ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 11 March 2025

DOCKET NUMBER: AR20230012227

APPLICANT REQUESTS: medical retirement.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application to the Army Discharge Review Board)
- Civilian hospital medical records, 16 pages
- National Guard Bureau (NGB) Form 22 (National Guard Report of Separation and Record of Service)
- Functional Capacity Worksheet
- Civilian doctor's letter of functional capacity
- Department of Veterans Affairs letter
- DA Form 3349 (Physical Profile)

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, in effect,:

- On 23 January 2015, while a member of the New York Army National Guard (NYARNG) and participating in weekend drill at West Point, NY, the applicant experienced dizziness and drove himself to the military hospital; the military hospital transported him to a civilian medical facility for further evaluation
- The civilian hospital admitted him, and he remained hospitalized until 26 January 2015; at the time, he was due to be administratively separated from the NYARNG within 6 months due to reaching his mandatory removal date (MRD)
- In April 2015, the civilian doctor who treated him determined the applicant was unfit for continued military service, and the doctor prepared a Functional Capacity Worksheet

- Upon receipt of the Functional Capacity Worksheet, the NYARNG should have placed the applicant on active duty orders and referred him for a medical evaluation board (MEB); the applicant asserts his medical condition qualifies him for a medical retirement, and his evidence supports his contention

3. The applicant provides:

a. Civilian hospital records, showing the following:

- On 23 January 2015, civilian medical authority received the applicant from a military hospital; the hospital admitted him to evaluate whether the applicant had suffered a seizure or a TIA (Transient Ischemic Attack)
- The records state, "[Applicant] with past medical history of TIA in October 2014, is transferred from outside hospital for evaluation of TIA…"; (the civilian medical records do not state whether the October 2014 TIA occurred while the applicant was on active duty or participating in a unit drill)
- "CT head reported negative bleed and ischemic changes…Patient complete MRI/MRA with no reported abnormalities…EEG routine reported no epileptiform activity"
- On 26 January 2015, the civilian hospital released the applicant

b. Functional Capacity Worksheet, completed on 15 April 2015, shows the applicant is unable to perform the following functional activities:

- Carry and fire weapon
- Evade Direct and Indirect Fire
- Ride in a Military Vehicle for at least 12 hours per day
- Wear Helmet for at least 12 hours per day
- Wear body armor for at least 12 hours per day
- Wear load bearing equipment (LBE) for at least 12 hours per day
- Wear protective mask (gas mask) and chemical suit for at least 2 hours per day
- Move 40lbs (i.e. duffle bag) while wearing helmet, LBE, body armor, and weapon at least 100 yards
- Live in an austere environment without worsening the medical condition

c. Civilian doctor's letter of functional capacity:

- The civilian doctor affirmed he had been treating the applicant for several years because of chronic back pain and neck conditions; applicant had recurrent neck and back problems due to his "neck and coccydynia from his sacrococcygeal problem"

- "[Applicant's] functional capacity has been significantly impaired with acute exacerbation of his problems intermittently. At this time, his musculoskeletal and pain condition (is) permanently hampered by several acute changes in his chronic conditions"
- "In my professional medical opinion, he is unfit"

d. DA Form 3349, signed by Captain (CPT) J__ L__ on 25 March 2015, indicates military medical authority issued the applicant a temporary profile at level "3" (may require significant limitations) for physical profile factor "P" (physical capacity or stamina). The temporary profile was to expire, on 23 June 2015, and it did not address whether the applicant required referral to either an MMRB (Military Occupational Specialty/Medical Retention Board) or an MEB.

4. The applicant's service records show the following:

- On 17 May 1987, the applicant executed his first oath of office as a U.S. Army Reserve (USAR) commissioned officer; he was under 25 years of age at the time
- On 1 December 2013, after completing subsequent commissioned service in the Massachusetts Army National Guard and the USAR, the applicant executed his oath of office in the NYARNG
- On 13 November 2014, NGB denied the applicant's request to extend his MRD from 31 May 2015 to 31 May 2018
- On 23 January 2015, the applicant received treatment at a military hospital; a DA Form 2173 (Statement of Medical Examination and Duty Status), states that after duty hours and while participating in drill, the applicant felt dizzy and drove himself to the hospital; he lost consciousness in the parking lot
- On 31 May 2015, the NYARNG honorably discharged the applicant, citing National Guard Regulation (NGR) 635-100 (Termination of Appointment and Withdrawal of Federal Recognition), paragraph 5 (Criteria), paragraph 6 (Retentions Beyond MRD), and paragraph 7 (Reserve of the Army Status)
- The NYARNG's additional separation authority was Army Regulation (AR) 135-175 (ARNG and Army Reserve – Separation of Officers), paragraph 4-4a (3) (Removal from an Active Status – Length of Service)
- NGB Form 22 shows completion of 1 year and 6 months of NYARNG service, with 24 years, 5 months, and 7 days of prior Reserve Component Service and 17 years of total service for retired pay; item 13 (Primary Specialty Number, Title, and Date Awarded) shows his area of concentration as 66H (Medical Surgical Nurse)
- On 1 December 2015, the NYARNG determined the applicant Transient Ischemic Attack was incurred in the line of duty

5. The applicant’s case will be reviewed and discussed at the medical/behavioral health staff at the Army Review Boards Agency due to the applicant’s medical issues.

