

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: Horn, [REDACTED]

BOARD DATE: 30 April 2024

DOCKET NUMBER: AR20230007866

APPLICANT REQUESTS: correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show a separation code of "JEA" (Disability, severance pay, combat related (enhanced)) instead of "SEK" (Disability, temporary (enhanced)).

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214
- Department of Veterans Affairs (VA) service-connected disability compensation letter

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, he was placed on the Temporary Disability Retired List (TDRL) in 2012. He was subsequently removed from the TDRL and discharged with severance pay due to combat-related disabilities. He would like the separation code changed on his DD Form 214 to show the most up to date and correct information. He was never issued a corrected DD Form 214.
3. The applicant enlisted in the Regular Army on 25 October 2001.
4. The applicant's DA Form 199 (Physical Evaluation Board (PEB) Proceedings) recommending his placement on the TDRL is not available.
5. Orders issued on 23 August 2012 released the applicant from assignment and duty because of physical disability and directed his placement on the TDRL effective 8 September 2012. The orders show he was assigned a disability rating of 70% and contain the following entries:

a. Disability is based on injury or disease received in the line of duty as a direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a period of as defined by law: Yes

b. Disability resulted from a combat related injury as defined in Title 26 U.S. Code, section 104: Yes

6. The applicant's DD Form 214 shows he was retired on 7 September 2012 under the authority of Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation), chapter 4. It further shows in:

- block 26 (Separation Code), "SEK"
- block 28 (Narrative Reason for Separation), "Disability, temporary (enhanced)"

7. On 21 January 2015, a PEB reevaluated the applicant's unfitting condition (post-traumatic stress disorder (PTSD)) and determined he remained unfit and that the condition was permanent and stable. The PEB recommended a 10% disability rating and the applicant's separation with severance pay.

8. Orders issued by the U.S. Army Physical Disability Agency (USAPDA) on 27 January 2015 directed the applicant's removal from the TDRL and his discharge from the service with entitlement to severance pay. The order contain the following entries:

a. The disability did result from a combat related injury as defined in Title 26, U.S. Code, section 104. Yes

b. The disability was incurred in a combat zone or incurred during the performance of duty in combat-related operations as designated by the Secretary of Defense (Title 10, U.S. Code, section 1212 National Defense Authorization Act 2008, Section 1646): Yes

9. The applicant provided a VA service-connected disability compensation certification letter showing he is receiving service-connected disability compensation.

10. During the processing of this case, and advisory opinion was obtained from the USAPDA. It states:

a. On 5 July 2012 a PEB found the applicant unfit for PTSD and recommended his placement on the TDRL with a 70%. He was subsequently reevaluated and maintained unfit by the PEB. However, the percentage of disability was reduced to 10% and he was separated with severance pay. Upon being placed on the TDRL, he was issued a DD 214 that identified type of separation as "Retirement," the narrative reason as "disability, temporary," and the separation code as "SEK." He requests the DD Form

214 be reissued to reflect his type of separation as discharge and combat-related rather than retirement. Specifically, he requests the separation code be changed from "SEK" (disability, temporary) to "JEA" (disability, severance pay, combat related).

b. Department of Defense Instruction 1336.01, section 3.2., does not require issuance of a new DD Form 214 when a service member is removed from TDRL. Army Regulation 635-8, paragraph 5-2, goes a step further and specifically states a DD Form 214 will not be prepared for personnel being removed from the TDRL. Procedurally, members removed from TDRL are issued orders that reflect the final disposition of the member. Accordingly, the applicant is not authorized a new DD Form 214 due to his removal from TDRL and should utilize the final orders issued on 27 January 2015 in conjunction with his DD Form 214 when needed.

11. The USAPDA advisory opinion was provided to the applicant and given the opportunity to provide additional comments. No response was received.

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 shows in July 2023, a PEB found the applicant unfit for PTSD and recommended his placement on the TDRL with a 70% disability rating. Once he was placed on the TDRL, he was in a retired status. He was issued a DD Form 214 that identified type of separation as "Retirement," the narrative reason as "temporary disability," and the separation code as "SEK." He requests the separation code be changed from "SEK" (disability, temporary) to "JEA" (disability, severance pay, combat related). The applicant was later reevaluated by a TDRL PEB that found he remained unfit. The TDRL PEB determined his condition was stable enough for final adjudication. The PEB rated him at 10% and his disposition was separation with severance pay. By regulation, members removed from the TDRL are issued orders that reflect their final disposition. The applicant was not on active duty between the date he was placed on the TDRL (7 September 2012) and the date he was ultimately discharged with severance pay (27 January 2015). Since the DD Form 214 is a record of continuous active service and since the applicant was not on active duty while on the TDRL, the Board determined no error or injustice occurred in his separation and/or DD Form 214 processing.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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.

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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, 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 635-8 (Separation Processing and Documents) explains separation document preparation, distribution, correction, and transition processing specific to the Disability Evaluation System (DES). It states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. Paragraph 5-2 provides that a DD Form 214 will not be prepared for personnel removed from the TDRL.
3. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) prescribes the specific authorities and the reasons for the separation of members from active military service and the SPD codes to be assigned. The regulation provides that the SPD code of "SEK," as shown on the applicant's DD Form 214, is appropriate for involuntary release from active or transfer of enlisted personnel and the narrative reason for separation is disability, temporary (enhanced) and the authority for separation is Army Regulation 635-40.

//NOTHING FOLLOWS//