

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 August 2024

DOCKET NUMBER: AR20230013811

APPLICANT REQUESTS: correction of his Reentry (RE) Code from RE-4 to RE-3 so he can reenter the military following his November 2021 disability retirement.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), ending on 11 November 2021
- Driver License
- Post Retirement Medical Evaluation Report, 3 April 2023

FACTS:

1. The applicant states in accordance with Army Regulation (AR) 601-210, Active and Reserve Components Enlistment Program, Table 3-1 states RE-4 applies to person separated from last period of service with a non-waiverable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment. Table 3-1 also states RE-3 applies to a person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waiverable. Eligibility: Ineligible unless a waiver is granted.

a. The medical conditions for which he was referred to DES (disability evaluation system) and evaluated for are as follows: Lumbar Fusion for L5-S1 spondylolisthesis (intervertebral disc syndrome (lumbar spine), spinal fusion, spondylolisthesis, dextroscoliosis); Right sciatic (lower extremity) radiculopathy; Left sciatic (lower extremity) radiculopathy. Of the above conditions, only spondylolisthesis is listed as a disqualifying condition (under specific circumstances) in accordance with AR 40-501 (Standards of Medical Fitness). According to AR 40-501, paragraph 3-20, (c) Spondylolysis or spondylolisthesis. More than one episode of symptoms resulting in repeated outpatient visits, or repeated hospitalization as to meet the definition of a disqualifying medical condition or physical defect as in paragraph 3-1. The episodes of symptoms that occurred to prompt his referral to the DES took place after his initial

injuries (airborne operation 10/2019, and 6 mile run 01/2020), and during recovery from surgery that was performed to correct the injury (L5-S1 lumbar spinal fusion 06/15/2020, and surgical revision 06/17/2020). The disqualifying conditions were deemed permanent and stable by An**** An**** Pe*** on 08/03/2021. It is his belief that these conditions were not permanent and stable on account of further recovery that continued after his DES evaluation and subsequent medical retirement from the Army.

b. It should be noted that while episodes of symptoms did occur during the aforementioned period, they did so after injury and during recovery from injury/surgery. It has been over 2 years since the last episode occurred and he is currently considered to be fully recovered by a licensed physician. He has not experienced any further episodes of symptoms that meet the standard defined in AR 40-501, 3-20, c. In addition, he has also been cleared by a licensed physician for other physically demanding and rigorous activity (North Carolina Basic Law Enforcement Training) which he recently participated in. To address the other two conditions listed above that prompted his DES referral (Left/Right sciatic (lower extremity) radiculopathy), these were subsequent to, and caused by, the damage incurred from injury and surgery in his lower back. There are no current symptoms of radiculopathy in either of his lower extremities and there has not been since his last episode of symptoms mentioned above.

c. Further, he is considered to be fully recovered by a licensed physician. The ultimate regulatory authority for determining a soldier's fitness for duty is AR 40-501, paragraph 3-1, (a)-(f), which states:

(1) a. Significantly limit or interfere with the Soldier's performance of their duties (either basic Soldier skills or MOS (military occupational specialty) specific) as substantiated by the Soldier's commander or supervisor.

(2) b. Require medication for control that requires frequent monitoring by a physician due to debilitating or serious side effects, medical care, or hospitalization with such frequency as to interfere with the satisfactory performance of duty.

(3) c. Restrict performance of any of the profile functional activities listed in Section 4 of DA Form 3349 SG (Physical Profile Record); prevent the performance of all aerobic events of the Army Combat Fitness Test (ACFT) (see AR 40-502 for descriptions and instructions on physical profiles); have met a clinical medical retention determination point (MRDP); or have been temporarily profiled for more than 365 days, meeting the administrative MRDP (Medical Retention Determination Point).

(4) d. May compromise or aggravate the Soldier's health or well-being if they were to remain in the military service. This may involve dependence on certain medications, appliances, severe dietary restrictions, frequent special treatments, or a requirement for frequent clinical monitoring.

(5) e. May compromise the health or well-being of other Soldiers (for example, a carrier of communicable disease who poses a health threat to others).

(6) f. May prejudice the best interests of the U.S. Government if the individual were to remain in the military Service. This criterion establishes that the conditions for which he was disqualified from service would not prevent him from re-entering the service if a waiver were to be granted.

d. Finally, in accordance with Army Directive 2018-12, 3 (b), any applicant who was separated or discharged from any component of the Armed Forces for any medical reason, with or without disability requires a waiver before enlistment, appointment, or induction. This would require that he obtains a waiver were he to re-enter any branch of service, furthering the point that the correct classification on the DD Form 214 form should be listed as RE-3 in block 27 (Reentry Code). Because of the circumstances he has outlined above and in accordance with the above regulations, it is his understanding that his medical state at the time of separation did disqualify him from service, but not permanently, and the disqualification would be waiverable based on the current state of his medical fitness. Therefore, it would be most correct that his RE code should be listed as RE-3 instead of RE-4 in block 27 of the DD-214 form.

