

(2) Before making such determination, the separation authority will give consideration to the gravity of a situation requiring a full mobilization and the positive motivation such condition may well have on these members; also, the probable maturing effect of an additional two or more years in age.

(3) The EDP provides for the separation of members who have demonstrated that they cannot or will not meet acceptable standards required of enlisted personnel in the Army because of existence of one or more of the following conditions:

- poor attitude
- lack of motivation
- lack of self-discipline
- inability to adapt socially or emotionally
- failure to demonstrate promotion potential

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 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.

4. 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).

5. 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.

6. Army Regulation 15-185 (Army Board for Correction of Military Records), paragraph 2-11, states applicants do not have a right to a formal hearing before the ABCMR. The Director of the ABCMR may grant a formal hearing whenever justice requires.

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//