

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 July 2024

DOCKET NUMBER: AR20230014251

APPLICANT REQUESTS:

- in effect, 15 years of qualifying service
- in effect, voiding Order D 274-41 issued by the U.S. Army Physical Disability Agency (USAPDA)
- in effect, issuance of a 15-Year Letter
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Timeline
- Order D 274-41, issued by the USAPDA, 1 October 2014
- Civil Court Case under the Federal Tort Claims Act
- Patent Documents
- Letter, U.S. Army Claims Service, subject: Claim of [Applicant], 6 January 2014

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 a member of the U.S. Army Reserve (USAR) and the Army mobilized him in support of Operation Iraqi Freedom in 2006, he deployed to Iraq. After redeploying, the applicant remained on Title 10 orders for several years.
 - a. In 2011, the applicant applied to remain on active duty for another year, but Warrant Officer (WO) L___ N___ decided to take matters into her own hands; "with complete disregard for regulations and directives...she decided not to keep me on orders, as she stated because I was facing a medical board." Other Soldiers in the applicant's situation were reassigned to a Warrior Transition Unit (WTU), but despite his

reassignment request and the approval by higher headquarters for another year of active duty, the applicant was not sent to a WTU.

b. Had the applicant been reassigned to a WTU, he would have completed enough active duty time to qualify for a 15-year retirement; with that, he would be receiving retired pay, as opposed to waiting until he reached age 60.

c. The applicant adds that he believes there was an additional reason his unit did not move him to a WTU. The company commander, Captain (CPT) K__ B__, and the battalion executive officer (XO), Major (MAJ) M__ O__, were talking about him (they didn't know he was outside their office at that time). He heard the XO say, 'let him work on his invention.' After hearing that comment, he walked out of the building. His invention is the Highway Alert Safety Kit and he applied for a patent at that time (2011). He was not given the same privilege as other Soldiers to 'get fixed' and was basically denied such because of his potential with his invention to make money.

d. All he requested was to be treated like everyone else; however, it was because of his potential to make money from his idea that drove WO L. N__, CPT K. B__, and MAJ M. O__ to not follow the rules. After not staying on orders, his line of duty (LOD) investigation were not completed until 14 months later. Thus denying him medical care, a paycheck while at a WTU, and his dignity. His invention went south, as well as his life. He fought them in court, and the district court judge could not believe what was done to him by them.

e. In support of his requests and arguments, the applicant supplies his medical retirement orders and documents associated with the patenting of his invention and the pursuit of legal action, under the Federal Tort Claims Act. Additionally, he includes a timeline, with email correspondence included, that outlines his efforts to remain on active duty and be transferred to a WTU; how he sought to ensure the timely processing of his LOD investigations; and the steps involved with undergoing Physical Disability Evaluation System (PDES)/Integrated Disability Evaluation System (IDES) processing.

3. The applicant's service records show:

a. On 17 August 2004, after completing enlisted service in the Regular Army and the Indiana Army National Guard, the applicant executed his oath of office as a USAR commissioned officer; orders immediately assigned him to the USAR Control Group (Reinforcement).

b. Effective 15 February 2005, orders reassigned the applicant to a Troop Program Unit (TPU). On 29 March 2006, Regional Readiness Command orders mobilized the applicant in support of Operation Iraqi Freedom with a report date of 17 April 2006. The applicant continued his active duty service, per subsequent Active Duty for Operational

Support (ADOS) orders issued by the U.S. Army Human Resources Command (HRC); the orders list the authority as Title 10, USC, section 12301(d) (Reserve Components Generally – Secretarial Authority to Order/Retain a Member of the Reserve Component on Active Duty).

c. Effective 24 February 2009, the Army promoted the applicant to CPT. On 8 July 2010, HRC issued the applicant his Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter).

(1) On 8 October 2011, the Army honorably released the applicant from active duty and returned him to his TPU. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 5 years, 5 months, and 22 days of active duty service.

