

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 February 2025

DOCKET NUMBER: AR20230010799

APPLICANT REQUESTS:

- Reconsideration of his previous requests for a medical retirement
- 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)
- Exhibit A – Department of Veterans Affairs (VA) letter, dated in 1981
- Exhibit B – Headquarters, U.S. Army Medical Department Activity (HQ, MEDDAC) Letter, dated 25 August 1983
- Exhibit C – HQ, MEDDAC letter, dated 8 September 1983
- Exhibit D – HQ, MEDDAC letter, dated 12 September 1983
- Applicant's service records, 92 pages

FACTS:

1. Incorporated herein by reference are military records, as were summarized in the previous considerations of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Numbers:

- AC81-06623, on 6 January 1982
- AC81-06623A, on 9 June 1982
- AC81-06623B, on 31 October 1984
- AR2003090830, on 8 January 2004

2. The applicant states:

a. As outlined in a 12 September 1983 memorandum, Major [REDACTED] Patient Administrator at HQ, MEDDAC, Fort Benning, GA (now renamed Fort Moore), stated a U.S. Army Reserve (USAR) Quadrennial Physical, conducted on 14 July 1983, determined the applicant was unfit for USAR retention.

b. A further review of the applicant's medical records showed the applicant's disqualifying medical conditions were present when he separated from active duty. In the opinion of the Chief, Orthopedic Service, the applicant was unfit when the Army released him from active duty, and he should have been referred into the Army's Physical Disability Evaluation System. The applicant adds that, over time, his conditions have only worsened.

c. The applicant additionally points out that, when he sought relief from the Board in 2022, the ABCMR told him they could not find his service record. The VA subsequently found his records, and he includes them for the Board's review.

d. Exhibits B through D were previously considered by the Board in ABCMR Docket Number AC81-06623B, convened on 31 October 1984.

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

a. On 3 September 1971, the applicant enlisted in the USAR as a Reserve Officers' Training Corps (ROTC) cadet. On 20 July 1972, the Third ROTC Region honorably discharged the applicant due to disenrollment.

b. On 5 June 1975, following the applicant's transfer to and graduation from a different college, the First ROTC Region appointed the applicant as a USAR Commissioned officer for an indefinite term and, on 5 June 1975, he executed his oath of office.

b. On 16 June 1975, ROTC Orders directed the applicant to enter active duty, on 8 July 1975, and to attend Infantry Officer Basic Course at Fort Benning, GA; upon completion of training, the applicant was to permanently change stations to the 193rd Infantry Brigade in Panama.

c. On 25 November 1975, the applicant reported to his new unit in Panama. On 22 December 1975, he executed his oath of office as a Regular Army commissioned officer. On 23 August 1977, he completed his tour in Panama and orders reassigned him to Fort Benning; he arrived at his duty station, on 29 August 1977.

d. Effective 13 December 1979, the Army promoted the applicant to captain in the Army of the United States. On 22 April 1980, the applicant submitted a request for unqualified resignation. He stated:

(1) "I desire to tender my resignation because I have the opportunity to attend law school in September of this year. I have made every effort to work through the chain-of-command and directly with the Infantry Branch to obtain the opportunity to attend law school either at the Army's expense or my own."

(2) "I have been alerted for the Advance Course and then an overseas assignment. By such time as I would return from this overseas tour, I would no longer have the opportunity to attend law school."

e. On 4 June 1980, the Army approved the applicant's unqualified resignation and, on 31 July 1980, honorably released him from active duty and transferred him to the USAR. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 5 years and 24 days of net active duty service. Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) stated, "None."

f. On 22 October 1980, Permanent Orders awarded the applicant the Army Commendation Medal (1st Award) for meritorious service during the period 15 February to 31 July 1980.

g. On 1 June 1981, the applicant petitioned the ABCMR, requesting a medical retirement.

(1) On 28 July 1981, the Office of The Surgeon General provided input for the Board's consideration.

(a) "Review of service medical records reveals an aid station visit on 22 Dec(ember) 1975 because of left knee pain which was reported as having begun two months previously. At that time there was no atrophy and no evidence of ligamentous disruption. Oral medications and a temporary physical profile was provided to limit duty."

