

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 October 2024

DOCKET NUMBER: AR20230015249

APPLICANT REQUESTS: in effect, a medical retirement.

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

- DD Form 149, Application for Correction of Military Record
- Orders 17-116-00011, 26 April 2017
- DD Form 214, Certificate of Release or Discharge from Active Duty, 7 February 2010

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 that he is seeking a medical early retirement due to his service-connected disabilities.
3. A review of the applicant's official records shows he served in the Regular Army from 20 March 2002 to 19 March 2005. He was transferred to the U.S. Army Reserve (Reinforcement) upon his release from active duty.
4. He entered active duty on 8 February 2008. His DD Form 214 (certificate of Release or Discharge from Active Duty) shows he was honorably released from active duty on 7 February 2010 in accordance with chapter 4 of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) due to completion of his required active service.
5. His record contains an extended Noncommissioned Officer Evaluation Report for the period 10 February 2011 to 28 May 2016. This evaluation shows the applicant met the standard in all the rated areas and was rated as "qualified" for overall potential.

6 On 26 April 2017, Headquarters, 88th Regional Readiness Command published orders honorably discharging the applicant from the U.S. Army Reserve on 26 April 2017 in accordance with Army Regulation 135-178 (Enlisted Administrative Separations).

7. A DA Form 5016, 1 October 2024, shows the applicant has 9 years, 2 months, and 8 days of qualifying service for non-regular retirement.

8. The applicant's record is void of any line of duty investigations and he did not identify his service-connected disabilities.

9. The ABCMR will decide cases on the evidence of record. It is not an investigative body. The applicant has the burden of proof.

10. The Board should consider the applicant's overall record and provided statement in accordance with the published equity, injustice, or clemency determination guidance.

11. By regulation –

a. An injury, illness, or disease diagnosed while serving on active duty or in an active duty status does not mean that the injury, illness, or disease was incurred while serving on active duty. An expert medical opinion from an appropriate provider is required and must address when the condition was incurred, if the condition existed prior to the current military service, and whether the condition was service aggravated.

b. An LOD investigation will be conducted for all Soldiers, regardless of Component, if the Soldier experiences a loss of duty time for a period of more than 24 hours and if an Reserve Component Soldier requires follow-on care for an injury, illness, or disease incurred during a period of active duty.

11. 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 (AHLTA), 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 a referral to the Disability Evaluation System (DES). He states: "Seeking medical early retirement due to my service-related disabilities."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. Orders published by the Headquarters of the 88th Regional Support Command (RSC) show the applicant was honorably discharged for the USAR on 26 April 2017. They list the separation authority as AR 135-178, Enlisted Administrative Separations (18 March 2014), without citing an authorizing paragraph or chapter.

d. The applicant does not identify the condition(s) he believes should be considered by the Board.

e. No medical documentation was submitted by the applicant.

f. Review of the applicant's file in MECHART found he was treated for ulcers in 2014 but no other significant medical history or conditions.

g. His final NCO Evaluation Report available for review was an extended annual covering thru 28 May 2016. It shows he passed his Army Physical Fitness Test in October 2015 and met the Army height/weight standards. His rater marked the applicant as having "Met Standard" (versus "Did not meet standard") for all attributes and competencies. His senior rater marked him as qualified opining:

"Soldier is newly assigned to 872nd SMC 3rd platoon. Soldier is a good communicator and shows interest in learning new skills. Soldier brings a wealth of military experience and will be a valuable member of 3rd platoon. Soldier will be sent to school for MOSQ [military occupational specialty qualification] once security clearance is obtained. Soldier should be promoted with peers."

h. There is no evidence the applicant had any duty incurred medical condition(s) which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System. 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 discharge.

i. JLV shows he has been awarded multiple VA service-connected disability ratings. However, the DES only compensates an individual for service incurred medical condition(s) which have been determined to disqualify him or her from further military service and consequently prematurely ends their career. 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. It is the strong opinion of the ARBA Medical Advisor that a referral of his case to the Disability Evaluation System is not warranted.

BOARD DISCUSSION:

1. The Board carefully considered the applicant's request, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of requests for changes to discharges.
2. The Board concurred with the conclusion of the ARBA Medical Advisor that the available evidence does not show the applicant had any duty-limiting medical conditions that would have been a basis for referring him to the Disability Evaluation System. Based on a preponderance of the evidence, the Board determined his discharge upon completion of his term of service was not in error or unjust.

BOARD VOTE:


Mbr 1 Mbr 2 Mbr 3

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| : | : | : | 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.

4/1/2025


XCHAIRPERSON


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, 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 at less than 30 percent.
3. Army Regulation (AR) 600-8-4, Personnel-General-Line of Duty Policy, Procedures, and Investigations prescribes policies and procedures for investigating the circumstances of disease, injury, or death of a Soldier. It provides standards and considerations used in determining Line of Duty (LOD) status. It states:
 - a. LOD investigations determine duty status at the time of incident and whether misconduct was involved and, if so, to what degree. An LOD investigation will be conducted for all Soldiers, regardless of Component, if the Soldier experiences a loss of duty time for a period of more than 24 hours and -
 - the injury, illness, or disease is of lasting significance (to be determined by a physician, physician assistant, or nurse practitioner)

- there is a likelihood that the injury, illness, or disease will result in a permanent disability
- if an RC Soldier requires follow-on care for an injury, illness, or disease incurred during a period of active duty

b. An injury, illness, or disease diagnosed while serving on active duty or in a duty status as outlined in AR 638-8, Army Casualty Program, does not mean that the injury, illness, or disease was incurred while serving on active duty or that an existed prior to service (EPTS) condition was service aggravated. An expert medical opinion from an appropriate provider is required and must address when the condition was incurred, if the condition existed prior to the current military service, and whether the condition was service aggravated. If an LOD determination has been made during a period of prior military service and the same condition arises in a subsequent period of military service, the prior determination will remain unchanged unless intervening events exists.

4. Title 38, U.S. Code, section 1110, General - Basic Entitlement: For disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

5. Title 38, U.S. Code, section 1131, Peacetime Disability Compensation - Basic Entitlement: For disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

6. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

7. Title 10, U.S. Code, section 1556 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 Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

8. 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 applicant has the burden of proving an error or injustice by a preponderance of the evidence.

//NOTHING FOLLOWS//