

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 October 2024

DOCKET NUMBER: AR20230012151

APPLICANT REQUESTS: correction of his records to show he was medically discharged vice being discharged from the Army National Guard due to ETS (expiration of term of service).

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

- DD Form 149 (Application for Correction of Military Record)
- Medical documents

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 on a physical profile due to an injury sustained during duty. He injured his right shoulder and had to get surgery resulting in a titanium screw placed in his shoulder giving him a disability rating of at least 30 percent. His commander, at the time, directed his ETS discharge and to go back into the service when he was able to do pushups for the Army Physical Fitness Test, despite the medics informing him that he was still on a line of duty and needed to be extended or have a medical discharge. He was applying for medical benefits and a disability upgrade when he was informed that he could not due to not having a medical discharge.
3. The applicant provides medical documents that show he had right shoulder surgery. The documents are available for the Board's review.
4. The applicant's service record contains the following documents:
  - a. The applicant served in the U.S. Navy from January 1998 to January 2002.
  - b. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows he enlisted in the Army National Guard (ARNG) on 23 February 2005.

DA Forms 4836 (Oath of Extension of Enlistment) show he remained in the ARNG through extensions of his enlistment.

c. NGB Form 22 (Report of Separation and Record of Service) shows he was honorably discharged from the ARNG on 22 February 2014, in accordance with National Guard Regulation (NGR) 600-200 (Enlisted Administrative Separations), paragraph 6-34a (ETS, expiration of term of service). His NGB Form 22 shows:

- He had 8 years of net service this period with 4 years of prior reserve component service, and 4 years of prior active duty service
- He had a total of 12 years, 1 month, and 1 day for retired pay.

d. His service record was void of a line of duty investigation or documentation showing he was injured while on duty.

5. MEDICAL REVIEW: The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The applicant requests medical discharge for his right shoulder condition that required surgery and placement of a titanium screw in the shoulder for which he believes should warrant a 30% rating.

a. The ABCMR ROP summarized the applicant's known record and circumstances surrounding the case. The applicant was in the US Navy from January 1998 to January 1992. He entered Army National Guard 23Feb2008. His MOS was Aviation Operations Specialist. He was discharged 22Feb2014 under NGR 600-200 due to ETS. His service was characterized as Honorable.

b. Summary of medical records and other pertinent records

(1) 23Feb2006 Report of Medical Examination and History for enlistment did not reveal any significant medical problems.

(2) 03Jan2008 Initial Medical Review- Annual Medical Certificate showed PULHES 111111.

(3) 19Sep2009 and 20Oct2012 Periodic Health Assessments. There were no ongoing mental or medical health concerns. The applicant was not on temporary or permanent profile restrictions.

(4) 23Feb2013 SF 600. The note indicated the applicant injured the right shoulder

during the October APFT. He was being evaluated for surgery. A temporary U3 physical profile was written.

(5) 18Mar2013 Family Medicine Parkview Physicians Group. The applicant's private treating physician indicated the applicant's shoulder diagnosis was Partial Thickness Tear of the Supraspinatus Tendon. Limitations included no overhead lifting or pushups. Recommendations included physical therapy and orthopedics surgery. He was not taking medication for the condition. The prognosis was "excellent".

(6) 19Aug2013 note indicated the applicant underwent right shoulder surgery on 09Aug2013 [REDACTED]. Post surgery, he was to use the following devices to aid in recovery: Ice system; motion machine; and TENS unit. He had temporary work restrictions from 19Aug2013 to 09Sep2013. He was expected to return to full use of the arm in 6 weeks. He was not to perform pushups, pullups, or sit-ups for 3 months (November 2013).

(7) 04Nov2013 Office Visit. The applicant was seen for Right Shoulder Pain. There was minimal improvement. He could do 20# curls. He could reach behind his head. His range of motion (ROM) was improving. The right shoulder strength was 4/5 (normal 5/5). He had not been able to attend physical therapy yet. Home exercise program instruction was given. He was to return in 3 weeks.

(8) 25Nov2013 Office Visit. There was more significant improvement: His ROM increased. Right shoulder strength was 5-/5 now (almost normal). He had pain only with certain movements and stretches. Plan: Continue exercises.

(9) 12Feb2014 Provider Profile Review revealed that the post-surgery temporary U3 physical profile for Rotator Cuff Syndrome of Shoulder and Allied Disorder, had expired 18Sep2013. At that time, the restrictions had presumably expired; however, the reviewer indicated that documentation that released the applicant from the profile restrictions was needed. *This ARBA Medical review did not find records after this date.*

c. There were no VA encounters in JLV. Available records did not show permanent level 3 physical profile restrictions for the right shoulder condition at the time of discharge. Evidence indicated the right shoulder was healing appropriately after surgery. His prognosis was deemed excellent. Based on records available for review, evidence was insufficient to support the right shoulder condition failed medical retention standards of AR 40-501 chapter 3 at the time of discharge. Referral for medical discharge processing 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 available evidence does not demonstrate that the applicant's shoulder condition failed medical retention standards, noting that the shoulder was healing well, and his prognosis was excellent. Based on a preponderance of the evidence, the Board determined his discharge by reason of ETS was 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.

3/29/2025

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 (USC), 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, USC, 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 Directive 1332.18 and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

3. Army Regulation (AR) 635-40 (Disability Evaluation for Retention, Retirement, or Separation) 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 AR 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.

4. Title 10, USC, 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, USC, 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.

5. AR 40-501 (Standards of Medical Fitness), provides policies and procedures on medical fitness standards for induction, enlistment, appointment, and retention. Paragraph 3-33 (anxiety, somatoform, or dissociative disorders) states the causes for referral to an MEB are as follows:

- persistence or recurrence of symptoms sufficient to require extended or recurrent hospitalization; or
- persistence or recurrence of symptoms necessitating limitations of duty or duty in protected environment; or
- persistence or recurrence of symptoms resulting in interference with effective military performance

6. Title 38, USC, sections 1110 and 1131, permits the VA to award compensation for disabilities that were incurred in or aggravated by active military service. However, an award of a higher VA rating does not establish error or injustice on the part of the Army. The Army rates only conditions determined to be physically unfitting at the time of discharge which disqualify the Soldier from further military service. The VA does not have the authority or responsibility for determining physical fitness for military service. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge, to compensate the individual for loss of civilian employability. These two government agencies operate under different policies. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

7. 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//