

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 June 2024

DOCKET NUMBER: AR20230011622

APPLICANT REQUESTS: in effect, correction of item 28 (Narrative Reason for Separation) of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show he has a disability that occurred on active duty.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214
- Letters from Department of Veterans Affairs (VA), 1 August 2023 and 22 December 2023

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 his separation and narrative reason for separation are incorrect. The applicant has a service- connected disability rated at 30 percent (%) for his back, by the VA. His DD Form 214 needs to reflect this and it currently states "no disability."
3. The applicant provides a letter from the VA, dated 1 August 2023, which shows he has service connected disability for spinal fusion with spinal stenosis and degenerative arthritis at 30% disability. A VA letter, dated 22 December 2023 shows he has service connected disability for upper extremity radiculopathy, middle radicular group and lower radicular group at 40% disability and service connected disability for left upper extremity radiculopathy, lower radicular group at 20% disability.
4. The applicant's service record contains the following documents:
  - a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States), shows the applicant enlisted in the Regular Army and entered active duty on 12 October 1988.

b. DD Forms 669 (Individual Sick Slip) show the applicant went to sick call on:

- 6 February 1989, for dizziness and tasting blood; he had an x-ray; the disposition of patient is blank
- 21 February 1989, for not being able to move his neck; he was put on 48 hours of light duty and returned to duty
- 20 March 1989, for pain in his neck; he was returned to duty

c. A Radiologic Examination Report, dated 24 March 1989 states in "conclusion": abnormal bone scan. The findings within the maxilla are suggestive of probable dental disease, however, would suggest clinical and x-ray correlation with the asymmetrical uptake noted in the area of C2 through 4 in the cervical spine.

d. A hospital narrative shows the applicant was admitted to the hospital on 22 March 1989 and was discharged on 30 March 1989. The applicant had T-spine and C-spine films and was admitted for a bone scan to rule out a new injury. The applicant was placed on bed rest and given physical therapy. His bone scan was negative for any new injury. He had x-ray changes of C2-C3 degenerative joint disease. He then had a Medical 200 board.

e. The applicant's complete separation packet was not available for the Board's review. On 13 April 1989, the applicant's commander provided an endorsement which states under the provisions of paragraph 5-11, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) the applicant would be released from his active duty status and transferred to the Individual Ready Reserve to complete his military obligation.

f. Orders 71-151, published by Headquarters, U.S. Army Armor Center and Fort Knox, dated 13 April 1989 released the applicant from active duty, not by reason of physical disability effective 18 April 1989.

g. DD Form 214, for the period ending 18 April 1989 honorably transferred the applicant to U.S. Army Reserve (USAR) Control Group (Annual Training). He had completed 6 months and 7 days of active duty service. He was discharged under the provisions of AR 635-200, paragraph 5-11. His narrative reason for separation was did not meet procurement medical fitness standards - no disability.

h. Orders D-10-68819, published by USAR Personnel Center, dated 15 October 1996 honorably discharged the applicant from the USAR effective 15 October 1996.

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/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).

c. The Record of Proceedings outlines the applicant's military service and the circumstances of the case. His DD 214 shows he entered the Regular Army on 12 October 1988 and received an honorable discharge on 18 April 1989 under authority provided by paragraph 5-11 of AR 635-200, Personnel Separations – Enlisted Personnel (22 January 1988): Separation of personnel who did not meet procurement medical fitness.

d. Paragraph 5-11 a of AR 635-200 (22 January 1988):

“a. Soldiers who were not medically qualified under procurement medical fitness standards when accepted for initial enlistment or who became medically disqualified under these standards prior to entry on AD [active duty] or ADT [active duty for training] for initial-entry training, will be separated. Medical proceedings, regardless of the date completed, must establish that a medical condition was identified by appropriate military medical authority within 6 months of the soldier's initial entrance on AD for RA [Regular Army],

e. The applicant's separation packet was neither submitted with the application nor found in the supporting documentation. His period of service predates the EMR and iPERMS.

f. Individual Sick Slips (DD Form 689) show the applicant was seen for the inability to move his neck on 21 February 1989 and neck pain on 20 March 1989.

g. Given his 5-11 of AR 635-200 separation authority, the applicant was referred to an Entrance Physical Standards Board (EPSBD) for IAW paragraph 5-11 of AR 635-200. EPSBDs are convened IAW paragraph 7-12 of AR 40-400, Patient Administration. This process is for enlisted Soldiers who within their first 6 months of active service are found to have a preexisting condition which does not meet the enlistment standard in chapter 2 of AR 40-501, Standards of Medical Fitness, but does meet the chapter 3

retention standard of the same regulation. The fourth criterion for this process is that the preexisting condition was not permanently aggravated by their military service.

h. The EPSBD Proceedings (DA form 4707) were not available for review. A discharge summary shows the applicant was admitted to the Ireland Army Community Hospital on Ft. Knox for 22-29 March 1989 for evaluation of chronic neck pain:

“HISTORY OF PRESENT ILLNESS: This is a 20-year-old white male who is in basic training with a three-week history of neck pain. He had sustained a prior injury in a motor vehicle accident approximately 18-20 months before coming into the military. The patient had done well after the accident; however, with the vigorous training of basic training he had recurrence of his ...

