

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 July 2024

DOCKET NUMBER: AR20230014146

APPLICANT REQUESTS:

- correction of his records to show he was discharged due to a service-incurred medical disability
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- four-page notarized personal statement
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge)
- General Discharge Certificate
- driver's license and social security card
- letters from the National Personnel Records Center and the U.S. Army Human Resources Command pertaining to the location of his military records
- Department of Veterans Affairs (VA) records (14 pages)
- civilian medical records (26 pages)

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 -

a. He was assigned a separation program number (SPN) 264 (character and behavior disorders). He witnessed someone commit suicide while he was in the service. He was discharged primarily for an ankle injury that occurred during training. He was seen numerous times and he was found unfit due to the injury and post-traumatic stress disorder. He applied for veterans benefits in 1975 and was denied because his records were destroyed in the National Personnel Records Center 1973 fire. He was injured and

immobile for most of his months due to unsafe conditions. His life could have been different if he would have been properly evaluated and treated.

b. He has been limited his whole life because of fear and flashback. He was seen numerous times and was casted at the time of discharge. He is applying for benefits decades later as his health and condition has resulted in displacement from employment. He recently underwent ankle surgery that should have been service connected if properly coded. After speaking with VA representatives and others, he finds it in his best interest to have the truths behind his discharge legible and corrected for all. He could have and would have utilized resources made available to him through the VA if he was instructed or advised properly. His claim was denied in 1975 and since that denial he has been denied healthcare. His ankle injury has caused harm to him his whole life. He recently underwent surgery for this injury that should have been covered and corrected many years ago.

3. The applicant was inducted into the Army on 27 January 1965. He entered basic combat training on or around 5 February 1965.

4. A Report of Psychiatric Evaluation, dated 4 June 1965, shows the applicant was referred by podiatry for a mental status evaluation. The report shows the following entries:

a. The applicant had innumerable somatic complaints about his foot following a stress fracture.

b. No disease found. Passive-dependent

c. His condition was not amenable to hospitalization, treatment, training, transfer to another organization or stations, or reclassification to another type of duty. No further attempt at rehabilitation should be made since it is believed he cannot be rehabilitated to the extent where he may be expected to become a satisfactory Soldier. Recommend separation from the service under the provisions of Army Regulation (AR) 635-209 (Personnel Separations – Discharge Unsuitability), paragraph 3b (character and behavior disorders) for unsuitability.

d. The condition is not disabling, and it presents no disqualifying mental or physical defect sufficient to warrant discharge under the provisions of AR 635-40A (Physical Evaluation for Retention, Separation, or Retirement for Physical Disability).

5. On 28 July 1965, the applicant was informed by his commander that he was recommending his discharge from the Army under the provisions of AR 635-209 for unsuitability. The applicant was also advised he was entitled to be present at hearing before a board of officer, to waive hearing before a board of officers but to submit written

statement in his own behalf, to waive both the hearing and the submission of written statements. He waived a hearing before a board of officers and elected not to submit statements in his own behalf.

6. On 2 August 1965, the applicant's commander formally recommended his separation from the Army under the provisions of AR 635-209, paragraph 3b, for unsuitability. The commander indicated the reason for the recommendation was the applicant's lack of interest and ability to succeed and complete basic combat training. The commander also indicated the following regarding the applicant's performance:

- He had been unable to meet the standards required of a trainee
- He had lost considerable training time due to repeated attendance at sick call, medical appointments, and 14 days convalescent leave
- He displayed a negative attitude towards training
- He had been counseled but failed to show improvement

7. On 4 August 1965, the separation approval authority approved the recommendation for separation under the provisions of AR 635-209 for unsuitability and directed the issuance of a General Discharge Certificate.

8. The applicant's DD Form 214 shows he was discharged on 1 September 1965 under the provisions of AR 635-209, SPN 264, with service characterized as under honorable conditions (general). The DD Form 214 also shows he was credited with 7 months and 5 days of active service.