(2) It also shows in item 18 (Remarks) – Service in Kuwait/Iraq from 7 July 2006 to 2 July 2007. Ordered to active duty in support of Operation Iraqi Freedom, in accordance with Title 10, USC, section 12302 (Ready Reserve), for the period 17 April 2006 to 9 October 2007.

d. On 25 June 2014, a formal physical evaluation board (PEB) determined the applicant was unfit for continued military service and recommended his placement on the Permanent Disability Retired List (PDRL) with a disability rating of 40 percent. The PEB found the following medical conditions as unfitting:

- Diabetes, Type II, 20 percent
- Cervical Spine Degenerative Disc Disease and Disc Herniation, 10 percent
- PTSD (initially referred as Adjustment Disorder; added as PTSD by the Formal PEB), 10 percent
- Left Shoulder Degenerative Joint Disease (Non-Dominant), 0 percent

e. On 1 October 2014, USAPDA issued orders directing the applicant's placement on the PDRL with a disability rating of 40 percent, effective 5 November 2014. The orders additionally showed the following:

- Statute Authorizing Retirement – Title 10, USC, section 1204 (Members on Active Duty for 30 days or Less or on Inactive-Duty Training; Retirement)
- Disability Retirement (Years of Active Duty Service) – 14 years, 1 month, and 7 days
- Basic Pay – 24 Years, 1 month, and 27 days
- Disability is based on injury or disease received in LOD as a direct result of Armed Conflict or caused by an instrumentality of war and incurred in the LOD during a war period as defined by law – "Yes"

- Disability resulted from a combat related injury as defined in Title 26 (Internal Revenue Code), USC, section 104 (Compensation for Injuries or Sickness) – "Yes"

4. In 2004, the Army established the U.S. Army Wounded Warrior (AW2) Program, which was a major component of the Army's Warrior Care and Transition Program. The AW2 was designed to help severely wounded, ill, and injured Soldiers, as well as Veterans, Families, and caregivers. In order to be considered eligible for entry into AW2, Soldiers must suffer from wounds, illness, or injuries incurred in the line of duty after 10 September 2001 and meet one of the following criteria:

a. Receive or expect to receive at least a 30 percent rating from IDES for one of the conditions listed below:

- PTSD
- Severe Traumatic Brain Injury
- Severe loss of vision/blindness
- Severe hearing loss/deafness
- Fatal/ incurable disease with limited life expectancy
- Loss of limb
- Spinal cord injury
- Permanent disfigurement
- Severe burns
- Complex Behavioral Health Conditions that were caused, or exacerbated or aggravated by combat/instrumentality of war versus service
- Received a 30 percent rating or greater for one Veterans Affairs Schedule for Rating Disabilities (VASRD), as rated by a PEB in any other Special Category/Enabling Care or combat/combat-related condition

b. Receive a 30 percent IDES disability rating in any other combat related condition or any condition caused by an instrumentality of war.

c. Receive a combined 50 percent IDES rating for any other combat/combat-related condition.

5. AR 15-185 (ABCMR), currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

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 applicant's contentions, the military record, and regulatory guidance were carefully considered.
 - a. 15 years of qualifying service: Deny. The evidence clearly shows the applicant served a total of 14 years, 7 months, and 1 day of active service for disability purposes. Entry into the WTU has certain requirements which the Board determined the applicant did not meet. The Board did not find evidence that he completed 15 years of active service.
 - b. Voiding Order D 274-41 issued by the U.S. Army Physical Disability Agency (USAPDA): Deny. A PEB found the applicant unfit for several medical conditions (Diabetes, Type II, Cervical Spine Degenerative Disc Disease and Disc Herniation, PTSD, and Left Shoulder Degenerative Joint Disease). The PEB determined he could no longer perform the duties required of his grade and specialty. His PEB was approved and the USAPDA appropriately published orders permanently retiring him. The Board noted that the applicant does not provide the medical evidence that shows the findings of unfitness is in error, or that he was medically was fit at the time the PEB found him unfit. Based on this finding, the Board found the applicant's claim to void his disability orders has no merit.
 - c. Issuance of a 15-Year Letter: Deny. The Board noted that the applicant completed more than 20 qualifying years of service for non-regular retirement, and has already been issued a 20-Year Letter. By law and regulation, a Reserve Component member who completed 20 or more qualifying service towards non-regular retirement is issued a 20-Year letter. The Board found no error or injustice. A copy of this 20-Year Letter is filed in his service records.

