

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 October 2024

DOCKET NUMBER: AR20230008202

APPLICANT REQUESTS:

- to be shown to have been discharged from the Illinois Army National Guard (ILARNG) due to a medical condition
- removal of the authority and reason for his separation (unsatisfactory performance) and the reentry code (RE Code) of 3
- a video/telephonic appearance before the Board

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) dated 28 February 2003
- NGB Form 22 - 3 December 2004
- USAR Discharge Orders -26 January 2010
- Department of Veterans Affairs (VA) decision letter
- VA Rating Decision

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:

a. His USAR service ended early because he injured his knee during Advanced Individual Training at Fort Bliss, TX.

b. The ILARNG discharged him for unsatisfactory performance after someone at the ILARNG failed to properly document his profile. He had been declared undeployable in 2003 due to his service connected injury.

c. In 2006, the applicant appeared before the Army Discharge Review Board (ADRB) to ask for an honorable discharge and a change in the narrative reason for separation. The ADRB recommended granting the characterization of service upgrade. He states the ADRB should have also struck the unsatisfactory remark from his record but did not.

d. In 2022, he finally made a VA claim for his disability, which was granted and he is receiving VA benefits for that injury. He would like for his records to reflect that the reason he was unable to complete his USAR obligation and had to finish his enlistment in the Individual Ready Reserve was because of that disability.

3. On the applicant's DD Form 149, he indicates a medical condition as a contributing and mitigating factor in the circumstances that resulted in his separation.

4. The available records do not include a copies of the applicant's enlistment document, service medical records, profiles, documentation of a him being considered undeployable, and only limited ARNG documentation.

5. The applicant underwent an entrance medical examination on 23 January 2002 that found him acceptable for enlistment.

6. The applicant served on active duty for training from 10 September 2002 through 28 February 2003. He completed training with award of the military occupational specialty 14R (Bradley Linebacker Crewmember). He was released from active duty and returned to his ARNG unit.

7. The DD Form 214 issued at this time shows his character of service as uncharacterized.

8. On 9 September 2003, an ILARNG Memorandum requested treatment records for the applicant's medical condition [no specification what that condition was being reviewed].

9. On 5 April 2004, the applicant's commanding officer advised the applicant that he was initiating separation actions. The memorandum indicated if the applicant was separated from the service, he was recommending that the applicant receive an under honorable conditions (general) discharge. The reason for this action was the applicant's failure to comply with a direct order to provide supporting medical treatment records and that failing to comply with this order constituted misconduct.

10. The applicant was discharged from the ILARNG, effective 3 December 2004, with a general discharge under the provisions of NGR 600-200 (Enlisted Personnel Management), paragraph 8-26d for unsatisfactory performance. The applicant was

transferred to the U. S. Army Reserve (USAR) (Annual Training) to complete his period of obligated service. The NGB Form 22 shows:

- Service from 23 January 2002 through 3 December 2004
- A reserve obligation date of 22 January 2010
- The authority and reason for separation as NGR 600-200 Paragraph 8-26d - Unsatisfactory Performance
- An RE Code of RE-3

11. On 10 May 2006 the Army Discharge Review Board recommended granting the applicant an upgrade of his character of service to honorable but denied his request for a change of his narrative reason for separation. The National Guard Bureau concurred with this decision and issued an amended NGB Form 22.

12. The applicant was discharged from the USAR on 26 January 2010 with an honorable characterization of service.

13. On 15 September 2022, the VA granted the applicant service connection for right knee patellofemoral pain syndrome at a 10% disability level. In the decisional document it is noted that the VA had reviewed the applicant's service medical records for the period from September 2002 through February 2003.

14. On 18 September 2023, the Army Review Boards Agency requested an advisory opinion from the NGB; however, as of this time no reply is of record.

15. 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 requesting a change in his separation authority and, in essence, a referral to the Disability Evaluation System (DES). He states:

“My active reserve service ended early because I hurt my knee on active duty in AIT [Advanced Individual Training] at Ft. Bliss, TX. The ILARNG [Illinois Army National

Guard] discharged me for "unsatisfactory performance" after someone at the ILARNG failed to properly document my profile. I had been declared "undeployable" in 2003 due to my service-connected injury.

In 2006, I appeared before the Board [ADRB] to ask for an Honorable discharge and was granted. They should have also struck the unsatisfactory remark from my record but did not.

In 2022, I finally made a VA claim for my disability, which was granted and I am receiving VA benefits for that injury. I would like for my records to reflect that the reason I was unable to complete my ARR obligation and had to finish my enlistment in the IRR was because of that injury."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's National Guard Report of Separation and Record of Service (NGB Form 22) shows he entered the Army National Guard on 23 January 2002 and was discharged from the Illinois Army National Guard (ILARNG) with an honorable characterization of service on 3 December 2004 under paragraph 8-26d of NGB 600-200, Enlisted Personnel Management: Unsatisfactory Performance. It shows 02 years, 10 months, and 11 days of total service for retired pay.

d. In a 9 September 2003 memorandum from the ILARNG Deputy State Surgeon to the applicant's Battery, his unit was informed them the applicant had been placed on a temporary physical profile for knee pain and follow-up documentation was required (suspense date 30 November 2003) to address his injury and fitness to serve:

"The above-mentioned soldier recently completed a physical exam, submitted treatment records or was issued a temporary profile in which they identified they are/was being treated for knee pain.

