

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 August 2024

DOCKET NUMBER: AR20230014238

APPLICANT REQUESTS: correction of his DD Form 214, ending 10 January 1999, to show he was discharged due to a disability versus retired due to a disability.

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

- DD Form 149, Application for Correction of Military Record
- Orders 342-0022, Headquarters, Fort Carson, 8 December 1998
- DD Form 214, Certificate of Release or Discharge from Active Duty, 10 January 1999
- Name Change Order, 14 August 2011
- DFAS-CL Form 1340/2, Estimated Earnings During Military Service (For Civil Service Retirement Purposes), 12 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 his DD Form 214 indicates he was retired due to a disability with severance pay. However, he was not retired and he does not receive retired pay nor any other benefits such as having a military retired identification card. Further, because of this error, he is encountering problems as a civilian with taking advantage of his military service for the purpose of retirement.
3. A review of the official record shows the applicant enlisted in the Regular Army on 10 September 1987.
4. On 30 June 1998, a Medical Evaluation Board referred the applicant's medical conditions related to his bilateral knee pain to a Physical Evaluation Board (PEB).

5. He appeared before a PEB on 9 July 1998 at Fort Lewis, Washington. The PEB found that the applicant was fit for return to duty. The applicant unsuccessfully appealed the PEB findings and on 28 July 1998, the U.S. Total Army Personnel Command notified the applicant's commander that the PEB findings had been approved.

6. Orders 342-0022, published by Headquarters, Fort Carson, Fort Carson, Colorado, on 8 December 1998 show the applicant was authorized disability severance pay in pay grade SGT/E-5 based on 11 years, 4 months, and 1 day of service as computed under Title 10, U.S. Code, section 1208. Percentage of disability was listed as "0%."

7. The applicant's DD Form 214 includes the following entries:

- Item 12b, Separation Date this Period – 10 January 1999
- Item 18, Remarks, the entry: DISABILITY SEVERANCE PAY-\$38418.00//
DISABILITY RATING OF 0%//
- Item 23, Type of separation – Retirement
- Item 25, Separation Authority – AR 635-40, Para 4-24B(3)
- Item 28, Narrative Reason for Separation – Disability, Severance Pay

8. The applicant's digital personnel record is void of orders showing he was "retired" due to physical disability.

9. The applicant provides an Estimated Earnings During Military Service (For Civil Service Retirement Purposes), 12 September 2023, in order to buy back his military time, he would have to pay \$167, 506. 87 based on service from 10 September 1987 to 31 December 1998; and from 1 January 1999 to 10 January 1999.

10. Army Regulation 635-40, Personnel Separations-Physical Evaluation for Retention, Retirement, or Separation, states in paragraph 4-24(b)(3) that based on the final disposition of the of the U.S. Army Physical Disability Agency or the Army Physical Disability Appeal Board, U. S. Total Army Personnel Command (PERSCOM) will issue retirement orders, or disposition instructions for separation for physical disability with severance pay (Title 10, U.S. Code, section 1203 or 1206).

11. 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 had several requests.

2. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The applicant enlisted in the Regular Army 10Sep1987. His MOS was 98C Signals Intelligence Analyst. He had a little more than 5 years in foreign service (Germany and Panama). He was separated from service due to disability on 10Jan1999 under AR 635-200 para 4-24B(3) and he was paid a severance pay. The type of separation listed on DD Form 214 was retirement in block #23.

3. Summary of pertinent medical records and related

a. 20Nov1997 views of the knees showed minimal early degenerative change at the patellofemoral articulation.

b. 25Feb1998 Physical profile for Bilateral Patellofemoral Syndrome showed a permanent L3 which included walking/running at own pace and distance and unlimited bicycling and swimming.

c. 19Jun1998 Report of Medical History (for Medical Board). Of pertinence, the applicant endorsed swollen or painful joints. The Bilateral Patellofemoral Pain Syndrome diagnosis was noted. The history included a right knee injury due to motorcycle accident in May 1990. He was status post partial left lateral meniscectomy (1991) with early degenerative changes. In addition, he had undergone the following treatments without much success: Pain medication, physical therapy, and profiling. He had been given a permanent L3 for the condition. He was deemed qualified for a MEB/PEB. The bilateral knee exam showed full ROM and no joint effusion and no joint laxity. There was bilateral joint line tenderness. The MEB NARSUM indicated that he did not meet medical retention standards of AR 40-501 chapter 3 for Patellofemoral Pain Syndrome.

d. 30Jun1998, a Medical Evaluation Board (MEB Proceedings, DA Form 3947) recommended referral to a Physical Evaluation Board (PEB) for fitness determination of the applicant's bilateral knee pain. The applicant concurred with the MEB findings/recommendations.

e. An 02Jul1998 memo with subject Commander's Performance Statement endorsed that the applicant's duty performance was substandard as a result of his chronic medical conditions. They also noted that the applicant had undergone a MMRB February 1998. Command specifically mentioned degenerative arthritis of the knees as the physically limiting condition.

f. A PEB (DA Form 199) convened on 09July1998, found the applicant physically fit for duty. The PEB narrative indicated that review of the record provided insufficient evidence that the applicant had physical impairment that precluded the satisfactory performance of duty in his MOS. It was specifically noted that he was rated as "among

the best” and he had passed the APFT with 270 points in August 1997 and he was qualified to take the alternate APFT. He was recommended to be returned to duty. The applicant did not concur.

g. 16Jul1998, the applicant contended that his physical condition interfered with duty performance and in addition contributed to his weight gain and resulted in his placement in the Army Weight Control Program (entered on 01Jul1998). He stated that he had knee pain when he knelt down, ran, or simply walked or stood for prolonged periods.

h. A second PEB convened 18Nov1998 found that the applicant was unfit for continued service due to Bilateral Retropatellar Pain Syndrome. The PEB noted a remote history of partial meniscectomy and debridement of a partial ACL tear (21Mar1991) without residual impairment. The PEB rated the condition at 0% under code 5299-5003. The bilateral knee condition was rated for pain. The recommended disposition was separation with severance pay at 0% total.