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:

a. Section 1034 (Military Whistleblower Protection Act (MWPA), enacted 29 September 1988, amended Title 10 provisions relating to communications with a Member of Congress by prohibiting any person from restricting a member of the U.S. Armed Forces to communicate with an Inspector General (IG), except for communications that were prohibited by statute.

(1) The law prohibited retaliatory personnel actions against a member for making or preparing to make such a communication.

(2) The law also directed the Department of Defense IG (DOD IG) to promptly investigate any allegation that a prohibited personnel action has taken place or been threatened with respect to any communication to a Member of Congress or IG complaining or disclosing information reasonably believed to evidence a violation of law, mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. Within 10 days of completing such an investigation, the IG was required to report the results to the Secretary of Defense.

(3) Members of the U.S. Armed Forces could, within 30 days after receipt of a copy of such investigative report, to petition the appropriate military board for correction of his or her military record concerning the matter, and the members were entitled to receive legal assistance by a judge advocate in any such matter before a military corrections board. The Act provided administrative procedures for the hearing of such petitions, together with appropriate corrective and disciplinary action to be taken and allowed for judicial review of any order resulting from such hearing, if petitioned for within 60 days after notice of the hearing's result.

b. Section 1204. Upon a determination by the Secretary concerned that a member of the armed forces, not covered by other sections under this title, is unfit to perform the duties of his office, grade, rank, or rating because of physical disability, the Secretary may retire the member with retired pay computed under section 1401 (Computation of Retired Pay) of this title, if the Secretary also determines that the disability is permanent in nature and was incurred after 23 September 1996 while performing active duty or inactive-duty for training.

c. 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.

d Section 12301 (h).

(1) When authorized by the Secretary of Defense, the Secretary of the Army may, with the consent of the Soldier, order a member of the RC to active duty to receive authorized medical care, be medically evaluated for disability or other purposes, or to complete a require Department of Defense health care study.

(2) A Soldier ordered to active duty under this subsection may, with the member's consent, be retained on active duty, if the Secretary of the Army considers it appropriate, for medical treatment for a condition associated with the study or evaluation, if that treatment of the member is otherwise authorized by law.

e. Section 12322 (Active Duty for Health Care). A Soldier who incurs or aggravates an injury, illness, or disease in the line of duty may be continued on active duty, for a period of more than 30 days while the Soldier is being treated for (or recovering from) an injury, illness, or disease when the Soldier is performing inactive-duty training or performs active duty for a period of 30 days or less.

f. Section 12731 (Age and Service Requirement). To receive retired pay, the person must have attained age eligibility, performed at least 20 years of qualifying service, and applied for retired pay.

g. Section 12731b (Special Rule for Members with Physical Disabilities Not Incurred in Line of Duty). In the case of a member of the Selected Reserve who no longer meets the membership qualifications solely because the member is unfit due to physical disability, the Secretary concerned may, for purposes of section 12731 of this title, determine to treat the member as having met the service requirements if the member has completed at least 15, and less than 20, years of service.

h. Section 12732 (Entitlement to Retired Pay: Computation of Years of Service). The person's years of service are computed by adding the following: Each one-year period, after July 1, 1949, in which the person has been credited with at least 50 points, based on one point for each day of active service and one point for each attendance at a drill or equivalent instruction. Additionally, the person will receive 15 points per year for membership in a Reserve Component.

2. The FY 2012 National Defense Authorization Act (NDAA), Public Law 112-81, enacted 31 December 2011, authorized the military services to offer early retirement to Service members who have completed at least 15 years of active service. This was a discretionary authority and not an entitlement. The Army elected to use this limited program as part of a comprehensive force management strategy to shape the force. It did not apply to Service members of the Army National Guard or the U.S. Army Reserve and was discontinued, on 28 February 2018.