(b) "The next available health record entry concerning the left knee was made 9 April 1979. On a clinic visit 13 February 1980 right knee pains were recorded as well as a weight of 198 pounds. He had weighed 138 pounds 10 February 1971. Between 13 February and 25 July 1980 there are 6 health record entries concerning pain, swelling and disability of the knees."

(c) "The applicant, in conjunction with a required quadrennial USAR medical evaluation, underwent special evaluation of the knees and hearing. Increasing pain in the knees and normal hearing levels were recorded. The applicant submitted an unsigned statement by an orthopedic surgeon dated 17 April 1981."

(d) "Careful review of the applicant's hearing and knee problems with comparison to Paragraphs 3-10 (Hearing) and 3-14b (Extremities – Chondromalacia or Osteochondritis Dissecans), AR (Army Regulation) 40-501 (Standards of Medical Fitness), reveals that the conditions, at the time of separation, did not meet or exceed the regulatory limits required for referral for physical disability processing. The applicant was considered medically fit for continuance on duty had he not resigned."

(2) On 6 January 1982, the Board evaluated the applicant's arguments and evidence and voted to deny relief; the Board determined that, on 31 July 1980, the applicant was medically fit for retention.

h. On 9 June 1982, following the applicant's request for reconsideration, the Board again reviewed the applicant's service record and available evidence. The Board stated:

(1) "The applicant originally applied to the ABCMR contending, in effect, that due to several medical problems incurred while on active duty he is entitled to disability retirement. On 6 January 1982 the ABCMR determined that insufficient evidence had been presented to demonstrate the existence of probable material error or injustice to warrant a formal hearing."

(2) "In conjunction with a Congressional inquiry, the applicant's case was reviewed within OTSG concerning the contentions shown above. No evidence of improprieties in his medical management by the professional staff at (applicant's supporting Army Community Hospital) was found by the Medical Consultants to the OTSG. The applicant's medical records were further reviewed concerning his medical conditions and it was determined that there is no evidence to substantiate a significant hearing loss at the time of resignation and; that the applicant's knee problem was not of such severity to qualify him for medical disability separation."

(3) In view of the foregoing, the Board concluded it had no basis for granting the applicant's request.

i. On 26 August 1983, the applicant filed a second request for reconsideration.

(1) On 30 April 1984, the Orthopaedic Consultant to The Army Surgeon General (TSG) provided the following:

(a) "It is my opinion that there is adequate documentation in these medical records to render an unfitting diagnosis. Apparently, at the time of separation from active duty, an Orthopaedic evaluation was not completed to determine medical fitness."

(b) "The Chief of Orthopaedics at (applicant's supporting Army hospital) followed the patient prior to his separation and has also seen the patient after separation, with supporting statements that the applicant was unfit at the time of separation." "The applicant is obviously unfit for Reserve duty at this time and should have an MEB and be referred to a PEB for a medical separation."

(2) On 18 May 1984, the Orthopaedic Consultant to TSG submitted a second consultant review:

(a) "Since my last review of the medical records and documents pertaining to the case of [applicant] on 30 April 1984, I have communicated with Dr. [REDACTED] Chief of Orthopaedic Surgery at (applicant's supporting Army hospital), Fort Benning, Georgia."

(b) "It is the opinion of Dr. [REDACTED] and myself that the applicant was medically fit at the time of his separation in July 1980. Dr. [REDACTED] recalls making a determination of medical fitness, as documented in the records. We are both in agreement that he is probably not medically fit at this time and should meet an MEB concerning his current condition as related to USAR duty."

(3) On 12 July 1984, Dr. [REDACTED] Chief of Orthopaedic Surgery at (applicant's supporting Army hospital), Fort Benning sent the following in a letter addressed to OTSG:

(a) "The specific language in the clinic notes of 28 April 1980 'not unfit under Chapter 3, AR 40-501,' and 25 July 'fit for duty/separation' is used by me only when performing evaluation with this specific purpose in mind...I stand by my statements in these two notes that [applicant] was fit for duty at the time of separation."

