

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 17 July 2024

DOCKET NUMBER: AR20230012958

APPLICANT REQUESTS: correction of his records to show he was discharged from the Army National Guard (ARNG) due to a service-incurred medical disability instead of discharged for medically unfit for retention, non-duty related (NDR).

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States ) in lieu of DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Memorandum, subject: Reply to Deputy Chief of Staff Personnel Notification of Intent, undated
- DA Form 4187 (Personnel Action), dated 18 January 2017
- DA Form 4856 (Developmental Counseling Form), undated
- National Guard Bureau (NGB) Form 22 (National Guard Report of Separation and Record of Service)
- NGB Form 23B (ARNG Retirement Points History Statement)
- Indiana National Guard Relief Fund Application
- letter from psychiatrist

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 discharged due to being medically unfit for retention, non-duty related (NDR), which is inaccurate. His discharge was directly linked to his time served, which would allow it to be classified as a medical discharge-duty related. His health records and evaluations show he had no direct issues with depression until he started to serve. He requested mental health help from the National Guard, but it was delayed for weeks. He had then to checked himself into a hospital. After that, he was given time to see a therapist.

3. The applicant enlisted in the Indiana ARNG (INARNG) on 28 September 2012. His DD Form 214 shows he attended initial active duty for training from 28 May to 9 October 2013.

4. A memorandum, dated 17 January 2017, from the INARNG, Director, Army Personnel, shows the applicant was informed that based on a recent review of his medical records by the INARNG State Surgeon, he was found not medically qualified for retention in the U.S. Army in accordance with Army Regulation 40-501 (Standards of Medical Fitness), paragraphs 3-32 (mood disorders) and 3-33 (anxiety, somatoform, or dissociative disorders). He was also provided his most up to date physical profile which reflected a "not in line of duty" injury, illness, or condition (note: physical profile form is not available). He was further informed, based on his medical condition, the INARNG was lawfully required to medically discharge him from the INARNG. His discharge date was established as 15 February 2017. He was also advised of the following:

a. If he felt his medical condition had improved in such a manner that he was qualified to serve, he was required to immediately forward additional medical documentation to the State Surgeon reflecting such an improvement. The medical documentation from his medical doctor must include diagnosis, prognosis, and current medications.

b. If he felt his disqualifying medical condition was caused in the line of duty, he had the right to dispute the not in the line of duty determination, however, he was required to show how his impairment was duty related.

c. He was eligible to be referred for an NDR Physical Evaluation Board (PEB), based on AR 40-501, paragraph 10-25 (Soldiers pending separation for failing to meet medical retention standards). The referral process to the PEB was solely for a fitness determination, not a process for determination of eligibility for Army disability benefits.

5. The applicant provided a memorandum, subject: Reply to Deputy Chief of Staff Personnel Notification of Intent. This memorandum afforded him the opportunity to elect one of the following options (note: while the memorandum includes the applicant's signature, it does not show the applicant made an election):

- discharge from the ARNG and as a Reserve of the Army for medical retention disqualification
- transfer to the Retired Reserve (if eligible)
- referral to an NDR PEB for retention ruling (he had 10 days to reply, if failing to reply, separation was required)

6. A DA Form 4187, dated 18 January 2017, shows the INARNG Director of Army Personnel requested the applicant's discharge for failure to meet medical retention standards of Army Regulation 40-501.

7. The applicant provided a Developmental Counseling Form, undated, showing he was counseled regarding his responsibilities while assigned to "IMDC" (interpreted to mean Medical Discharge Company).

8. Orders issued on 8 February 2017 directed the applicant's discharged from the ARNG and a Reserve of the Army effective 15 February 2017 by reason of "medical, physical or mental condition retention."

9. The applicant's NGB Form 22 shows he was discharged from the ARNG on 15 February 2017 under the authority of National Guard Regulation 600-200 (Enlisted Personnel Management), paragraph 6-35I(8) (medically unfit for retention per Army Regulation 40-501).

10. The applicant provided:

a. Indiana National Guard Relief Fund Application showing he requested financial assistance.

b. A letter from psychiatrist showing he had an appointment at a psychological clinic on 29 October 2015.

11. MEDICAL REVIEW:

a. Background: The applicant is requesting correction of his records to show he was discharged from the Army National Guard (ARNG) due to a service-incurred medical disability instead of discharged for medically unfit for retention, non-duty related (NDR).

