

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 June 2024

DOCKET NUMBER: AR20230011711

APPLICANT REQUESTS: physical disability discharge in lieu of administrative discharge under the Trainee Discharge Program.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Report of Separation from Active Duty) ending 19 April 1974
- Department of Veterans Affairs (VA) Rating Decision, 19 August 2010
- VA letter, dated 23 August 2010
- Member of Congress' letter, dated 23 September 2020

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:

a. He should have received a medical discharge instead of an honorable administrative discharge. He requested his medical records from the Fort Jackson, SC, Infirmary, which reflect his head injury, traumatic hearing loss in the right ear, and arthritis in his right foot from wearing boots in the military. He has also marked the block on his application indicating post-traumatic stress disorder (PTSD) is a condition related to his request.

b. Additionally, he did not sign up for the U.S. Army Reserve (USAR), but rather enlisted in the Regular Army for 3 years and got hurt at the firing range on 19 April 1974. His Member of Congress has been helping him to get all of his medical and service records from Fort Jackson, SC.

3. A DD Form 4 (Enlistment Contract – Armed Forces of the United States) shows the applicant enlisted in the USAR Control Group (Delayed Entry) on 11 March 1974, with delayed entry on active duty until 29 March 1974.
4. Armed Forces Examining and Entrance Station (AFEES) Special Orders Number 62, dated 29 March 1974, honorably discharged the applicant from the USAR Control group (Delayed Entry) for the purpose of enlistment in the Regular Army.
5. A second DD Form 4 shows the applicant enlisted in the Regular Army (active duty) on 29 March 1974, for a period of 2 years. He was assigned to Fort Jackson, SC for initial training.
6. A physical profile is used to classify a Soldier's physical disabilities in terms of six factors or body systems, as follows: "P" (Physical capacity or stamina), "U" (Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric) and is abbreviated as PULHES. Each factor has a numerical designation: 1 indicates a high level of fitness, 2 indicates some activity limitations are warranted, 3 reflects significant limitations, and 4 reflects one or more medical conditions of such a severity that performance of military duties must be drastically limited. Physical profile ratings can be either permanent (P) or temporary (T).
7. The applicant's DA Form 20 (Enlisted Qualification Record), item 17 (Physical Status) shows his PULHES was 1-1-1-1-1-1 with an assignment restrictions or geographical or climatic area limitations code A (None) effective 29 March 1974.
8. The complete facts and circumstances surrounding the applicant's discharge are unknown, as his discharge packet, to include his notification of separation, acknowledgment, and approval are not in his available records for review.
9. A DA Form 3082-R (Statement of Medical Condition) shows the applicant signed the form on 19 April 1974, indicating his last separation medical examination was at the Medical Treatment Facility (IMTF) at Fort Jackson, SC, on 8 April 1974 and to the best of his knowledge, since his last separation examination, there had been no change to his medical condition.
10. A DA Form 564 (Serviceman's Statement Concerning Application for Compensation from the Veterans Administration) shows the applicant signed the form on 19 April 1974, indicating he was being processed for separation from the Army and had been advised that he was entitled to file an application for compensation from the VA and he had not filed an application for such compensation, but understood he may do so at a later date.

11. The applicant's available service records do not contain a DA Form 3349 (Physical Profile) or show:

- he was issued a permanent physical profile rating
- he suffered from a medical condition, physical or mental, that affected his ability to perform the duties required by his MOS and/or grade or rendered him unfit for military service
- he was diagnosed with a medical condition that warranted his entry into the Army Physical Disability Evaluation System (PDES)
- he was diagnosed with a condition that failed retention standards and/or was unfitting

12. Headquarters, U.S. Army Personnel Center, Fort Jackson, SC, Special Orders Number 77, dated 19 April 1974, discharged the applicant under the provisions of Department of the Army Message (DA MSG) DAPE MPE 011510Z (Evaluation and Discharge of Enlistees before 180 Active Duty Days), dated August 1973, pertaining to the Army Trainee Discharge Program.

