

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 September 2024

DOCKET NUMBER: AR20230010120

APPLICANT REQUESTS: correction of his records to show he was separated due to a medical condition.

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)
- self-authored statement
- Standard Form (SF) 600 (Chronological Record of Medical Care)
- DA Form 3349 (Medical Condition – Physical Profile Record), dated 2 September 1980
- DA Form 3349, dated 15 September 1980
- separation proceedings
- Department of Veterans Affairs (VA) Form 21-526e (Service Member's Statement Concerning Application for Compensation from the VA)
- VA Form 00-3101-3 (Request for Information)
- VA service-connected disability compensation 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 is asking for reconsideration of his discharge because his discharge was medical. A captain and the VA changed his discharge, and he has done everything he can for the last 43 years to get it changed, but every time he gets close, the VA stops him.
3. In a separate self-authored statement, the applicant describes the issues he is having with the VA through the years trying to obtain medical care and receiving service-connected disability compensation. The complete applicant's self-authored statement was provided to the Board for their review and consideration.

4. The applicant enlisted in the Regular Army on 4 June 1980. His DA Form 2-1 (Personnel Qualification Record) shows he completed basic combat training and commenced advanced individual training (AIT) on 29 July 1980.
5. The applicant's records contain a DA Form 4187 (Personnel Action – Part II) showing his duty status was changed from "hospital" to present for duty effective 8 August 1980.
6. The applicant provided an SF 600 showing he was treated on 2 September 1980 for sharp pain and of his wrist. He also provided a physical profile record, dated 2 September 1980, showing he was issued a temporary physical profile (14 days) due to left wrist pain and a physical profile record, dated 15 September 1980, showing his temporary profile was extended by 60 days, unless otherwise directed.
7. The applicant's complete separation packet (i.e. counseling record) is not available.
8. On 30 September 1980, the applicant, while attending AIT, was informed by his company commander that he was initiating action to discharge him from the Army under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-33, The Trainee Discharge Program (TDP). The commander cited as the reasons for the proposed separation action the applicant's lack of aptitude, ability, motivation, or self-discipline. The applicant was also advised of his rights to present statements in his own behalf and to request a separation medical examination if he felt his physical status had changed since his last examination.
9. On 1 October 1980, the applicant acknowledged the notification of the proposed separation from the Army. He elected not to submit statements in his own behalf and elected not to have a separation medical examination.
10. On an unspecified date, the separation authority approved the applicant's separation from active duty under the provisions of Army Regulation 635-200, paragraph 5-33.
11. The applicant's DD Form 214 shows he was honorably released from active duty and transferred to the U.S. Army Reserve (USAR) Control Group (Annual Training) on 10 October 1980 under the provisions of Army Regulation 635-200, paragraph 5-33, by reason of TDP, marginal or nonproductive. The DD Form 214 also shows he completed 4 months and 7 days of active service.
12. The applicant was honorably discharged from the USAR on 3 June 1986.
13. The applicant provided VA documents showing a service-connected disability compensation for forearm muscle injury with a 20% disability rating.

14. 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 requesting, in essence, a referral to the Disability Evaluation System (DES). He states:

"I was medical discharge at 40% with [??]. Then after 2 years and VA took it away and drew the money as I have shown because I never got it.

Because someone is getting what I should have got and my PEB Board findings was read off to me at a Rep's office at the VSO in Nashville, TN and then told I couldn't have it because it belonged to the VA.

I have had no luck with the VA or the courts because they want nothing to do with this because they are the ones who screwed it up and this is a fraud because someone is still drawing money in my name."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 shows he entered the Regular Army on 4 June 1980 and was honorably discharged on 10 October 1980 under provisions provided in paragraph 5-33f of AR 635-200, Personnel Separations – Enlisted Personnel (15 August 1979): Trainee Discharge Program (TDP).

d. Because of the period of Service under consideration, there are no encounters in AHLTA nor documents in iPERMS.

e. Medical documentation shows the applicant was seen for a six-week history of left wrist pain on 2 September 1908 and later placed on two temporary physical profiles for same.

f. On 15 September 1980, the applicant was seen in follow-up for anterior tibial pain with activity. Radiographs remained negative for a fatigue fracture and the provider recommended the applicant be discharged under the trainee discharge program.

g. On 30 September, the applicant's company commander informed him of his initiation of action to separate him from the Army under paragraph 5-33 of AR 635-200 stating "The specific reasons for my proposed action are "Lack of aptitude, ability, motivation, or self-discipline."

h. The brigade commander approved the recommended discharge under the TDP stating "Upon discharge, action will be taken to recoup any unearned portions of enlistment bonus which the service member has received."

i. There is no evidence the applicant had a service incurred permanent medical condition which would have failed the medical retention standards of chapter 3, AR 40-501 prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System.

j. JLV shows he was awarded one VA service-connected disability rating of either 0% or 10% for left forearm injury effective 5 September 1984. This was increased to 30% effective 18 August. 2011. However, 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.

k. It is the opinion of the ARBA Medical Advisor that a referral of this case to the Disability Evaluation System is not warranted.

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 Board carefully considered counsel's statement, 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 that a referral of this case to the Disability Evaluation System is not warranted. The opine noted, there is insufficient evidence the applicant had a service incurred permanent medical condition which would have failed the medical retention standards of chapter 3,

AR 40-501 prior to his discharge. The Board agreed, based on the advising official opine and evidence in the applicant's record, relief is not warranted.

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 (AR) 635-200 (Personnel Separations – Enlisted Personnel), sets forth the basic authority for the separation of enlisted personnel from the Army. Paragraph 5-33 of the regulation in effect at the time governed the TDP. It provided for the expeditious separation of service members who lacked the necessary motivation, discipline, ability, or aptitude to become productive Soldiers or who failed to respond to formal counseling.

a. Service members must have:

- voluntarily enlisted
- been in basic, advanced individual, on-the-job, or service school training prior to award of a military occupational specialty
- not have completed more than 179 days of active duty on their current enlistment by the date of separation

b. Soldiers could be separated when they demonstrated that they:

- were not qualified for retention due to failure to adapt socially or emotionally to military life
- could not meet minimum standards prescribed for successful completion of training because of lack of aptitude, ability, motivation, or self-discipline
- demonstrated character and behavior characteristics not compatible with satisfactory continued service

3. Army Regulation 40-501 (Standards of Medical Fitness) provides that for an individual to be found unfit by reason of physical disability, he or she must be unable to perform the duties of his or her office, grade, rank or rating. Performance of duty despite impairment would be considered presumptive evidence of physical fitness.

4. 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//