

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 April 2025

DOCKET NUMBER: AR20240000011

APPLICANT REQUESTS: physical disability discharge in lieu of honorable administrative discharge due to failure to maintain acceptable standards for retention (EDP)

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

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 reason for discharge should be medical. He received a traumatic brain injury (TBI) from an accident while in training and his discharge should be changed to reflect medical.
3. The applicant enlisted in the Regular Army on 19 July 1977.
4. A DA Form 2627 (Record of Proceedings under Article 15 of the Uniform Code of Military Justice (UCMJ)) shows the applicant accepted nonjudicial punishment (NJP) under Article 15 of the UCMJ on 10 May 1978, for violating a lawful general regulation by having in his possession a knife with a 3 1/4 inch blade.
5. The complete facts and circumstances surrounding the applicant's discharge are unknown as his discharge packet, to include the notification of separation, acknowledgement, and approval are not in his available records for review.
6. The applicant's DD Form 214 (Report of Separation from Active Duty) shows he was honorably discharged on 14 August 1978, under the provisions of Army Regulation

635-200 (Personnel Separations – Enlisted Personnel), due to failure to maintain acceptable standards for retention (Expeditious Discharge Program (EDP)). He was credited with 10 months and 26 days of net active service.

7. The applicant's available service records do not contain documentation regarding the diagnosis and/or treatment of a TBI and he has not provided such documentation.

8. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of physical disability discharge in lieu of honorable administrative discharge due to failure to maintain acceptable standards for retention (EDP). He contends he experienced a Traumatic Brain Injury (TBI) that warrants this change.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following:

- The applicant enlisted into the Regular Army on 19 July 1977.
- A DA Form shows the applicant accepted NJP under Article 15 of the UCMJ on 10 May 1978 for violating a lawful general regulation by having in his possession a knife with a 3 1/4 inch blade.
- The complete facts and circumstances surrounding the applicant's discharge are unknown as his discharge packet, including the notification of separation, acknowledgement, and approval, are not in his available records for review.
- The applicant was honorably discharged on 14 August 1978 due to failure to maintain acceptable standards for retention (Expeditious Discharge Program (EDP)). He was credited with 10 months and 26 days of net active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts his reason for discharge should be medical. He received a traumatic brain injury (TBI) from an accident while in training and his discharge should be changed to reflect medical. The application was void of any medical or mental health records. There was insufficient evidence that the applicant was diagnosed with a TBI while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed the applicant appears to be 60% service connected for the following conditions: migraine headaches (50%), facial scars (10%), lower leg condition (0%), and residual of TBI (0%). He initiated an evaluation for PTSD on 16 May 2008, and he described a traumatic event where another soldier jumped out of a window that the applicant had opened and a second event, which

occurred after his discharge (not involving a TBI). He was diagnosed with PTSD, but there is no indication he engaged in mental health treatment.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence, beyond self-report, to support that the applicant had a condition or experience that warrants a medical discharge. There are no medical or mental health records available for review from his time in service indicating any symptoms or diagnosis of a TBI, and although he is service connected through the VA for TBI, his disability rating is 0 percent. A VA PTSD evaluation from 2008 showed no indication of any events that could have led to a TBI. However, the applicant contends he had a TBI or an experience that warrants a change to a medical discharge, and per Liberal Consideration his contention is sufficient for the board's consideration.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? NA; request is for medical discharge

(2) Did the condition exist or experience occur during military service? NA; request is for medical discharge

(3) Does the condition or experience actually excuse or mitigate the discharge? NA; request is for medical discharge

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, medical advisory opinion, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. The Board noted there are no medical or mental health records available for review from his time in service indicating any symptoms or diagnosis of a TBI, and although he is service connected through the VA for TBI, his disability rating is 0 percent. The Board concurred with the advisory official there is insufficient evidence, beyond self-report, to support that the applicant had a condition or experience that warrants a medical discharge. Upon review of the applicant's petition and available military record, the Board determined there is insufficient evidence to show a medical discharge was warranted during his period of active service.

2. The Board considerer the Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate th discharge? NA; request is for medical discharge

(2) Did the condition exist or experience occur during military service? NA; request is for medical discharge

(3) Does the condition or experience actually excuse or mitigate the discharge? NA; request is for medical discharge

3. The Board agreed that the VA provides post-service support and benefits for service connected medical conditions. The VA operates under different laws and regulations than the Department of Defense (DOD). In essence, the VA will compensate for all service connected disabilities. Variance in ratings does not indicate an error on the part of either entity.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

: : : GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

XXX XXX XXX 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.

X

//SIGNED//

CHAIRPERSON

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 is responsible for administering the Army physical disability evaluation system (DES) and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 (Discharge Review Board (DRB) Procedures and Standards) and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

a. Soldiers are referred to the disability system 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 (MEB); when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an Military Occupational Specialty (MOS) Medical Retention Board (MMRB); and/or they are command-referred for a fitness-for-duty medical examination.

b. The disability evaluation assessment process involves two distinct stages: the MEB and Physical Evaluation Board (PEB). The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the severity of the disability and length of military service. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

c. The mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of his or her office, grade, rank, or rating. Reasonable performance of the preponderance of duties will invariably result in a

finding of fitness for continued duty. A Soldier is physically unfit when a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

3. Army Regulation 635-40 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. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

a. 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 military service.

b. Soldiers who sustain or aggravate physically-unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

(1) The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

(2) The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

c. The percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Ratings are assigned from the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD). The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting, or ratable condition, is one which renders the Soldier unable to perform the duties of their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

4. 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.

5. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 5-31, in effect at the time provides that individuals who have demonstrated they cannot or will not meet acceptable standards required of enlisted personnel in the Army, because of the existence of one or more of the following conditions, may be discharged under the expeditious discharge program (EDP): poor attitude; lack of motivation; lack of self-discipline; inability to adapt socially or emotionally; and/or failure to demonstrate promotion potential.

b. No members shall be discharged under this program unless the Army member voluntarily consents to the proposed discharge. Individuals discharged under the EDP may be awarded an honorable or general discharge certificate as appropriate.

6. 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.

7. Army Regulation 15-185 (Army Board for Correction of Military Records (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//