

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 January 2025

DOCKET NUMBER: AR20230011486

APPLICANT REQUESTS: in effect, a medical retirement or reinstatement in the [REDACTED] Army National Guard ([REDACTED] ARNG).

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)
- Memorandum, subject: Referred Report, dated 15 November 1999
- DA Form 1059 (Service School Academic Report), dated 15 November 1999
- Orders 228-087, dated 11 October 2000
- NGB Form 22 (National Guard Report of Separation and Record of Service)
- NGB Form 23B (ARNG Retirement Points History Statement)

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 injured while attending the Primary Leadership Development Course (PLDC), while on orders for active duty training (ADT) and was never afforded the opportunity to continue his service and/or be medically retired. He believes that he should have gone before a Medical Evaluation Board (MEB) or have a line of duty (LOD) investigation conducted.
3. The applicant's service record shows the following:
 - a. He served in the Regular Army from 8 July 1983 to 31 May 1985.
 - b. After a break in service, he enlisted in the Army National Guard (ARNG) on 13 February 1995.

c. In a memorandum, subject: Referred Report, dated 15 November 1999, shows his DA Form 1059 was rated as "Failed to achieve course standards." He was given the opportunity to make statements or comments on his own behalf, he elected not to do so.

d. His DA Form 1059, for the period 7 November 1999 to 15 November 1999, reflects the following:

- He failed to achieve course standards
- He did not demonstrate the academic potential for selection to higher level schooling/training
- He was dismissed from PLDC for failure to meet Army Physical Fitness Test (APFT) standards

e. In a letter issued by the Office of the Inspector General (IG), [REDACTED] ARNG, dated 13 January 2000, reflects he did not report the injury to PLDC cadre, this information was verified through a telephonic inquiry of the IG to PLDC. By not alerting anyone at the time of injury or reporting the injury, health services cannot initiate an LOD investigation on his injury.

f. NGB Form 22 for the period ending 31 October 2000, shows he was honorably discharged for being medically unfit for retention. He completed 5 years, 8 months, and 18 days of service.

4. On 28 December 2023, a representative with the Case Management Division of the Army Review Boards Agency (ARBA) contacted the applicant via email, requesting a copy of the medical documents that support his medical health issues (injury while at training). He did not respond.

5. 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 in essence requesting a referral to the Disability Evaluation System. He states:

"I should have been given the opportunity to complete my time in service, or medically retired because of my injuries while on an army training facility (Fort Jackson, SC). I was medically separated, and I believe I should have gone before a medical board or at least had a LOD [Line of Duty Determination].

I am trying to get a VA loan, and the VA is saying I am not eligible because I was not medically retired. I was issued a certificate of eligibility (COE) and now I am not able get one."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His Report of Separation and Record of Service (NGB Form 22) shows he entered the Army National Guard on 13 February 1995 and received an honorable discharge form [REDACTED] Army National Guard ([REDACTED] ARNG) 31 October 2000 under authority provided in paragraph 8-26j(1) of NGR 600-200, Enlisted Personnel Management (1 March 1997): Medically unfit for retention per AR 40-501 (Standards of Medical Fitness).

d. Documentation shows the applicant was dismissed from Primary Leadership Development Course (PLDC) in November 1999 for having failed to achieve the course standards due to his failure to meet Army Physical Fitness Test standards.

e. The applicant requested the assistance of the [REDACTED] ARNG Inspector General in obtaining an affirmative LODD for a knee injury he claimed occurred while he was enrolled in PLDC. On 13 January 2000, the [REDACTED] ARNG Office of the Inspector General informed the applicant he was ineligible for such a LODD for several reasons, the primary one being there was no documentation showing such an injury had occurred:

"You stated to MSG [REDACTED] that you did not report the injury to anyone at PLDC. This was verified by a call to the school [REDACTED] By not alerting anyone at the time of injury or reporting the injury in accordance with the manifestation clause, The Office of Health Services cannot initiate a Line of Duty Investigation on your injury."

f. Paragraph 8-26j(1) of NGR 600-200:

Medically unfit for retention per AR 40-501, chapter 3. Commanders who suspect that a soldier may not be medically qualified for retention, will direct the soldier to report for a complete medical examination per AR 40-501 and NGR 40-501. If the soldier refuses to report as directed, see paragraph 8-27i of this regulation.