3. The applicant provides a post-retirement medical report, dated 3 April 2023.

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 27 June 2017. He held MOS 25S, SATCOM Systems Operator/Maintainer.

b. A DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings) shows on 3 August 2021, an informal PEB convened and found the applicant physically unfit. The PEB recommended a rating of 40% and the applicant's disposition be permanent disability retirement. The unfitting disability conditions listed are Status Post Lumbar Fusion for L5-S1 spondylolisthesis (intervertebral disc syndrome (lumbar spine), spinal fusion, spondylolisthesis, dextroscoliosis); Right sciatic (lower extremity) radiculopathy; Left sciatic (lower extremity) radiculopathy.

c. The applicant was counseled and concurred with the findings, waived a formal hearing of her case, and did not request reconsideration of her rating.

d. On 11 November 2021, he was retired from active duty. His DD Form 214 shows he retired in accordance with chapter 4 of AR 635-40 (Disability Evaluation for Retention, Retirement, or Separation). He completed 4 years, 4 months, and 15 days of active service. It also shows she was assigned Separation Code SEJ and the narrative reason for separation listed as "Disability, Permanent" with RE Code 4.

5. Army Directive 2018-12 states: Definition of a Medical Waiver (from DODI 6130.03): A formal request to consider the suitability for service of an applicant who, because of current or past medical conditions, does not meet medical standards. Upon the completion of a thorough review, the applicant may be considered for a waiver. The applicant must have displayed sufficient mitigating circumstances/provided medical documentation that clearly justify waiver consideration. The Secretaries of the Military Departments may delegate the final approval authority for all waivers.

6. By regulation,

a. AR 635-8, the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

b. AR 635-5-1, Soldiers placed on the permanent disability retired list due to disability in accordance with chapter 4 of AR 635-40 are assigned separation code SEJ – Disability, temporary (enhanced). The SPD/RE Cross Reference Table in effect at the time of his retirement shows Separation Code SEJ has a corresponding RE Code of 4.

8. By regulation (AR 601-210), RE codes are used for administrative purposes only and are not to be considered derogatory in nature. They are codes used for identification of an enlistment processing procedure. Table 3-1 lists the following:

- RE-1 applies to persons completing their term of active service who are considered qualified to reenter the U.S. Army. They are qualified for enlistment if all other criteria are met.
- RE-3 applies to persons who are not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waivable. They are ineligible unless a waiver is granted.
- RE-4 applies to persons separated from last period of service with a nonwaivable disqualification. Persons are ineligible for enlistment.

9. MEDICAL REVIEW:

1. 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 change in reentry code from RE-4 to RE-3 to allow reentry into the military. The applicant believes that his medical condition at the

time of separation disqualified him from service, but not permanently, and the disqualification would be waiverable based on the current state of his medical condition.

2. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The applicant enlisted in the Army Reserve 02Mar2017 and entered active service on 27Jun2017. His MOS was 25S (Satellite Communications Systems Operator/Maintainer). He was referred into the IDES for symptoms status post lumbar fusion for L5-S1 spondylolisthesis in 2021. He was retired for permanent medical disability on 11Nov2021 under provisions of AR 635-200 chapter 4. His service was characterized as honorable. The reentry code was RE-4.

3. Summary of the applicant's IDES chronology

a. The first AHLTA note for back symptoms was in January 2020. At the time, the applicant reported pain began in the low back pain after a six mile run on 13Jan2020. He was treated with pain medication and was seen by physical therapy Jan, Feb, Mar, Oct and Nov2020 and Jan 2021. He failed conservative measures and underwent spinal fusion surgery on 15Jun2020. The 2021 Physical Profile Record (DA Form 3349) showed multiple permanent functional activity limitations: He could not ride in a military vehicle wearing usual protective gear without worsening the condition; wear protective/load bearing equipment without worsening the condition; or move greater than 40 lbs while wearing usual protective gear up to 100 yards.

b. 05Feb2021 DES Commander's Performance and Functional Statement DA Form 7652). Command endorsed that the applicant was unable to complete tasks to standard and further stated his "back problems prevent him from doing basic mobility functions that any Soldier in the military would need to perform".