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following:

- The applicant enlisted in the Indiana ARNG (INARNG) on 28 September 2012. His DD Form 214 shows he attended initial active duty for training from 28 May to 9 October 2013.
- A memorandum dated 17 January 2017, from the INARNG, Director, Army Personnel, shows the applicant was informed that based on a recent review of his medical records by the INARNG State Surgeon, he was found not medically qualified for retention in the U.S. Army in accordance with Army Regulation 40-501 (Standards of Medical Fitness), paragraphs 3-32 (mood disorders) and 3-33 (anxiety, somatoform, or dissociative disorders). He was also provided his most up to date physical profile which reflected a "not in line of duty" injury, illness, or

condition (note: physical profile form is not available). He was further informed, based on his medical condition, the INARNG was lawfully required to medically discharge him from the INARNG. His discharge date was established as 15 February 2017.

- A DA Form 4187, dated 18 January 2017, shows the INARNG Director of Army Personnel requested the applicant's discharge for failure to meet medical retention standards of Army Regulation 40-501.
- Orders issued on 8 February 2017 directed the applicant's discharged from the ARNG and a Reserve of the Army effective 15 February 2017 by reason of "medical, physical or mental condition retention."
- The applicant's NGB Form 22 shows he was discharged from the ARNG on 15 February 2017 under the authority of National Guard Regulation 600-200 (Enlisted Personnel Management), paragraph 6-35I(8) (medically unfit for retention per Army Regulation 40-501).

c. Review of Available Records: The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, he "was discharged due to being medically unfit for retention, non-duty related (NDR), which is inaccurate. His discharge was directly linked to his time served, which would allow it to be classified as a medical discharge-duty related. His health records and evaluations show he had no direct issues with depression until he started to serve. He requested mental health help from the National Guard, but it was delayed for weeks. He then had to check himself into a hospital. After that, he was given time to see a therapist."

d. The applicant does not provide any medical documentation from his time in service and the active-duty electronic medical record does not evidence any treatment records other than standard medical encounters for military service such as immunizations and various screenings. The memorandum, dated 17 January 2017, indicates he was provided with his most up to date physical profile which reflected a "not in line of duty" injury, illness, or condition. However, the applicant did not include it for review. The only medical documentation the applicant provided was a letter, dated 29 October 2015, indicating he was scheduled for a psychiatric appointment. The letter does not indicate whether the applicant was an established patient or had a diagnosis, nor does it indicate if the applicant attended the appointment.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected and has not been treated by the VA post-military service.

f. Based on the available information, this Behavioral Health Advisor opines the applicant's discharge was proper and equitable. In addition, based on the evidence provided, a referral to the IDES process is not indicated, at this time, since there is no evidence, the applicant incurred or had a condition permanently aggravated by military service.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Not applicable

(2) Did the condition exist or experience occur during military service? Not applicable

(3) Does the condition or experience actually excuse or mitigate the discharge? Not applicable

BOARD DISCUSSION:

1. 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and the medical review, the Board concurred with the advising official noting the applicant's discharge was proper and equitable. The opine determined, based on the evidence provided, a referral to the IDES process is not indicated, at this time, since there is no evidence, the applicant incurred or had a condition permanently aggravated by military service.

2. The Board noted, the applicant provided no medical documentation from his time in service and the active-duty electronic medical record does not reflect any treatment records other than standard medical encounters for military service. The Board found insufficient evidence that warranted correction of the applicant's records to show he was discharged from the ARNG due to service-incurred medical disability instead of his current discharge of medically unfit for retention, non-duty related. Based on this, the Board denied relief.

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.



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, 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 and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 and Army Regulation 635-40 (Disability 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, 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 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 PEB. The purpose of the MEB is to determine whether the service member's

injury or illness is severe enough to compromise their 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.

c. 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.

3. 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.

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.

4. Army Regulation 40-501 provides information on medical fitness standards for induction, enlistment, appointment, retention, and related policies and procedures. Soldiers with conditions listed in chapter 3 who do not meet the required medical standards will be evaluated by a Medical Evaluation Board and will be referred to a PEB as defined in Army Regulation 635-40.

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 and chapter 10 of this regulation.

b. Chapter 10 (ARNG) sets basic policies, standards, and procedures for medical examinations and physical standards for the ARNG. The Clinical Section, NGB, Office of the Chief Surgeon, is the office responsible for management of all issues pertaining to this chapter.

c. 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.

5. National Guard Regulation 600-200, paragraph 6-35l(8) 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 Army Regulation 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 Army Regulation 600-8-4 (Line of Duty Policy, Procedures, and Investigations) will apply. Discharge will not be ordered while the case is pending final disposition.

6. Section 1556 of Title 10, U.S. Code, 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 ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//