

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 March 2024

DOCKET NUMBER: AR20230008107

APPLICANT REQUESTS: correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) ending on 6 February 2002 to show he was discharged instead of retired.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214, 6 February 2002

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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:

a. His DD Form 214 item 23 (Type of Separation) states "Retirement" and item 28 (Narrative Reason for Separation) states "Disability, Temporary." He was not retired. He is seeking a corrected DD Form 214 stating he was discharged and not retired.

b. He does not receive any benefits or retirement pay from the U.S. Army. He is not retired, nor does he receive any retirement pay or benefits. It is however negatively affecting him in his career with the Department of Homeland Security (DHS)/Transportation Security Administration (TSA). He has attempted to buy his military time back for his Federal Employees Retirement System retirement to obtain credit for military service, however, his current DD Form 214 states he is retired which is incorrect. He served honorably and continues to serve in a civilian capacity, but he should not be penalized for an administrative error of not receiving a DD Form 214 stating discharged as opposed to retirement.

3. A review of the applicant's official records show the following:

a. Having prior Regular Army and U.S. Army Reserve (USAR) service, he enlisted in the Regular Army on 26 May 1993.

b. DD Forms 4 (Enlistment/Reenlistment Document - Armed Forces of the United States) show he reenlisted on 21 August 1996 and 18 September 1997.

c. His record contained a Physical Disability Information Report, which shows the Transition Point was notified the applicant would be separated on 6 February 2002 and placed on the Temporary Disability Retired List (TDRL) on 7 February 2002 with a 30 percent disability rating.

d. On 10 December 2001, Headquarters Fort McPherson, GA, published Orders Number 344-0110, which retired the applicant, effective 6 February 2002 and placed him on the TDRL in the rank of staff sergeant, effective 7 February 2002. In pertinent part, the orders show:

- Percentage of disability: 30
- Retirement type and allotment code: TEMP Disability/6
- Statute authorizing retirement: 1202 [Title 10, USC, Section 1202]
- Disability retirement: 12 years, 10 months, 17 days
- Basic pay: 14 years, 10 months, 19 days

e. On 6 February 2002, he was retired by reason of "disability, temporary" and transferred to the USAR Control Group (Retired) Army Reserve-U.S. Total Army Personnel Command (PERSCOM). DD Form 214 shows in:

- item 23 (Type of Separation) – Retirement
- item 24 (Character of Service) – Honorable
- item 25 (Separation Authority) – Army Regulation (AR) 635-40 (Physical Evaluation for Retention, Retirement, or Separation), paragraph 4-24B(2)
- item 28 (Narrative Reason for Separation) – Disability, Temporary

f. The applicant's official military records in the Interactive Personnel Electronic Records Management System did not contain orders removing him from the TDRL.

4. On 3 October 2023, Headquarters, U.S. Army Physical Disability Agency, Legal Advisor provided an advisory opinion for this case and found the applicant's request to be legally insufficient. The Legal Advisor stated:

a. This memorandum is in response to the Army Review Boards Agency, Case Management Division's 12 September 2023 request for an advisory opinion regarding the applicant's request to have his DD Form 214 amended to reflect his separation

rather than his retirement from the Army. For the reasons below, we find the request to be legally insufficient.

b. On 24 September 2001 a Physical Evaluation Board (PEB) found the applicant unfit for chronic relapsing pancreatitis and recommended he be placed on the TDRL with a 30 percent rating. He was subsequently reevaluated and maintained unfit by the PEB. However, the percentage of disability was reduced to 10 percent, and the applicant was separated with severance pay. Upon being placed on the TDRL he was issued a DD Form 214 that identifies type of separation as "Retirement" and the narrative reason as "disability, temporary." The applicant requests the DD Form 214 be reissued to reflect his type of separation as discharge rather than retirement.

c. 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. AR 635-8 (Separation Processing and Documents), 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. Consequently, the applicant is not entitled to a new DD Form 214 due to his removal from TDRL and should utilize the final orders in conjunction with the DD Form 214 when needed. We [the USAPDA] find the applicant's request to be legally insufficient.