In order to assess the soldier's medical condition, the soldier needs to provide a current diagnosis, prognosis, and any specific limitations from his/her personal physician, through the soldier's unit, to the Medical Support Branch, 1301 N. Macarthur Blvd. Springfield, IL 62702-2399 by the above-mentioned suspense date.

Failure to do so will result in a fitness for duty evaluation."

e. In a 5 April 2004 memorandum to the applicant, the assistant adjutant general of the ILARNG informed the application of his initiation to separate the applicant from the ILARNG:

“The reason for the proposed action is you have failed to comply with a direct order to provide supporting documentation for medical treatment records. Failing to comply constitutes misconduct and you will be discharged as such.”

f. No medical documentation submitted with the application and there are no medical records in the EMR or MEDCHART.

g. There is no evidence the applicant had a mental health or other medical condition which would have then contributed to or would now mitigate his failure to comply with a direct order in the six (6) months he was given; or that would have failed the medical retention standards of chapter 3, AR 40-501, Standards of Medical Fitness, and been a cause for referral to the DES prior to this discharge. 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.

h. JLV shows he has been awarded one 10% VA service-connected disability rating for limited flexion of his right knee. He had no diagnosed mental health conditions.

i. The DES only compensates an individual for service incurred medical condition(s) which have been determined to disqualify him or her from further military service and consequently prematurely ends their career. 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.

j. It is the opinion of the Agency Medical Advisor that neither a change is his separation authority nor a referral of his case to the DES is warranted.

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 review based on law, policy, and regulation. Upon review of the applicant's petition, available military records, and the medical review, the Board concurred with the advising official finding that the applicant's Department of Veterans Affairs rating determinations are based on the roles and authorities granted by Congress to the Department of Veterans Affairs and executed under a different set of laws. Based on this, the Board determined referral of his case to

the Disability Evaluation System (DES) or amendment of his narrative reason for separation from the ILARNG are not warranted.

2. The Board next considered the applicant's request to remove the authority and reason for separation for unsatisfactory performance from the ILARNG on 3 December 2004. The Board found no error or injustice in the processing of the separation action and was not convinced by the applicant's statement that his profile was not documented and therefore he should not have been discharged for unsatisfactory performance. The evidence of record shows the applicant failed to comply with a direct order to provide supporting documentation for medical treatment records. The Board determined relief was not warranted.

3. Prior to closing the discussion, the Board noted the analyst of record's administrative note below and recommended the correction be completed to more accurately depict the military service of the applicant.

4. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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.

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.

ADMINISTRATIVE NOTE(S):

The applicant completed a period of initial active duty for training (IADT). He was awarded a MOS at the completion of training and was transferred back to the ARNG. Army Regulation 635-200 provides that when a Reserve Component or ARNG Soldier successfully completes IADT, the characterization of service is Honorable unless directed otherwise by the separation authority. Please reissue him a DD Form 214 for the period ending 18 February 2003 showing his character of service as Honorable.

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 (USC), Section 1201, provides for the physical disability retirement of a member who has either 20 years of service or a disability rating of 30 percent (%) or greater.
3. Title 10, U.S. Code (USC), Section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating at less than 30%.
4. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, 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.
5. NGB Regulation 600-200, as then in effect, provided that a Soldier was subject to discharge for unsatisfactory participation when it is determined that the Soldier is unqualified for further military service because attempts to have the Soldier respond or comply with orders or correspondence failed.
6. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) states :
 - a. The mere presence of an 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.
 - b. Paragraph 2-2b, as amended, provides that when a member is being separated by reason other than physical disability, his continued performance of duty creates a presumption of fitness which can be overcome only by clear and convincing evidence that he was unable to perform their duties or that acute grave illness or injury or other

deterioration of physical condition, occurring immediately prior to or coincident with separation, rendered the member unfit.

7. Army Regulation 601–210 (Active and Reserve Components Enlistment Program) states an RE code is not upgraded unless it was administratively incorrect when originally issued.

a. RE–1 applies to personnel who have completed their obligated term of active service and are considered qualified to reenter the U.S. Army if all other criteria are met.

b. RE–3 applies to personnel who are not considered fully qualified for reentry or continuous service at time of separation, but whose disqualification is waivable. They are ineligible unless a waiver is granted.

c. The SPD/RE Code Cross Reference Table included in the regulation establishes RE-3 as the proper code to assign members separated narrative reason.

8. Army Regulation 635-5 (Separation Documents), in effect at the time, prescribed the separation documents that were prepared for individuals upon retirement, discharge, or release from active military service or control of the Army. It established standardized policy for preparing and distributing DD Form 214. Paragraph 1-4 provided that a DD Form 214 will be prepared for personnel at the time of their retirement, discharge, or release from the Active Army. Personnel included are members of the ARNGUS and USAR separated after completing 90 days or more of continuous ADT, and those separated after completing initial active duty for training that resulted in the award of an MOS, even though the active duty was less than 90 days.

//NOTHING FOLLOWS//