(b) My statement of 8 September 1983 (based on examination of 14 July 1983) is not correct as it stands and probably should have been worded more precisely. The statement was based upon a conversation at that time with [applicant], which essentially was that he would have been found unfit had there been any way to predict the unexpected subsequent course of his condition (emphasis added by Dr. [REDACTED])."

(4) On 25 July 1984, OTSG provided input for the Board's review. After summarizing the applicant's separation physical, his 1981 VA hospitalization, and subsequent evaluations, the OTSG concluded, "The consultant staff of OTSG, having carefully reviewed this case, is of the opinion that the applicant was medically fit for retention or appropriate separation at the time."

(5) On 31 August 1984, the U.S. Army Physical Disability Agency (USAPDA) submitted their review of the applicant's case. USAPDA briefly described the applicant active duty medical history and the assessments of the applicant's requests for a medical retirement.

(a) "The applicant's available medical records are replete with recurrent visits to medical facilities concerning his knees. However, nowhere in his records while on active duty status is there a medical diagnosis or impressions that his medical condition warranted medical unfitness and appearance before a medical evaluation board."

(b) "This Agency evaluated the applicant's available medical and personnel records in relationship to his medical and physical condition at the time of his separation

from active military service. The governing regulations in effect on 31 July 1980 were applied in his case."

(c) "The applicant's personnel records, specifically his Officer Evaluation Reports, indicated that he performed his assigned duties consistently in an outstanding and highly efficient manner up to the date of his separation. An Officer Evaluation Report ending 18 Feb 1980, prepared by his rater COL (colonel) [REDACTED] stated that the applicant had the potential to successfully command an Infantry Company and serve as a primary staff officer at battalion level."

(d) "The applicant is currently rated by VA at 40% disability for his knee condition."

(e) USAPDA concluded the applicant was medically and physically qualified for retention at the time of his relief from active duty. "Although the VA awarded the applicant disability for his knee shortly after his separation from the service, this does not in itself indicate error or injustice. The Army and VA are two separate and distinct Government agencies who arrive at disability and rating decisions independently. One agency is not bound by the other's decision and it is not uncommon that the ratings rendered could differ."

(6) On 31 October 1984, the Board voted to deny relief.

j. On 22 April 2003, the applicant asked the Board to add his already awarded Army Commendation Medal to his DD Form 214 and to reconsider his requests for a medical retirement. On 8 January 2004, the ABCMR administratively closed the applicant's request for reconsideration, citing the lack of new evidence but issued him a DD Form 215 (Correction to DD Form 214), adding the Army Commendation Medal.

k. On 15 February 2022, applicant petitioned the Board to again reconsider his previous requests for a medical retirement, and he included 180 pages of medical documentation. On 29 November 2022, the ABCMR administrative closed the applicant's request due to the unavailability of his service record.

4. AR 15-185 (ABCMR), currently in effect, states in paragraph 2-11 (ABCMR Hearings) that applicants do not have a right to a hearing before the ABCMR; however, the Director or the ABCMR may grant a formal hearing.

5. Based on the applicant's request for a referral for a medical evaluation board and a physical evaluation board, this case will be reviewed and discussed by the Medical Staff at the Army Review Boards Agency.

6. 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 has again applied to the ABCMR requesting referral to the Disability Evaluation System (DES). He has indicated on his DD form 149 that PTSD and TBI are conditions related to his request. He states:

"In accordance with the attached letter dated 12 Sept 1983, request referral to a medical board for processing. Attached letter found at VA Regional Office in [REDACTED]. Undersigned had no knowledge. I was determined that I was unfit at the time of discharge however nothing was done about this. Conditions have only gotten worse."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 for the period of Service under consideration shows the former Officer entered the regular Army thru ROTC on 7 July 1975 and was honorably discharged on 31 July 1980 under the separation authority provided by chapter 3 of AR 635-120, Officer Resignations and Discharges (1 October 1978): Unqualified Resignations.

d. This request was previously denied by the ABCMR on 31 October 1984 (AC81-06623). Rather than repeat their findings here, the board is referred to the record of proceedings and outside advisories for that case. This review will concentrate on the new evidence submitted by the applicant.