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 (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 has applied to the ABCMR in essence requesting referral to the Disability Evaluation System. He states:

> "I believe that my out-processing from the NY ARNG was not done correctly and that I should have been out-processed as a Medical Discharge/medical retirement. I was hospitalized during a training event and for two days after. I was due to be administratively discharged 6 months later.
>
> After the hospitalization, my doctor deemed me medically unfit for service on NY ARNG Functional Worksheet. I believe I should have been placed on orders at that time, sent to an MEB and would have qualified for medical discharge/retirement at that time."

c. The Record of Proceedings details the applicant's service and the circumstances of the case. Orders and his National Guard Report of Separation and Record of Service (NGB 22) published by the New York Army National Guard (NYARNG) show the applicant was to be separated effective 31 May 2015 under the authority of NGR 636-100 for having reached his mandatory removal date.

d. 26 January 2015 civilian hospital discharge instructions shows the applicant first experienced a transient ischemic attack (brief stroke typically without residuals) in October 2014 while he was in a store. The discharge instructions indicate he had experienced a second incident in Janaury 2015. The discharge summary shows he experienced this second on 24 January 2015 and discharged on 26 January 2015. As in October 2014, no underlying cause was identified, he had no residual deficits, and he was discharged to home without any needed therapy. The January 2015 TIA appears to have occurred during a drill weekend.

e. He was placed on a temporary duty limiting physical profile for “Neurology Concern” on 25 March 2015.

f. On 16 April 2015, a civilian provider opined the applicant was no longer fit for military duties for a host of chronic conditions:

- Chronic sacroiliac joint pain
- Coccydynia
- intervertebral disc disorder with radiculopathy of lumbar region
- Neuralgia of flank, unspecified laterality
- Stenosis of lateral recess of lumbar spine
- H/O TIA (transient ischemic attack) and stroke
- Cervicogenic headache
- Cervical disc herniation
- Radiculopathy affecting upper extremity
- Whiplash injury, chronic, sequela
- Facet arthritis of cervical region
- DDD (degenerative disc disease), lumbar
- Impaired physical mobility

g. A Statement of Medical Examination and Duty Status (DA Form 2173) for the January 2015 TIA was completed 24 October 2015 and found the condition to have been in the line of duty. This would have allowed the military to pay any outstanding debts from the January hospitalization.

h. There is insufficient probative evidence that any of these chronic conditions, including the TIA, both failed medical retention standards and also were incurred while the applicant in a qualifying duty status.

i. These conditions would be found to have existed prior to service. Paragraph 4-8e(1) of AR 600-8-4, Line of Duty Policy, Procedures, and Investigations (15 April 2004) states:

> “(1) The term "EPTS" is added to a medical diagnosis. It shows that there is substantial evidence that the disease or injury, or underlying condition existed before military service or it happened between periods of active service. Included in this category are chronic diseases with an incubation period that clearly precludes a determination that it started during short tours of authorized training or duty.”

j. Conditions which existed prior to service are not related to the Service Member's military service and are therefore non-compensable and ineligible for referral to the duty related DES.

k. JLV shows he has been awarded multiple VA service-connected disability ratings. 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; 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.

l. It is the opinion of the ARBA medical advisor that a referral to the DES is unwarranted.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation and the findings and recommendations outlined in the medical review, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's narrative reason for separaton.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	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.

//SIGNED//

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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. Title 10, USC, 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.

3. National Guard Regulation (NGR) 635-100 (Termination of Appointment and Withdrawal of Federal Recognition), currently in effect, prescribes policies and procedures for the separation of Army National Guard (ARNG) officers.

a. Paragraph 5 (Criteria).

(1) Termination of State Appointment. The reasons to terminate the appointment of an ARNG officer include the following:

- Attainment of maximum age
- Completion of maximum service

(2) Withdrawal of Federal Recognition. Reasons to withdraw Federal recognition of an ARNG officer include:

- Separation or discharge from a State appointment
- Any reason listed under "Termination of State Appointment" when discharge or removal from active status was required

b. Paragraph 6 (Retention Beyond Mandatory Removal Date (MRD) – Army Medical Specialties). An officer of the Medical Corps, Dental Corps, Veterinary Corps, Army Nurse Corps, or Army Medical Specialist Corps may be retained in an active status beyond the mandatory removal date, provided he/she is otherwise fully qualified, but not beyond age 60.

c. Paragraph 7 (Reserve of the Army Status). Unless discharged as a Reserve of the Army Officer, an officer of the Army National Guard of the United States becomes a member of the Army Reserve when Federal recognition is withdrawn.

