

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 June 2024

DOCKET NUMBER: AR20230012687

APPLICANT REQUESTS:

- in effect, correction of his military records to show he was retired due to physical disability versus discharged due to being “medically disqualified” in the Army National Guard
- a personal appearance before the Board

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

- DD Form 149, Application for Correction of Military Record with applicant's statement
- U.S. Marine Corps Reserve (USMCR) Digital Record, 2004-2011
- Orders 14-114-00063, 24 April 2014
- DD Form 214, Certificate of Release or Discharge from Active Duty, 17 January 2015
- 2-Memorandum for Records, Subject: Line of Duty, 1 May 2015
- NGB Form 22, National Guard Report of Separation and Record of Service, 15 June 2016
- Medical records, 6 May 2010-2016
- DA Form-SG, Physical Profile Record, 22 August 2019
- Orders 19-344-00003, 10 December 2019
- DD Form 2656, Data for Payment of Retired Personnel, 13 December 2019
- DA Form 5016, Chronological Statement of Retirement Points, 24 November 2023
- Department of Veterans Affairs (VA) Summary of Benefits, 4 September 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, in effect, prior to his discharge his medical/mental health conditions were not reviewed by a Medical Evaluation Board (MEB). He received separation orders, a physical profile, and a memorandum stating, "unfit for duty due to service" [sic] and "medically disqualified-not the result of own misconduct." He contends that he was separated from the New Jersey Army National Guard (NJARNG) on 13 December 2019 with a physical/mental disability when he should have been medically retired with pay and benefits. The VA has granted him disability compensation at the rate of 80% for injuries and illnesses related to his deployments, hospitalization, and surgeries conducted at the VA hospital.
3. Having prior service in the USMC Reserve (USMCR), the applicant enlisted in the U.S. Army Reserve on 17 May 2012 in the rank/grade of specialist/E-4.
4. He entered active duty on 10 June 2014. He served in Guantanamo Bay, Cuba from 12 July 2014 to 10 January 2015.
5. He requested a conditional release from the USAR for the purpose of enlisting in the New Jersey Army National Guard (NJARNG). The applicant enlisted in the NJARNG on 18 May 2015 for a period of three years. He held military occupational specialty 31B, Military Police.
6. Orders 207-029, 25 July 2016, published by Joint Force Headquarters, Joint Base McGuire-Dix-Lakehurst, NJ show the applicant was honorably discharged from the ARNG and a reserve of the Army effective 15 June 2016.
7. NGB Form 22, which shows the applicant was discharged from the NJARNG on 15 June 2016, in accordance with National Guard Regulation 600-200 (Enlisted Personnel Management), paragraph 6-35(b) and transferred to the USAR Control Group (Reinforcement) for the purpose of enlistment in another component of the U.S. Armed Forces. This form further shows the applicant served in Guantanamo Bay, Cuba from 12 July 2014 to 10 January 2015.
8. The complete facts and circumstances of the applicant's discharge are not available for review. The record contains Orders 19-344-00003, 10 December 2019, published by Headquarters, 99th Readiness Division (USAR). These orders show the applicant was honorably discharged from the USAR, effective 13 December 2019 in accordance with AR 135-178, ARNG and Army Reserve-Enlisted Administrative Separations, and the reason cited was "MEDICALLY DISQUALIFIED-NOT RESULT OF OWN MISCONDUCT."
9. Documents related to a line of duty report/investigation were not found in the applicant's official personnel record.

10. The applicant provides:

a. His USMCR digital records. These records do not show the applicant was treated for any significant medical or mental health condition.

b. Two MFRs, 1 May 2015, published by the Headquarters and Headquarters Company, 3rd Battalion, 11th Infantry Regiment, 199th Infantry Brigade, Fort Benning, Georgia. These documents show the applicant's line of duty for fracture of spinous process for lumbar vertebra L2-4 and his closed stress fracture to tibia right knee were reviewed for completeness.

c. His medical records for the period 2010-2016. These records show the applicant was treated for right knee pain, stress fracture, low back pain, fracture of spinous process of lumbar vertebra and closed stress fracture of tibia.

d. DD Form 3349-SG, which appears to show that while assigned to the USAR the applicant was initially given a shaving profile on 4 August 2017 and again, on 22 August 2019.

e. DD Form 2656, 1 September 2023, wherein the applicant provides information for the purpose of establishing retired pay. This form shows the applicant reported his retirement plan as "Disability."

f. A VA summary of benefits, 4 September 2023. This document shows the applicant has a combined rating of 80% for one or more service-connected disabilities.

11. The Board should consider the applicant's overall record and provided statement in accordance with the published equity, injustice, or clemency determination guidance.

12. By regulation, commanders who suspect that a Soldier may not be medically qualified for retention, will direct the Soldier to report for a complete medical examination. Commanders who do not recommend retention will request the Soldier's discharge.