c. 09Mar2021 Back Condition DBQ and Peripheral Nerves Condition DBQ. The applicant recounted the origin of the back condition and subsequent treatment. After the surgery by Cape Fear Orthopedics, he had continued symptoms and ultimately was referred for a MEB. The applicant was advised concerning radio ablation procedure (for pain control), but it was not available at that facility. The back exam ROM showed forward flexion to 50 degrees (normal 90 degrees); and extension to 15 degrees (normal 30 degrees). There was evidence of pain with weight-bearing, non weight-bearing, and with passive and active motion. Straight leg testing was positive on both right and left consistent with objective evidence of nerve root involvement (or lumbar radiculopathy). He endorsed moderate constant "24/7" (may be excruciating at times) pain. He also had moderate intermittent (usually dull) pain, paresthesias and/or dysesthesias and numbness. The right and left sciatic nerves were involved (L4/L5/S1/S2/S3 nerve root). He endorsed episodes of bed rest with a total duration of at least 6 weeks during the prior 12 months. He stated that he was unable to lift more than 15 lbs because of back pain and stiffness, and that he could not walk more than 1

mile without experiencing lower back pain. And finally, he could not stand or sit for more than 30 minutes in one position.

d. 30Mar2021 MEB determined that the following conditions did not meet medical retention standards of AR 40-501 chapter 3: Status Post Lumbar Fusion for L5-S1 Spondylolisthesis (Intervertebral Disc Syndrome (Lumbar Spine) Spine Fusion, Spondylolisthesis, Dextroscoliosis) in accordance AR 40-501 chapter 3-20h; and Right and Left Sciatic (Lower Extremity) Radiculopathy in accordance AR 40-501 3-31k. The applicant concurred with the MEB findings and did not request an Impartial Medical Review.

e. 03Aug2021 Informal PEB found the following conditions unfitting for continued service: Status Post Lumbar Fusion for L5-S1 Spondylolisthesis (Intervertebral Disc Syndrome (Lumbar Spine), Spine Fusion, Spondylolisthesis, Dextroscoliosis) at 20%; Right Sciatic (Lower Extremity) Radiculopathy at 10%; and Left Sciatic (Lower Extremity) Radiculopathy at 10%. The PEB recommended disposition was permanent disability retirement at 40% total. The applicant concurred with the PEB findings and did not request reconsideration of the VA ratings.

4. Pre- and post-surgical imaging results

a. 18Feb2020 lumbar spine MRI Womack AMC. Chronic L5 bilateral spondylolysis with associated degenerative changes were seen at the site of spondylolysis. There was also chronic degenerative disc disease (for example there was mild to moderate disc desiccation) and mild 6 mm anterolisthesis of L5 on S1. The spinal canal maintained normal caliber and no spinal canal stenosis was seen. However, the spondylolysis and L5-S1 degenerative disc changes resulted in bilateral neural foraminal narrowing at the L5-S1 neural foramina which could affect the exiting L5 nerve roots.

b. 09Mar2021 lumbar spine MRI Shelby Medical Inc. There was grade II (50% slippage of the vertebral body) anterior spondylolisthesis of L5 relative to S1 which measured 13 mm. Post-surgical changes of a prosthetic disc at L5-S1 and posterior fusion with metallic hardware in place at L5-S1, were noted. And finally, the radiologist noted spina bifida occulta at L5 and dextroscoliosis (right side curvature) centered at L2-3 measuring 11 degrees.

5. In his ABCMR application, the applicant indicated that he was referred into the Army disability evaluation system for Lumbar Fusion for L5-S1 Spondylolisthesis (Intervertebral Disc Syndrome (Lumbar Spine) Spine Fusion, Spondylolisthesis, Dextroscoliosis); Right Sciatic (Lower Extremity) Radiculopathy; and Left Sciatic (Lower Extremity) Radiculopathy. He contends that only the spondylolisthesis is listed as a

disqualifying condition (under specific circumstances): IAW AR 40-501, 3-20, (c) spondylolysis or spondylolisthesis, more than one episode of symptoms resulting in repeated outpatient visits, or repeated hospitalization as to meet the definition of a disqualifying medical condition or physical defect as in paragraph 3-1. He stated that it had been over 2 years since the last episode occurred and that he was currently considered to be fully recovered by a licensed physician. In addition, he stated that he was cleared by a licensed physician for other physically demanding and rigorous activity (North Carolina Basic Law Enforcement Training) which he had recently completed.

6. As medical evidence, the applicant submitted a Medical Examination Report dated 03Apr2023. This document is available in the record for the Board's review. The report recorded a normal physical exam. The ARBA Medical Reviewer makes the following observations concerning this report (especially as it compares to the entry medical history/exam requirements for the Army): There was no apparent evidence that the medical examiner was aware of the applicant's rather significant medical history. Specifically, the physical evaluation made no mention of prior back diagnoses, prior back surgery. In addition, surgical scar(s) were not documented. And no current back film(s) were ordered.