Briefly:

e. On 22 April 1980, the applicant tendered his unqualified resignation from the Army in order to attend law school. His resignation was accepted and he was discharged on 31 July 1980. It appears he entered the USAR to complete his service obligation.

f. After his resignation, the applicant retroactively sought a medical disability retirement in 1981. In the Chief of Evaluation and Inquires Branch's 28 July response to

the applicant, the military physician concluded the applicant met medical retention standards at the time of discharge:

“Careful review of the applicant’s hearing and knee problems with comparison to Paragraphs 3-10 and 3-14b, AR 40-501, reveals that the conditions, at the time of separation, did not meet or exceed the regulatory limits required for referral for physical disability processing. The applicant was considered medically fit for continuance on duty had he not resigned.”

g. On 25 August 1983, he was informed he was found on his quadrennial physical to have severe chondromalacia which was unfitting for continued service; and had it been found 3 years earlier, processing through a medical evaluation board MEB would have been initiated. It is unknown by what retrograde prognosticative process this provider used to arrive at this conclusion. It is just as likely as not that the condition worsened to this point during the three years since his resignation from the Army.

h. It should also be noted that a referral to an MEB does not always lead to a referral to a physical evaluation board (PEB) and referral to a PEB does not always lead to a finding of unfit for continued service.

i. The ROP for AC81-06623 addresses the findings at that time and those of medical officers from the Office of the Surgeon General.

j. The new medical evidence submitted with the case is post-service VA and civilian documentation from 1998 thru 2023 and so is of no significant probative value. There is no new evidence the applicant had any medical condition which would have failed the medical retention standards of chapter 3, AR 40-501 prior to his voluntary resignation. Thus, there was no cause for referral to the Disability Evaluation System.

k. Paragraph 2-1a of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (25 February 1975) states:

“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 office, grade, rank, or rating.”

l. JLV shows he has been awarded multiple VA service-connected disability ratings, including ratings for loss of use of both feet (100%), sleep apnea (50%), migraine

headaches (50%), and PTSD (50%). However, the DES only compensates an individual for permanent 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.

m. It is the opinion of the Agency Medical Advisor that a referral of his case to the DES remains unwarranted.

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 a referral of his case to the Disability Evaluation System (DES) is not warranted.
2. 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 amendment of the ABCMR decision rendered in Docket Numbers AC81-06623, on 6 January 1982, AC81-06623A, on 9 June 1982, AC81-06623B, on 31 October 1984, and AR2003090830, on 8 January 2004.

6/6/2025

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, U.S. Code, section 1556 (Ex Parte Communications Prohibited) 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 Army Board for Correction of Military Records applicant's (and/or their counsel) prior to adjudication.

2. Army Regulation (AR) 40-501 (Standards of Medical Fitness), in effect at the time, prescribed standards for medical retention in chapter 3 (Retention Medical Fitness Standards).

a. Paragraph 3-3 (Policies). Normally, members with conditions listed in this chapter were considered unfit by reason of physical disability; however, the chapter only provided general guidelines and was not to be taken as a mandate to the effect that having one or more of the listed conditions meant an automatic retirement or separation from the service. Each condition had to be individually determined based on relevant facts and findings of fitness or unfitness and were dependent upon the members' ability to perform the duties required of him or her according to rank or grade.

b. Paragraph 3-4 (Disposition of Members who May Be Unfit Because of Physical Disability). Members believed to be unfit due to physical disability or who had one of the conditions listed in this chapter or to be processed as prescribed in AR 40-3 (Medical, Dental, and Veterinary Care) and AR-635-40 (Physical Evaluation for Retention, Retirement, or Separation) to determine their eligibility for physical disability benefits.

3. AR 40-3, in effect at the time, prescribed policies and procedures for medical evaluation boards (MEB) in chapter 7 (MEB).

a. Paragraph 7-1 (Purpose). MEBs were convened to document a servicemember's medical status and duty limitations insofar as duty is affected by the member's medical status. Decisions regarding unfitness for further military duty because of physical or mental disability are prerogatives of physical evaluation boards (PEB). MEB were not to express conclusions or recommendations regarding such matters.

b. Paragraph 7-5 (Use of MEB). Generally, only those cases that presented problematical or controversial aspects and those in which MEB action was required by

regulation were to be referred to an MEB before disposition. Situations which could be considered to require an MEB included the following:

(1) Those in which PEB referral is contemplated. When a member's fitness for duty was to be determined by a PEB, it was essential that the MEB evaluate thoroughly and report all abnormalities and their impact on functional ability. Correlation had to be established between the abnormalities and the inability to perform duties. This was particularly important when a chronic condition formed the basis for referral to a PEB and there has been no change in the severity of the condition.