Commanders who do not recommend retention will request the soldier's discharge. When medical condition was incurred in line of duty, the procedures of NGR 40-3 will apply. Discharge will not be ordered while the case is pending final disposition.

g. The medical condition for which the applicant was involuntarily separated is unknown. If it was a knee injury, there is no evidence it was incurred in the line of duty.

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

i. The applicant has no clinical encounters or medical problems listed JLV. It is the opinion of the Agency Medical Advisor that a referral of his 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 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 no evidence the applicant had a duty incurred medical condition which would have failed the medical retention standards. The Board determined there was no error or injustice to warrant reinstatement in the Army National Guard.

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.

4/10/2025

X [REDACTED]

CHAIRPERSON

[REDACTED]

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, United States Code (USC) (Armed Forces), 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, United States Code (USC) (Armed Forces), chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with Department of Defense (DOD) Directive 1332.18 and AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in a Medical Evaluation Board (MEB); when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an MOS Medical Retention Board; and/or they are command-referred for a fitness-for-duty medical examination.

b. The disability evaluation assessment process involves two distinct stages: the Medical Evaluation Board (MEB) and the Informal Physical Evaluation Board (PEB) Proceedings. The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the severity of the disability and length of military service. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

c. The mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of his or her office, grade, rank, or rating. Reasonable performance of the preponderance of duties will invariably result in a

finding of fitness for continued duty. A Soldier is physically unfit when a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

3. Title 10, United States Code (USC) (Armed Forces), section 1201, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30%. Title 10, United States Code (USC) (Armed Forces), section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating of less than 30%.

4. Title 38, United States Code (USC) (Veterans' Benefits), section 1110 (General - Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

5. Title 38, United States Code (USC) (Veterans' Benefits), section 1131 (Peacetime Disability Compensation - Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

6. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), establishes the Army Physical Disability Evaluation System according to the provisions of Title 10, United States Code (USC), Chapter 61, (10 USC 61) and Department of Defense Directive (DODD) 1332.18. It 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. If a Soldier is found unfit because of physical disability, this regulation provides for disposition of the Soldier according to applicable laws and regulations. The objectives of this regulation are to maintain an effective and fit military organization with maximum use of available manpower, provide benefits for eligible Soldiers whose military service is terminated because of a service-connected disability, provide prompt disability processing while ensuring that the rights and interests of the Government and the

Soldier are protected.

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in an MEB; when they receive a permanent physical profile rating of "3" or "4" in any functional capacity factor and are referred by a Military Occupational Specialty Medical Retention Board; and/or they are command-referred for a fitness-for-duty medical examination or directed by medical providers.

b. The disability evaluation assessment process involves two distinct stages: the MEB and PEB. The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his or her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members whose medical condition did not exist prior to service who are determined to be unfit for duty due to disability are either separated from the military or are permanently retired, depending on the severity of the disability. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

c. The percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Ratings are assigned from the Veterans Affairs Schedule for Rating Disabilities (VASRD). The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting or ratable condition is one which renders the Soldier unable to perform the duties of his or her office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of his or her employment on active duty. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

d. Physical disability evaluation will include a determination and supporting documentation on whether the Soldiers disability compensation is excluded from Federal gross income under the provisions of Title 26, United States Code (USC), section 104. The entitlement to this exclusion is based on the Soldier having a certain status on 24 September 1975 or being retired or separated for a disability determined to

be combat related as set forth in this paragraph. The determination will be recorded on the record of proceedings of the Soldier's adjudication.

7. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation) in effect at the time, prescribes Army policy and responsibilities for the disability evaluation and disposition of Soldiers who may be unfit to perform their military duties due to physical disability. Any medical condition incurred or aggravated during one period of active Service or authorized training in any of the Armed Forces that recurs, is aggravated, or otherwise causes the Soldier to be unfit, should be considered incurred in the line of duty (LOD), provided the origin of such impairment or its current state is not due to the Soldier's misconduct or willful negligence, or progressed to unfitness as the result of intervening events when the Soldier was not in a duty status.

8. Title 10, United States Code (USC) (Armed Forces), 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.

//NOTHING FOLLOWS//