13. The applicant's DD Form 214 shows he was honorably discharged under the provisions of Department of the Army Message (DA MSG) DAPE MPE 011510Z (Evaluation and Discharge of Enlistees before 180 Active Duty Days), dated August 1973, pertaining to the Army Trainee Discharge Program. He was credited with 1 month and 9 days of net active service. He did not complete training and was not awarded a military occupational specialty. [Note his DD Form 214 shows his date of entry on active duty as 11 March 1974; this is the date he enlisted in the USAR; the correct date of entry on active duty is 29 March 1974, the date he enlisted in the Regular Army.]

14. A VA Rating Decision, dated 19 August 2010, shows:

- a. The applicant's claim for service-connection for headaches, etiology unknown, remained denied because the evidence submitted was not new and material.
- b. Service-connection for residuals, cerebrovascular accident, claimed as stroke, was denied.

15. A VA letter to the applicant, dated 23 August 2010, informed the applicant they made a decision on his claim for service-connected compensation received on 11 June 2009. They determined his residuals, cerebrovascular accident, claimed as stroke, was not related to his military service, so no service-connection could be granted. His claim for service-connection for headaches, etiology unknown, remained denied because the evidence was not new and material.

16. The applicant provided a letter from his Member of Congress, dated 23 September 2020, advising him that in order for his office to assist him, they must have a signed Release of Information Form on file, and requested he sign such a form and return it to his office.

17. The Army rates only conditions determined to be physically unfitting at the time of discharge, which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career. The VA does not have authority or responsibility for determining physical fitness for military service. The VA may compensate the individual for loss of civilian employability.

18. 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 (MER -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. On his DD form 149, he has indicated that PTSD is an issue related to his request.

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 shows he entered the regular Army on 11 March 1974 and was honorably discharged on 19 April 1974 under provisions provided in DA message DTG 011510Z August 1973, Subject: Evaluation and Discharge of Enlistees Before 180 Active-Duty Days.

d. No medical documentation was submitted with the application and his period of service predates the EMR.

e. On a 19 April 1974 memorandum, the applicant stated he had undergone a separation physical examination and there had been no subsequent change in his health/medical condition.

f. JLV shows the applicant receives care at Veterans Hospital Administration facilities as a non-service-connected veteran. He has no VA service-connected disabilities.

g. It is the opinion of the ARBA medical advisor that a referral of the applicant's 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 found no evidence indicating the applicant had a disabling condition that was incurred during or aggravated by his period of military service. The Board concurred with the conclusion of the ARBA Medical Advisory that the evidence does not support a conclusion that the applicant should have been referred to the Disability Evaluation System prior to his discharge. Based on a preponderance of the evidence, the Board determined the reason for the applicant's discharge is 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.

12/19/2024

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 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. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRBs) and Boards for Correction of Military/Naval Records (BCM/NRs) when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), sexual assault, or sexual harassment. Boards are to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based, in whole or in part, on those conditions or experiences.

3. Title 10, U.S. Code, 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 (DES) and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 (Discharge Review Board (DRB) Procedures and Standards) and Army Regulation 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 Military Occupational Specialty (MOS) Medical Retention Board (MMRB); 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/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.

4. Army Regulation 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. 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.

b. 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.

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 Department of Veterans Affairs (VA) 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 their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their 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.

5. 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.

6. Army Regulation 635-200 (Personnel Separations Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel from the Army. The version of the change regulation dated 1 December 1975, incorporated the policy promulgated in Department of the Army Message DAPE MPE 011510Z (Evaluation and Discharge of Enlistees before 180 Active Duty Days), dated August 1973, pertaining to the Army Trainee Discharge Program. The Trainee Discharge Program 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. For discharge under the Trainee Discharge Program, the service member must:

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

b. Soldiers could be separated under this provision 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

7. Title 38, U.S. Code, 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.

8. Title 38, U.S. Code, 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.

9. 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.

10. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. 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.

//NOTHING FOLLOWS//