9. The applicant provided:

a. VA records showing the VA is still processing his application for service-connected disability compensation based on various conditions that include his left foot.

b. A four-page notarized personal statement regarding his multiple applications to the VA for service-connected disability compensation. He also stated that his injuries occurred after falling down a mountain and due to the injuries, he was discharged by military medical personnel. *The complete four-page statement was provided to the Board for their review and consideration.*

10. 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 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 referral to the Disability Evaluation System and a discharge upgrade. He has indicated on his DD 149 that PTSD is related to this request. He states:

"I applied for veterans benefits in 1975 and was denied because records were destroyed in St. Louis MO record fire of 1973. I witnessed someone commit suicide in front of me while enlisted. I was injured and immobile for most of my months due to unsafe conditions. My life would have been different if I could have been properly treated and evaluated. I have been limited my whole life because of fear and flashback.

I was seen numerous times and was casted at the time of discharge. I am applying for benefits decades later as my health and condition has resulted in displacement from employment. I recently underwent ankle surgery that would have or should have been service connected if properly coded. After speaking with VA reps and others, I find it in my best interest to have the truths behind my discharge legible and corrected for all."

c. The Record of Proceedings and the previous denial detail the applicant's military service and the circumstances of the case.

d. Statements from his chain of command show he was treated for a stress fracture in one of his feet and was not meeting standards. His company commander's 30 July 1965 statement:

"Private [Applicant] has been under my command for approximately two (2) months. During this period, he has been unable to meet the standards required of a trainee. He has lost considerable training time due to repeated attendance at sick call, medical appointments, and a fourteen (14 day) convalescent leave. During the days he has attended training his performance has been substandard He displays a negative attitude towards training and the Army. He has been counselled by myself and his Platoon Sergeant but he failed to show any improvement. Based on his past

performance and negative attitude, it is recommended that Pvt [Applicant] be eliminated from the service under the provisions of AR 635-209”

e. The applicant underwent a mental health evaluation on 4 June 1965. The provider found “No disease:”

He has been in basic since Jan 65 and still has 8 weeks to go. He has innumerable somatic complaints about his foot, following a stress fracture.

 X No disease found. Passive-dependent, immature 21-year-old boy ...
The condition is not disabling and it presents no disqualifying mental or physical defects sufficient to warrant discharge under provisions of AR 635-40A or B.”

f. His period of service predates the EMR and there are no documents in iPERMS. There is no evidence the applicant had a service incurred mental health or other medical condition which would have failed the medical retention standards of chapter 3, AR 40-501 prior to his separation. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his separation.

g. JLV shows he has been awarded a single VA service-connected disability ratings of 10% for limited motion of his left ankle and has been diagnosed with non-service-connected PTSD.

h. It is the opinion of the Agency medical advisor that neither a referral to the DES or discharge upgrade is warranted.

i. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, PTSD.

(2) Did the condition exist or experience occur during military service? No, the condition is not related to his service.

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A

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 medical review, the Board concurred with the advising official finding that neither a referral to the DES or discharge upgrade is warranted. The opine noted no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his separation.
2. The Board determined there is insufficient evidence to support the applicant's contentions for correction of his records to show he was discharged due to a service-incurred medical disability. The Board found no evidence the applicant had a service incurred mental health or other medical condition which would have failed the medical retention standards prior to his separation. The Board noted, the applicant has been awarded a single VA service-connected disability ratings of 10% for limited motion of his left ankle and has been diagnosed with non-service-connected PTSD. Based on the advising official opine and the preponderance of evidence found in the applicant's record that lacks supporting documentation as it relates to the applicant's contention, the Board agreed relief is not warranted.
3. The Board determined DES compensates an individual only for service incurred 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; 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.
4. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.

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 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, under the operational control of the Commander, U.S. Army Human Resources

Command (HRC), is responsible for administering the PDES 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. Soldiers are referred to the PDES when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in a medical evaluation board, when they receive a permanent medical profile, P3 or P4, and are referred by an MOS Medical Retention Board, when they are command-referred for a fitness-for-duty medical examination, and when they are referred by the Commander, Human Resources Command.

3. Army Regulation 40-501 (Standards of Medical Fitness) provides that for an individual to be found unfit by reason of physical disability, they must be unable to perform the duties of their office, grade, rank, or rating. Performance of duty despite impairment would be considered presumptive evidence of physical fitness.

4. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) establishes the Physical Disability Evaluation System (PDES) 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 their office, grade, rank, or rating. It provides that an MEB is convened to document a Soldier's medical status and duty limitations insofar as duty is affected by the Soldier's status. A decision is made as to the Soldier's medical qualifications for retention based on the criteria in Army Regulation 40-501. 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 service.

a. Paragraph 2-1 provides that the mere presence of impairment does not of itself justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the member reasonably may be expected to perform because of their office, rank, grade, or rating. The Army must find that a service member is physically unfit to reasonably perform their duties and assign an appropriate disability rating before they can be medically retired or separated.

b. Paragraph 2-2b(1) provides that when a member is being processed for separation for reasons other than physical disability (e.g., retirement, resignation, reduction in force, relief from active duty, administrative separation, discharge, etc.), his or her continued performance of duty (until he or she is referred to the PDES for evaluation for separation for reasons indicated above) creates a presumption that the member is fit for duty. Except for a member who was previously found unfit and retained in a limited assignment duty status in accordance with chapter 6 of this regulation, such a member should not be referred to the PDES unless his or her physical defects raise

substantial doubt that he or she is fit to continue to perform the duties of his or her office, grade, rank, or rating.

c. Paragraph 2-2b(2) provides that when a member is being processed for separation for reasons other than physical disability, the presumption of fitness may be overcome if the evidence establishes that the member, in fact, was physically unable to adequately perform the duties of his or her office, grade, rank, or rating even though he or she was improperly retained in that office, grade, rank, or rating for a period of time and/or acute, grave illness or injury or other deterioration of physical condition that occurred immediately prior to or coincidentally with the member's separation for reasons other than physical disability rendered him or her unfit for further duty.

d. Paragraph 4-10 provides that MEBs are convened to document a Soldier's medical status and duty limitations insofar as duty is affected by the Soldier's status. A decision is made as to the Soldier's medical qualification for retention based on criteria in Army Regulation 40-501, chapter 3. If the MEB determines the Soldier does not meet retention standards, the board will recommend referral of the Soldier to a PEB.

e. Paragraph 4-12 provides that each case is first considered by an informal PEB. Informal procedures reduce the overall time required to process a case through the disability evaluation system. An informal board must ensure that each case considered is complete and correct. All evidence in the case file must be closely examined and additional evidence obtained, if required.

5. Title 10, U.S. Code, 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 U.S. Code, 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.

6. Title 38, U.S. Code, sections 1110 and 1131, permits the VA to award compensation for medical conditions incurred in or aggravated by active military service. The VA, however, is not empowered by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual may have a medical condition that is not considered medically unfitting for military service at the time of processing for separation, discharge, or retirement, but that same condition may be sufficient to qualify the individual for VA benefits based on an evaluation by that agency.

7. Army Regulation 635-209, in effect at the time, established the policy and provided procedures and guidance for the prompt elimination of enlisted personnel who were determined to be unsuitable for further military service. Action would be taken to discharge an individual for unsuitability only when, in the commander's opinion, it was clearly established that the individual was unlikely to develop sufficiently to participate in further military training and/or become a satisfactory Soldier or the individual's psychiatric or physical condition was such as to not warrant discharge for disability. Evaluation by a medical officer was required and, when psychiatric indications were involved, the medical officer must have been a psychiatrist, if one was available. A general or an honorable discharge was considered appropriate. Unsuitability included:

- inaptitude
- character and behavior disorders
- disorders of intelligence and transient personality disorders due to acute or special stress
- apathy (lack of appropriate interest), defective attitudes, and inability to expend effort constructively
- enuresis
- chronic alcoholism

8. Army Regulation 635-5 (Separations Documents), in effect at the time, prescribed the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It established standardized policy for the preparation of the DD Form 214. Appendix I of the regulation in effect at the time provides that SPN 264 applies to Soldier discharged under the authority of AR 635-209 by reason of character and behavior disorders.

9. Army Regulation 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.

10. 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//