LABORATORY DATA AND HOSPITAL COURSE: ... His bone scan was negative for any new injury. He had x-ray changes of C2-C3 degenerative joint disease.”

i. Paragraph 2-37b of AR 40-501 (1 July 1987) states the criteria for failing procurement standards due to preexisting spine conditions which prevent training:

“b. Complaint of a disease or injury of the spine or sacroiliac joints with or without objective signs that has prevented the individual from successfully following a physically active vocation in civilian life. Substantiation or documentation of the complaint without objective physical findings is required.”

j. There is no evidence the applicant had any 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.

k. JLV shows he has been awarded three VA service-connected disability ratings related to his cervical spine. 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.

l. It is the opinion of the ARBA Medical Advisor the applicant's discharge was appropriate and IAW Army regulations, and a referral of his case to the Disability Evaluation System is not warranted.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted.
2. The Board concurred with the conclusion of the ARBA Medical Advisor that the evidence does not indicate the applicant had any medical conditions incurred during or aggravated by his brief period of active duty service. Based on a preponderance of the evidence, the Board determined the reason and authority for the applicant's release from active duty in 1989 were not in error or unjust.

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.

11/1/2024

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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 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 (AR) 15–185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. In pertinent part, it states that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR will decide cases based on the evidence of record. The ABCMR is not an investigative agency.
3. AR 635-200 (Personnel Separations – Enlisted Personnel) paragraph 5-11 (Separation of personnel who did not meet procurement medical fitness) in effect at that time provides that members who were not medically qualified under procurement medical fitness standards when accepted for initial enlistment will-be separated. Medical proceedings, regardless of the date completed, must establish that a medical condition was identified by appropriate medical authority within 4 months of the member's initial entrance on active duty which would have permanently disqualified him for entry into the military service had it been detected at that time.
4. Title 38, United States Code, sections 1110 and 1131, permits the VA to award compensation for a medical condition which was incurred in or aggravated by active military service. The VA, however, is not required by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual's medical condition, although not considered medically unfitting for military service at the time of processing for separation, discharge or retirement, may be sufficient to qualify the individual for VA benefits based on an evaluation by that agency.
5. AR 635-5-1 (Separation Program Designator Codes), prescribes the specific authorities (statutory, regulatory, and Department of Defense (DOD)/Army policy) and reasons for separating Soldiers from active duty. Also, it prescribes when to enter separation program designator (SPD) codes on the DD Form 214 (Certificate of Release or Discharge from Active Duty).
  - a. The narrative reason for separation will be entered in block 28 of the DD Form 214 exactly as listed in the tables of this regulation. No deviation is authorized.

b. Table 2-3 states separation code LFT has the narrative reason of did not meet procurement medical fitness standards - no disability.

6. AR 601-210 (Regular Army and Reserve Components Enlistment Program) table 3-1 (U.S. Army reentry eligibility codes) states:

a. RE-1: Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army.

b. RE-3: Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation or disqualification is waiverable.

c. RE-4: Applies to: Person separated from last period of service with a nonwaiverable disqualification.

d. RE-4R: Applies to: A person who retired for length of service with 15 or more years active federal service.

7. Army Regulation 635-5 (Personnel Separations Separation Documents), prescribes the separation documents which are prepared for individuals upon retirement, discharge, or release from active military service or control of the Army. It states, Block 28 of the DD Form 214: enter the reason for separation (shown in AR 635-5-1) based on the regulatory or statutory authority.

8. Army Regulation (AR) 635-40 establishes the Army Disability Evaluation System and 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 office, grade, rank, or rating. 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.

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501, chapter 3, as evidenced in a medical evaluation board (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.

b. The disability evaluation assessment process involves two distinct stages: the MEB and physical evaluation board (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 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 and length of military service. Individuals who are "separated" receive a onetime 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 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 medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

d. Paragraph 3-2 states disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in military service.

e. Paragraph 3-4 states Soldiers who sustain or aggravate physically unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

(1) The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

(2) The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

9. Title 10, U.S. Code, 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 percent. Title 10, U.S. Code, 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 percent.



10. Title 10, U.S. Code, section 1556 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 applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//