

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 May 2024

DOCKET NUMBER: AR20230010430

APPLICANT REQUESTS: correction of his records to show he was discharged due to a service-incurred medical disability instead of for a condition that existed prior to service (EPTS).

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Rating Decision, dated 31 May 2023
- VA Certificate of Eligibility (for loan guaranty benefits)
- Veteran Status and Service-Connected Disability Verification

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 just recently made to feel whole by the VA after acknowledging that his discharge from the Army was due to a service related disability. He is requesting the correction of his records because he is looking to obtain a VA loan for his retirement home purchase and to correct the injustice of an incorrect discharge narrative. His discharge narrative has prevented him from being approved as well as being regarded as giving up his ability to hear due to military service. It is time for the Army to fix this injustice and error.
3. The applicant's records contain a statement provided by a Doctor of Medicine (Dr. F), dated 10 October 1969, stating the following:

This letter is to make you aware of the fact that on 4 September 1969, a Stapedectomy was performed on the right ear of [the applicant] because of otosclerotic deafness.

In my opinion, the fact that he now has a wire prosthesis in his right ear, with the possibility of recurrent attacks of vertigo, does not make him fit for induction into the armed services.

4. The applicant was inducted into the Army on 8 September 1970.
5. On 29 September 1970, the applicant was issued a DA Form 3349 (Medical Record-Physical Profile Record) due to postoperative stapedectomy. The DA Form 3349 shows he was deemed medically qualified for duty with limitations.
6. The applicant's records contain a letter from his attorney, dated 6 October 1970, addressed to military authorities, stating the following:

As is shown by the letter from [Dr. F], [the applicant] has had a stapedectomy and a wire prosthesis placed in his right ear. Since [the applicant] was inducted into the Army only several weeks ago, the medical fitness standards for induction, AR [Army Regulation] 40-501 [Standards of Medical Fitness], would apply to his case, and I believe he should have been found disqualified under these regulations. Although [the applicant] brought the matter to the attention of the examining doctors at Los Angeles Entrance and Examining Station, it was ignored.

In accordance with this medical evidence, I hereby formally, respectfully request discharge for and on behalf of my client.

7. On 29 October 1970 a medical board found the applicant unfit for further military service due to:
 - postoperative stapedectomy with resulting vertigo - Line of duty (LOD)-No, EPTS
 - refractive error, bilateral – LOD-No, EPTS
8. The medical board recommended the applicant's separation from military service under the provisions of AR 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-9 (Discharge of personnel who did not meet procurement medical fitness standards), for a condition which EPTS and had not been aggravated by active service. The DA Form 8-118 (Medical Board Proceedings) shows the applicant elected not to appeal the medical board's findings and recommendations and also indicated he did not desire to continue on active duty.
9. The applicant's DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was honorably discharged on 13 November 1970 under the authority of AR 635-200, chapter 5, by reason of physical disability EPTS. The DD Form 214 also shows he was credited with 2 months and 6 days of active service.

10. The applicant provided his VA Rating Decision, dated 31 May 2023, showing he was granted service-connected disability compensation for bilateral hearing loss.

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/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 in essence requesting a referral to the Disability Evaluation System (DES) so he can obtain a VA loan to purchase a home.

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 8 September 1970 and was honorably discharged on 13 November 1970 under the authority provided in paragraph 5-9 of AR 635-200, Personnel Separations – Enlisted Personnel 1 June 1967): Discharge of personnel who did not meet procurement medical fitness standards. The separation program number 375 denotes "Discharge because of not meeting medical fitness standards at time of enlistment."

d. Because of the period of service under consideration, there are no encounters in AHLTA or documents in iPERMS.

e. In a 10 October 1969 "To Whom It May Concern" memorandum from his treating physician:

"This letter is to make you aware of the fact that on September 4, 1969, a Stapedectomy was performed on the right ear of [Applicant] because of otosclerotic deafness.

In my opinion, the fact that he now has a wire prosthesis in his right ear, with the possibility of recurrent attacks of vertigo, does not make him fit for induction into the armed services."

f. On 29 October 1970, a medical board determined he should be separated from the service under paragraph 5-9 or AR 635-200 for two conditions which existed prior to service: "Post-op stapedectomy with resulting vertigo" and "Refractive error, bilateral." The applicant was informed of the decision and on 29 October 1970, he declined the opportunity to submit a written appeal.

g. JLV shows he has been awarded a single VA service-connected of 80% for impaired hearing effective 9 November 2022. 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. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

h. It is the opinion of the ARBA Medical Advisor that a referral of his case to the Disability Evaluation System is unwarranted.

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 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. The applicant was discharged from active duty by reason of physical disability that existed prior to service. Based on this, the Board determined referral of his case to the Disability Evaluation System (DES) 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. AR 635-200 sets forth the basic authority for the separation of enlisted personnel. Paragraph 5-9, of the regulation in effect at the time, states individuals who were not medically qualified under procurement medical fitness standards when accepted for induction or initial enlistment will be discharged when a medical board, regardless of the date completed, establishes that a medical condition was identified by appropriate military medical authority within 4 months of the member's initial entrance on active duty which:

a. Would have permanently disqualified the member for entry into the military service had it been detected at that time; and

b. Does not disqualify the member for retention in the military service under the provisions of chapter 3, AR 40-501.

3. Section 1556 of Title 10, United States 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//