4. Pertinent JLV records and historical VA C&P records

a. During the 23Jan2012 Knee and Lower Leg Conditions DBQ, the applicant recalled that his knees worsened (after being found fit) and while stationed in Colorado, he underwent further knee evaluation. This led to him being medically separated in January 1999. He reportedly was seen afterward at the VA where he was service-connected for both knees at 10% each.

b. 16Mar1999 Compensation and Pension Examination. Gait was normal. Right knee ROM showed flexion was from 0 to 115 degrees (normal 140 degrees), and extension was complete to flexion (normal). There was no painful motion. Left knee flexion was from 0 to 125 degrees; and extension was complete to flexion (normal). The bilateral exam revealed: There was no painful motion; there was no tenderness to palpation; strength was 5/5 (normal); the joint was stable.

c. A discussion of rating for the knee conditions included assigning a rating for loss of motion of flexion for each knee, which documented the addition of the 10% rating (for each knee) for consideration of Deluca issues (pain due to flare ups and pain due to repeated use).

d. JLV search today showed the following enduring ratings for the knee: Limited Flexion of the Knee at 10% for the left and 10% for the right knee; and Limited Extension of the Knee at 0% for the left and 0% for the right knee.

5. The PEB rating was reviewed using 38CFR chapter I (7-1-98 Edition)

a. 5003 Arthritis, degenerative (hypertrophic or osteoarthritis). Degenerative

arthritis established by x-ray findings will be rated on the basis of limitation of motion under the appropriate diagnostic codes for the specific joint(s). However, when the limitation of motion of the specific joint(s) involved is noncompensable, a rating of 10% is applied for each major joint or group of minor joints affected by limitation of motion, to be combined, not added under diagnostic code 5003.

b. With x-ray evidence of involvement of 2 or more major joints or 2 or more minor joint groups, rate at 10%. With x-ray evidence of involvement of 2 or more major joints or 2 or more minor joint groups, with occasional incapacitating exacerbations, rate at 20%. Incapacitating episodes were not documented in the record.

c. Based on this, it appears that the Bilateral Retropatellar Pain Syndrome could have been rated at 10% for each knee—just as the VA had done. Total combined would be 20% (including §4.26 Bilateral factor). Rating under code 5010 (Arthritis due to trauma) was considered but would not change the rating percentage.

6. Summary/Opinion

Based on records available for review, the bilateral knee condition failed medical retention standards of AR 40-501 chapter 3 at the time of discharge. The PEB ultimately determined that the condition was unfitting for continued service and rated the condition at 0% for pain. Based on a 16Mar1999 C&P Examination completed approximately 2 months after he was separated from service, the VA evaluated each knee at 10% disabling. With consideration of VASRD principles, the ARBA Medical Reviewer concurs with the VA rating. The condition could have been rated under the code for arthritis based on the x-ray findings of early degenerative disease. That notwithstanding, the total rating would have been 20%; therefore, the applicant's disposition would have been unchanged. He would have been recommended to be separated with severance pay at 20% total. He would not have been recommended retirement disposition due to the rating being less than 30%. He would not have not recommended retirement disposition based on time in service—he had approximately 11 years and 4 months at the time.

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 request, available military records and medical review, the Board concurred with the advising official finding the applicant would not have been recommended retirement disposition due to the rating being less than 30%. The opine noted, the applicant would not have been recommended retirement

disposition based on time in service with 11 years at the time.

2. The Board determined there is insufficient evidence to support the applicant's contentions for correction of his DD Form 214, ending 10 January 1999, to show he was discharged due to a disability versus retired due to a disability. The Board found, based on the preponderance of evidence and the medical opine relief is not warranted and denied relief.

3. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is completed to more accurately depict the military service of the applicant.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

Except for the correction addressed in Administrative Note(s) below, the Board found 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.

■ [REDACTED]

■ [REDACTED] _____

■ [REDACTED]
■ [REDACTED]

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.

ADMINISTRATIVE NOTE(S):

ABCMR Docket AR20130003248, dated 19 September 2013 denied the applicant's request to have his legal name entered on his DD Form 214, ending 10 January 1999. The applicant's record will be administratively corrected based on current Army policy guidance, to show his current legal name as reflected on his court ordered name change, dated 15 August 2011.

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) 635-40, Personnel Separations-Physical Evaluation for Retention, Retirement, or Separation, states in:

a. Paragraph 4-24, the U.S. Army Total Personnel Command (PERSCOM) will dispose of the case by publishing orders or issuing proper instructions to subordinate headquarters or return any disability evaluation case to the U.S. Army Physical Disability Agency (USAPDA) for clarification or reconsideration when newly discovered evidence become available and is not reflected in the findings and recommendations.

b. Paragraph 4-24(b)(3) that based on the final disposition of the of the USAPDA or the Army Physical Disability Appeal Board, PERSCOM will issue retirement orders or disposition instructions for separation for physical disability with severance pay (Title 10, U.S. Code, section 1203 or 1206).

3. AR 15-185, ABCMR, prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The ABCMR will decide cases on the evidence of record. It is not an investigative body. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

//NOTHING FOLLOWS//