13. AR 15-185 states applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

14. 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). He states:

“I did not meet with or receive a medical review board however was medically discharged. My separation orders state ‘medically disqualified,’ not “medically discharged- retired.”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. A DD 214 shows the then USAR Soldier entered active duty on 10 June 2014 and was honorably discharged on 17 January 2015 at the completion of his required active service under authority provided in chapter 4 of AR 635-200, Active Duty Enlisted Administrative Separations (17 December 2009). It shows he Served in Guantanamo Bay from 12 July 2014 thru 10 January 2015.

d. A National Guard Report of Separation and Record of Service (NBS Form 22) shows he entered the Army National Guard on 18 May 2015 and was honorably discharged from the New Jersey Army National Guard (NJARNG) on 15 June 2016 under the separation authority provided by paragraph 6-35b(3) of NGR 600-200, Enlisted Personnel Management (31 July 2009): Discharged for enlistment in another component of the U.S. Armed Forces. His reenlistment eligibility code of RE-1 shows he was fully eligible to reenlist.

e. Discharge orders published by the 99th Readiness Division on 19 December 2019 show the former drilling USAR Soldier was honorably discharged on 13 December 2019 under authority provided in AR 135-178, enlisted Administrative Separations: Medically Disqualified – Not Result of Own Misconduct. The orders do not cite a chapter or paragraph.

f. The applicant completed a Functional Capacity Certificate Form 507 (FCC 507) in May 2019. He marked 24 Yes/No questions which in combination showed he was a fully capable Soldier without limitations or medical conditions. The physician reviewed the form and the applicant was deemed fully mission capable.

g. The applicant was placed on a duty limiting only permanent physical profile for an unidentified behavioral health condition on 22 August 2019.

h. A 23 September 2019 Nurse Case Management note in MEDCHART shows the applicant had been diagnosed with a disqualifying non-duty related mental health condition and that she had sent the applicant the notification memorandum and

elections memorandum. There was no additional documentation related to his behavioral health condition and the condition was not identified in MEDCHART.

i. JLV shows the applicant has a VA service-connected disability of 70% of schizoaffective disorder.

j. Neither the applicant's separation packet nor additional documentation addressing his involuntary administrative separation for a disqualifying medical condition was submitted with the application nor uploaded into iPERMS.

k. It appears the applicant developed schizoaffective disorder between May and August 2019 while he was a drilling USAR Soldier. Though it has been service connected by the VA, there is no probative evidence the condition was incurred during or was permanently aggravated while the applicant was in a qualified duty status. Thus, he was not eligible for entrance into the DES.

l. The DES compensates an individual only for service incurred medical condition(s) which have been determined to disqualify him or her from further military service. 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.

m. It is the opinion of the ARBA medical advisor that a referral of his case to the Disability Evaluation System is not warranted.<sup>1</sup> (Only for use by Medical Advisors. Delete this section and section header if not applicable.)

#### BOARD DISCUSSION:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. 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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests.

a. The applicant served in the USMC, ARNG, and USA. After serving in the NJARNG from 18 May 2015 to 15 June 2016, he joined the USAR. The complete facts

and circumstances of the applicant's discharge from the USAR are not available for review. The record contains Orders published by Headquarters, 99th Readiness Division (USAR). These orders show the applicant was honorably discharged from the USAR, effective 13 December 2019 in accordance with AR 135-178, and the reason cited was "Medically Disqualified – Not Result of Own Misconduct." The orders do not cite a chapter or paragraph.

b. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's finding no probative evidence a medical condition was incurred during or was permanently aggravated while the applicant was in a qualified duty status. Thus, he was not eligible for entrance into the disability evaluation system. Therefore, the Board determined that a referral of his case to the Disability Evaluation System is not warranted.

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.

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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 Army Board for Correction of Military Records (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. Army Regulation (AR) 40-501, Medical Service-Standards of Medical Fitness, provides information on medical fitness standards for induction, enlistment, appointment, retention, and related policies and procedures. Soldiers with conditions listed in chapter 3, Medical Fitness Standards for Retention and Separation, Including Retirement, who do not meet the required medical standards will be evaluated by an Medical Evaluation Board (MEB) and will be referred to a Physical Evaluation Board (PEB) as defined in AR 635-40, Personnel Separations-Physical Evaluation for Retention, Retirement, or Separation. The regulation further states in:
  - a. Paragraph 3-3, U.S. Army Reserve or ARNG Soldiers not on active duty whose medical condition was not incurred or aggravated during an active duty period, will be processed in accordance with chapter 9, Army Reserve Medical Examinations, and chapter 10 (ARNG) of this regulation.
  - b. Paragraph 10-25, Soldiers pending separation for failing to meet medical retention standards, states members with non-duty related impairments are eligible to be referred to the PEB solely for a fitness determination, but not a determination of eligibility for disability benefits. Determination of whether a non-duty case is forwarded to the PEB is at the request of the Soldier. Soldiers pending separation for in the line of duty injuries or illnesses will be processed in accordance with AR 40-400, Medical Services-Patient Administration and AR 635-40.
3. NGR 600-200, Personnel-General-Enlisted Personnel Management, paragraph 6-35 of the regulation in effect at the time, states 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. Commanders who do not recommend retention will request the Soldier's discharge. When medical condition was incurred in line of duty, the procedures of AR 600-8-4, Line of Duty Policy, Procedures, and Investigations, will apply. Discharge will not be ordered while the case is pending final disposition.
4. Title 38, U.S. Code, section 1110, General - Basic Entitlement: 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, U.S. Code, section 1131, Peacetime Disability Compensation - Basic Entitlement: 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. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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, Boards 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.

7. Title 10, U.S. Code, section 1556 of, 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.

8. AR 15-185 (ABCMR) provides Department of the Army policy, criteria, and administrative instructions regarding an applicant's request for the correction of a military record. Paragraph 2-11 states applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//