(2) Patients with medical conditions or physical defects that were usually progressive in nature and expectations for reasonable recovery could not be established; or cases in which a claim against the Government was likely.

(3) Patients whose medical fitness for return to duty was problematical or controversial. When a member's fitness for further military duty was questionable, it became essential that all abnormalities in his or her condition be thoroughly evaluated. Under these conditions, evaluation had to be undertaken only in a medical treatment facility that had the necessary professional staffing and equipment.

4. AR 635-40, in effect at the time, established the Physical Disability Evaluation System (PDES), and implemented chapter 61 (Retirement or Separation for Physical Disability), Title 10, U.S Code. The regulation set forth policies, responsibilities, and procedures that governed the evaluation for physical fitness of Soldiers who may be unfit to perform their military duties because of physical disability.

a. Chapter 2 (Policies).

(1) Paragraph 2-1 (Standards of Unfitness Because of Physical Disability). The mere presence of impairment did not alone justify a finding of unfitness because of physical disability. In each case, it was necessary to compare the nature and degree of the physical disability with the requirements of the Soldier's duties, as required by his or her office, rank, grade or rating.

(2) Paragraph 2-2 (Presumptions).

(a) Before and during active service, Soldiers were presumed to be in sound physical and mental condition and any disease or injury sustained while entitled to basic pay and not due to the Soldiers' intentional misconduct or willful neglect were incurred in the line of duty.

(b) Soldiers being processed for separation for reasons other than physical disability were presumed to be fit for duty and were not to be referred to a PEB unless

there was substantial doubt as to whether the Soldier would have been fit if retained. A member being processed for separation for reasons other than physical disability could be referred to a PEB if the evidence showed the following:

- The member was, in fact, physically unable to perform adequately the duties of his office, grade, rank, or rating
- Acute, grave illness or injury, or other deterioration of a physical condition that occurred immediately or at the same time as the member's separation for reasons other than physical disability, rendered him unfit

b. Chapter 4 (Procedures). Commanders or medical authority could refer Soldiers into the Physical Disability Evaluation System when there was evidence a medical condition/disability was inhibiting a Soldier's ability to perform his/her duties.

(1) Medical authority convened an MEB to document the Soldier's medical status and determine whether the Soldier met medical retention standards, in accordance with AR 40-501. Those Soldiers who failed medical retention standards were referred to a PEB for a fitness determination.

(2) PEBs investigated the nature, cause, degree of severity, and probable permanency of the Soldier's disability, evaluated the Soldier's physical condition against the physical requirements of the Soldier's grade/rank and military occupational specialty, and then submitted findings and recommendations as to the Soldier's disposition.

(3) If the Soldier was entitled to disability benefits, the PEB decided the rating for each compensable disability using the VASRD, as modified by the regulation's Appendix B (Army Application of the VASRD). The percentage ratings were to reflect the severity of the Soldiers' disabling condition(s) at the time of the rating.

(4) Final disposition could include the Soldier being returned to duty or separated under the following circumstances:

- With or without severance pay, depending on whether the disability was incurred in the line of duty, where the combined disability rating was 20 percent or less
- Retired, when the combined disability rating was 30 percent or higher

5. AR 15-185 (Army Board for Correction of Military Records (ABCMR), currently in effect, states:

a. Paragraph 2-2 (ABCMR Functions). The ABCMR decides cases on the evidence of record; it is not an investigative body.

b. Paragraph 2-9 (Burden of Proof) states:

(1) The ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary).

(2) The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than r50-50 chance what he/she claims is verifiably correct.

c. Paragraph 2-11 (ABCMR Hearings) states applicants do not have a right to a hearing before the ABCMR; however, the Director or the ABCMR may grant a formal hearing.

//NOTHING FOLLOWS//