7. In the ARBA Medical Reviewer's opinion, the applicant's back condition would not be waivable based on the following observations: The applicant's imaging showed degenerative disc and vertebral disease changes which are permanent and progressive in nature. In addition, imaging results showed developmental spine abnormalities which can also worsen with age. The physical profile restrictions were accordingly permanent to prevent worsening of the applicant's back condition. Command attested to the applicant's performance limitations. Moreover, the Back Conditions DBQ showed moderate to severe loss of ROM which resulted in significant functional impairment. The applicant stated that he is pain-free currently and recently participated in physically demanding and rigorous activity for North Carolina Basic Law Enforcement Training. However, he did not present sufficient substantive medical evidence that the back condition was resolved sufficiently to allow return to full unrestricted military duties/training notwithstanding his claim that he was cleared for training by a state law enforcement agency. In accordance with DoDI 6130.03, paragraph 5.28, the applicant's back condition does not meet accession standards. In accordance with AR 40-501 chapter 2, Physical Standards for Enlistment, Appointment, and Induction (applicable since more than 12 months had elapsed since his discharge), any history of surgical fusion of spinal vertebrae does not meet the standard; and current or history of spondylolysis (congenital or acquired) and spondylolisthesis (congenital or acquired) does not meet the standard.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was/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 medical review, the Board concurred with the advising official finding the applicant's back condition would not be waiverable based on the following observations: The opine noted the applicant did not present sufficient substantive medical evidence that the back condition was resolved sufficiently to allow return to full unrestricted military duties/training notwithstanding his claim that he was cleared for training by a state law enforcement agency.

2. The Board determined there is insufficient evidence to support the applicant's contentions for correction of his Reentry (RE) Code from RE-4 to RE-3 so he can reenter the military following his November 2021 disability retirement. Based on the opine which found the applicant's Back Conditions DBQ showed moderate to severe loss of ROM which resulted in significant functional impairment. As such, the Board agreed that correction of the applicant's RE Code is without merit and relief is denied.

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. Army Regulation 635-40 (Physical 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.
2. Army Regulation 635-8 (Separation Processing and Documents) states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.
3. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides SPD codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. Table 2-3 identified the following SPD codes for disability retirements and the regulatory authority AR 635-40. The SPD/RE Cross Reference Table in effect at the time of his retirement shows Separation Code SEJ has a corresponding RE Code of 4.
 - SEJ – Disability, permanent (enhanced)
 - SEK – Disability, temporary (enhanced)
 - SFJ – Disability, permanent
 - SFK – Disability, temporary

4. Army Regulation 601-210 (Active and Reserve Components Enlistment Program), governs eligibility criteria, policies and procedures for enlistment and processing of persons into the Regular Army, the Army Reserve, and the Army National Guard. Reentry eligibility (RE) codes are used for administrative purposes only and are not to be considered derogatory in nature. They are codes used for identification of an enlistment processing procedure. Table 3-1 lists the following:

a. RE-1 applies to persons completing their term of active service who are considered qualified to reenter the U.S. Army. They are qualified for enlistment if all other criteria are met.

b. RE-3 applies to persons who are not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waivable. They are ineligible unless a waiver is granted.

c. RE-4 applies to persons separated from last period of service with a nonwaivable disqualification. Persons are ineligible for enlistment.

5. Army Directive 2018-12, (New Policy Regarding Waivers for Appointment and Enlistment Applicants), 30 July 2018,

a. Purpose. This directive provides new guidance on waivers for appointment and enlistment. In addition, this directive supersedes provisions in Army regulations and previous Army G-1 waiver guidance, which control medical and misconduct waiver authorities for applicants requesting enlistment, reenlistment, appointment, or accession.

b. Medical Waivers. Any applicant who does not meet the physical and medical accession, enlistment, and reenlistment standards for the conditions or diagnoses in paragraphs 3a or 3b may be considered for a waiver. Unless otherwise stated in this document, the medical waiver authority for the conditions identified is the Deputy Chief of Staff, G-1 Director of Military Personnel Management (DMPM). Any waivers submitted for these identified medical conditions will come through the appropriate service medical waiver review authority (SMWRA), who will provide a recommendation, to the DMPM for decision. Guidance to the SMWRA is in paragraph 6. The standard for approval of a medical waiver will be a determination that appointment, enlistment, reenlistment, or induction is in the best interests of the Army based on a holistic review of the applicant's potential for service.

c. Guidance to Medical Waiver Review Authorities: All applicants considered for appointment, enlistment, or induction in the RA, ARNG, and USAR must meet the five standards in DoDI 6130.03, paragraphs 1.2.c.(1)–(5). Disqualifying conditions listed in

section 5 of the DoDI do not meet medical standards by virtue of a current diagnosis or for which the applicant has a verified past medical history.

6. DoDI 6130.03, Medical Standards for Military Service: Appointment, Enlistment, or Induction, list disqualifying conditions for enlistment, appointment, or induction.

//NOTHING FOLLOWS//