4. Army Regulation (AR) 135-175 (ARNG and Army Reserve – Separation of Officers), in effect at the time, outlined policies and procedures for the separation of Reserve Component officers. Paragraph 4-4a (3) (Removal from an Active Status – Length of Service) stated Members of the Army Reserve were to be removed from an active status upon completion of the maximum authorized years of service.

5. AR 140-10 (Army Reserve – Assignments, Attachments, Details, and Transfers), in effect at the time, covered policies and procedures for U.S Army Reserve transfers, assignments, and removals. Chapter 7 (Removal from Active Status) listed reasons and exceptions for the removal of officers from an active status.

a. Paragraph 7-2 (Length of Service (Removal Rule 1)). Soldiers in the rank of major were to be removed from active status when they complete 28 years of commissioned service, assuming they were under 25 years of age upon initial appointment.

b. Paragraph 7-3 (Maximum Age (Removal Rule 2)). Soldiers who reached their maximum age were to be removed; for field grade officers, that age was 60. However, certain officers were eligible for exceptions.

c. Section III (Army Medical Department (AMEDD) Officer Removal Exceptions and Processing Procedures).

(1) Paragraph 7-14 (USAR Applicability). USAR Officers who possessed critical areas of concentration that were short within the Army could receive exceptions; this included members of the Army Nurse Corps.

(2) Paragraph 7-14.1 (Policy Governing Exception to Removal for Length of Service or Age). Officers who met the criteria in paragraph 7-14 could remain in an active status until 68 years of age. The U.S. Army Human Resources Command was the approval authority.

6. AR 40-501 (Standards of Medical Fitness), in effect at the time, provided guidance for determining when Soldiers fail medical retention standards and had to be referred to a medical evaluation board (MEB).

7. AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation), in effect at the time, set forth policies, responsibilities, and procedures for the evaluation of a Soldier's physical fitness for continued military service.

a. Paragraph 3-1 (Standards of Unfitness because of Physical Disability). The mere presence of an impairment did not, of itself, justify a finding of unfitness because of physical disability. In each case, it was necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier reasonably could be expected to perform, based on their office, grade, rank, or rating.

b. Chapter 8 (Reserve Components) provided additional guidance specifically for U.S. Army Reserve (USAR) and ARNG members who were not on extended active duty for more than 30 days.

(1) Paragraph 8-2a (Eligibility – Disability from Injury). Reserve Component Soldiers eligible for processing under this paragraph were those who had incurred a disability from an injury determined to be the proximate result of performing:

- Annual Training (AT), active duty special work (ADSW), active duty for training (ADT) with or without pay, or temporary tour of active duty (TTAD) under a call or order that specifies a period of 30 days or less, to include full time training duty (FTTD) under Title 32 (National Guard), U.S. Code
- Inactive duty training (IDT) including IDT without pay under competent orders
- ADT under Title 10 U.S. Code 10148(a) (Ready Reserve: Failure to Satisfactorily Perform Prescribed Training); (this was usually a 45-day tour required by law because of failure on the part of the Reserve Component Soldier to perform other required training duty)

(2) Paragraph 8-2b (Eligibility – Disability from Disease Incurred while Performing Duty on or after 15 November 1986). Section 604, Public Law 99-661, 14 November 1986, revised provisions in Title 10, U.S. Code to provide for disability processing of Soldiers who, while performing inactive or active duty training, incurred an injury or disease or aggravated that injury or disease in the line of duty. Referral for processing did not mean an automatic entitlement to disability compensation. Once referred, a determination had to be made whether the disease was the proximate result of performing duty.

(3) Paragraph 8-3 (Proximate Result).

(a) In order for a Reserve Component Soldier to be compensated for disabilities incurred while performing duty for 30 days or less, a physical evaluation board (PEB) had to find that the unfitting condition was the proximate result of performing duty. This determination was different from a line of duty determination, which established whether the Soldier was in an authorized duty status at the time he/she incurred the disabling condition and whether misconduct or gross negligence was involved. Proximate result established a causal relationship between the disability and the required military duty.

(b) An injury incurred in the line of duty while the Soldier was hospitalized could be determined to be proximate result of performing active duty. The injury had to be incurred before the termination date of the Soldier's initial period of active duty for 30 days or less as reflected by official orders unless a direct causal relationship existed between the original proximate result injury and the subsequent injury. In cases where the proximate cause was not certain, any decisions had to be submitted to the U.S. Army Physical Disability Agency for review.

8. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

9. 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 Board 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 to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

10. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

11. 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

50-50 chance what he/she claims is verifiably correct.

//NOTHING FOLLOWS//