3. AR 40-400 (Patient Administration), in effect at the time, stated in chapter 8 (Warrior Transit Unit) that a Soldier was eligible for warrior-in-transition status and could be assigned or attached to a WTU when, based on nomination from the Soldier's commander and the treating provider, the Medical Treatment Facility commander determined that the Soldier met the following criteria: as a Reserve Component Soldier, he/she qualified in accordance with the current personnel policy guidance; this included Soldiers on medical retention processing (MRP) and medical retention processing 2 (MRP2).

4. Department of the Army Personnel Policy Guidance for Overseas Contingency Operations, dated 1 July 2009, stated MRP Orders, under Title 10, USC, section 12301(h). If the Soldier is not expected to return to duty within 60 days, from time of injury or illness, or, if the Soldier could return to duty within 60 days but would have fewer than 120 days left on his/her current mobilization orders, then the Soldier will convert from partial mobilization orders to Medical Retention Processing (MRP) orders (12301(h)), subject to the Soldier's consent. If the Soldier does not consent to convert to MRP orders, (12301(h)), the Soldier will REFRAD immediately.

5. AR 600-77 (Administrative Management of Wounded, Ill, or Injured Soldiers), effective 5 April 2019, prescribes policy, procedures, and administrative guidance for the management and support of wounded, ill, or injured Regular Army and Reserve Component Soldiers.

a. Paragraph 2-6 (Medical retention processing (MRP) (to include medical retention processing 2 (MRP2) and medical retention processing – evaluation)). The basis for the MRP programs (including MRP2) is drawn directly from Department of Defense Instruction (DODI) 1241.01 (Reserve Component (RC) Line of Duty Determination for Medical and Dental Treatments and Incapacitation Pay Entitlements) and DODI 1332.18 (Disability Evaluation System), which state that Reserve Component Soldiers who are on active duty orders, in support of contingency operations greater than 30 days will, with Soldier consent, be retained on or returned to active duty for authorized medical treatment or evaluation.

(1) MRP. If, during the course of a contingency mobilization or during demobilization processing, it becomes evident that a Soldier has incurred or aggravated a duty-related medical condition, the Soldier may be transitioned from operational mobilization orders to MRP orders. Requests for MRP orders will be produced by the Soldier's unit of assignment with the commander's referral letter and forwarded to the supporting WTU. The installation Triad of Leadership of the supporting WTU location will review the MRP packet and, subject to approval, ensure that the Soldier is directly transitioned from existing orders to MRP orders.

(2) MRP 2. MRP2 was created based on a recognition that Reserve Component Soldiers could demobilize from contingency operations without receiving the appropriate guidance/support for transition to MRP orders or the medical condition might become evident pursuant to demobilization. If, during the 180 days pursuant to demobilization, it becomes evident that the Soldier requires authorized medical treatment or evaluation, a MRP2 application may be submitted. Requests for MRP2 orders will be produced by the Soldier's unit of assignment with the commander's referral letter and forwarded to the OTSG/MEDCOM medical review board for adjudication. If approved, MEDCOM G1 will generate MRP2 orders returning the Soldier to active duty and the Soldier will be attached to a supporting WTU.

b. Paragraph 3-2 (Continuation on active duty for medical care (MRP/MRP – evaluation)). Reserve Component Soldiers on active duty orders for more than 30 days who incur or aggravate a wound, illness, or injury with a definitive treatment plan requiring one of the following are eligible to request voluntarily retention on active duty when they require definitive care or have a permanent profile that refers the Soldiers into the Disability Evaluation System.

c. Paragraph 3-3 (Return to Active Duty for Medical Care (MRP2), Contingency Operations. The purpose is to voluntarily return Reserve Component Soldiers to active duty to receive evaluation and/or treatment for an unresolved wound, illness, or injury incurred or aggravated while the Soldier was on active duty for more than 30 days.

(1) To be eligible, the Soldier must be a member in good standing within the Selected Reserves who was previously released from an order or call to active duty.

(2) The Soldier must require definitive care, which is defined as a specific treatment or sequence of treatments of at least 30 days in duration, requiring a significant commitment of the Soldier's time, and which may, upon completion of the treatment and care, could reasonably result in the Soldier's return to duty or a referral into the Disability Evaluation System.

6. AR 15-185 (ABCMR), currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

//NOTHING FOLLOWS//