5. In an email on 15 October 2023, the applicant responded to the USAPDA advisory opinion and stated:

a. He understands that AR 635-8 states that a DD Form 214 will not be prepared for a service member when they are removed from TDRL because orders procedurally should have been issued to reflect his final disposition. However, he never received those orders. Those orders were not included in the paperwork he received yesterday. Therefore, he respectfully requests a copy of those orders if they exist and if they do not, he is requesting an amended DD Form 214.

b. He is respectfully requesting that the Case Management Division reject the ABCMR recommendation to not issue an amended DD Form 214. He does not have a copy of the orders referenced in their recommendation; he has no way of obtaining a copy of them.

c. It is amazing how the difference of how one word on a document can positively or negatively impact one's life. He has worked for DHS/TSA for nearly 22 years after leaving the Army. When he was hired, he bought his military time back to add to the length of service to his retirement. He now has 36 years working for the U.S. Government. When the TSA was reviewing his records to provide him a retirement estimate they reviewed his military buy back and identified the fact that his

DD Form 214 says retired and not discharged. They are now saying he was erroneously given credit for those years of service, and they have overcompensated him through his annual leave and he now has a debt to them because military retirees cannot receive double compensation. He does not receive compensation from the U.S. Army. Please help him and provide a copy of the orders removing him from TDRL or amend his DD Form 214 from retirement to discharge.

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 the Headquarters, U.S. Army Physical Disability Agency advisory opinion, the Board concurred with the advising official finding there is insufficient evidence to legally support the applicant's request for correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) ending on 6 February 2002 to show he was discharged instead of retired.

2. The Board determined the applicant went before a Physical Evaluation Board (PEB) and was found unfit for chronic relapsing pancreatitis and recommended he be placed on the TDRL. Evidence shows the applicant was placed on the TDRL and issued a DD Form 214 that identifies type of separation as "Retirement" and the narrative reason as "disability, temporary." The Board noted, the opinion summary that procedurally, members removed from TDRL are issued orders that reflect the final disposition of the member. Consequently, in accordance with regulatory guidance the applicant is not entitled to a new DD Form 214 due to his removal from TDRL and should utilize the final orders in conjunction with the DD Form 214 when needed. Based on the opinion findings, the Board denied relief.

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.

X

CHAIRPERSON

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, USC, 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. Department of Defense Instruction 1336.01 (Certificate of Uniformed Service (DD Form 214/5 Series)) establishes policy, assigns responsibilities, and prescribes procedures for the preparation and distribution of the revised DD Form 214/5 Series. Paragraph 3.2.a(2)(c) states the DD Form 214 is not required to be issued for personnel being removed from the TDRL.
3. AR 635-5 (Separation Documents), in effect at the time, prescribes the separation documents that must be prepared for Soldiers on retirement, discharge, release from active duty service, or control of the Active Army. It establishes standardized policy for preparing and distributing the DD Form 214 (Certificate of Release or Discharge from Active Duty). Paragraph 2-1b.(3) states, DD Form 214 will not be prepared for Soldiers removed from the TDRL.
4. AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation), in effect at the time, establishes the Army Physical 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 or her office, grade, rank, or rating.

a. Section VI - Disposition Subsequent to Adjudication, paragraph 4-24 (Disposition by PERSCOM) states, PERSCOM will dispose of the case by publishing orders or issuing proper instructions to subordinate headquarters or return any disability evaluation case to U.S. Army Physical Disability Agency (USAPDA) for clarification or reconsideration when newly discovered evidence becomes available and is not reflected in the findings and recommendations. Paragraph 4-24b(2) states, in pertinent part, based upon the final decision of USAPDA or Army Physical Disability Appeal Board, PERSCOM will issue retirement orders or other disposition instructions as follows:

- (1) Permanent retirement for physical disability (see 10 USC 1201 or 1204).
- (2) Placement on the TDRL (see 10 USC 1202 or 1205).
- (3) Separation for physical disability with severance pay (10 USC 1203 or 1206).
- (4) Separation for physical disability without severance pay.

b. Paragraph 7-11a (Disposition of the TDRL Soldier), action following periodic Physical Evaluation Board (PEB) evaluation or on fifth anniversary, provides that PERSCOM will remove a Soldier from the TDRL as described below on the fifth anniversary of the date the Soldier's name was placed on the list, or sooner on the approved recommendation of a PEB. A soldier will be removed from the TDRL and separated with severance pay if the Soldier:

- (1) Has less than 20 years of service.
- (2) Is unfit because of the disability for which the Soldier was placed on the TDRL; and either the disability has stabilized at less than 30 percent; or the disability, although not stabilized, has improved so as to be ratable at less than 30 percent. A former Regular Army enlisted Soldier who would be separated under this authority may request a waiver to reenlist.

//NOTHING FOLLOWS//