

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 November 2024

DOCKET NUMBER: AR20240000419

APPLICANT REQUESTS: in effect, issuance of a 20-year notice of eligibility for retirement from the U.S. Army Reserve (USAR) and/or medical retirement

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

- DD Form 293 (Application for the Review of Discharge)
- Letter from Disabled American Veterans

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, in effect, he served nine years on active duty and nine years in the USAR. He tried to complete his 20 years of service for retirement. The reserve unit he was in would not let him reenlist because of his medical conditions. Also they would not send him to a medical evaluation board (MEB). He extended his contract as long as he could.
3. The applicant's service record contains the following documents:
  - a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows he enlisted in the Regular Army and entered active duty on 13 July 2000. He remained in the Regular Army through immediate reenlistments.
  - b. Orders 070-0005, published by Installation Management Command - Europe, 11 March 2009, show he was discharged from the Army effective 1 September 2009. There is no indication he was being discharged for a medical condition.
  - c. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably transferred to a USAR unit on 1 September 2009. He had completed 9

years, 1 month, and 19 days of net active service this period. He had service in Iraq from 30 October 2003 through 30 October 2004 and from 1 November 2005 through 26 October 2005. He was discharged for completion of required active service. His DD Form 214 shows he was awarded the Purple Heart and Combat Action Badge along with other awards and decorations.

d. The applicant's enlistment documents into the USAR are not available for the Board's consideration. Orders 12-184-00047, published by Headquarters, 88th Regional Support Command, 2 July 2012, show he was honorably discharged from the USAR effective 1 September 2012; however, they do not indicate the reason for his discharge.

e. Orders 18-261-00052, published by Headquarters, 88th Regional Support Command, 18 September 2018, show he was honorably discharged from the USAR effective 18 September 2018 for expiration of USAR service obligation. He was held beyond his normal discharge date through no fault of his own.

f. DA Form 5016 (Chronological Statement of Retirement Points), 20 November 2024, shows he was in the Regular Army from 13 July 2000 through 1 September 2009. He was in the USAR from 9 December 2009 through 18 September 2018. He had 18 years, 9 months, and 11 days qualifying service for retirement.

g. The applicant's service record is void of, and the applicant did not provide, documentation showing he was medically disqualified for retention in the Army.

5. On 3 April 2024, the Chief, Personnel Services Division, U.S. Army Human Resources Command (AHRC) provided an advisory opinion, which states:

a. A review of the applicant's record and supporting documentation shows that his former USAR unit submitted a Memorandum to the Department of the Army, Office of the Deputy Chief of Staff, on his behalf requesting Headquarters, Department of the Army G-1 authorize a medical waiver for a two-year antedated reenlistment. On 7 February 2017, his request was approved. The approved waiver allowed him to drill past his expiration term of service (ETS) date of 1 September 2016, so that he could undergo an MEB review, while in a drilling status. Approval of his antedated reenlistment allowed him to extend his ETS until 1 September 2018.

b. His records show he had attained at least 15 but less than 20 years of qualifying service towards retirement, at the time he was granted approval to extend beyond his ETS. Additionally, Orders 18-261-00052, dated 18 September 2018, show he was discharged from the USAR due to expiration of his USAR service obligation. These orders further state he was held beyond his normal discharge date through no fault of his own.

c. The MEB is a process designed to determine whether a servicemember's long-term medical condition enables him or her to continue to meet medical retention standards in accordance with military service regulations. However, due to limited information in his records, the AHRC, Gray Area Retirements Branch is not able to determine if he completed the MEB process.

d. Since the purpose of his approved waiver was to allow him to undergo the MEB process to determine if he was fit for duty, it is the opinion of the Gray Area Retirement Branch that he should, at the very least, be granted a 15-year letter which will make him eligible for non-regular retirement, at age 60.

6. On 25 April 2024, the advisory opinion was provided to the applicant to allow him the opportunity to respond. He did not respond.

#### 7. 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: "The Reserve would not let me reenlist because of medical conditions. Also, they would not send me to a medical board. I extended my contract as long as I could."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. Orders published by the Headquarters of the 88<sup>th</sup> Regional Support Command (RSC) show the applicant was honorably discharged for the USAR on 18 September 2018. They list the separation authority as AR 135-178, Enlisted Administrative Separations (18 March 2014) and state: "Additional Instructions: Expiration of USAR service obligation. Soldier was held beyond normal discharge date through no fault of the Soldier."

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. Please see the United States Army Human Resources Command's (USAHRC's) Outside Advisory Opinion for background.
- g. The applicant was placed on an S3 duty limiting permanent profile in 2012 IOT undergo evaluation for PTSD. The physical profile stated "No documentation was provided by the Service member at the time of the PHA [periodic health assessment]. Service member must provide supporting documentation to RSC [Reserve Support Command]." No evidence was found that this occurred.
- h. There is insufficient probative evidence the applicant had any medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his voluntary separation; or which prevented him from reenlisting IOT to complete 20 years of service for retirement. 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 voluntary separation.
- i. In light of this, the medical advisor non-concurs with USAHRC's opinion the applicant should "be granted a 15-year letter which will make him eligible for non-regular retirement at age 60."
- j. Passed on 5 October 1999, 10 U.S. Code § 12731b, "Special rule for members with physical disabilities not incurred in line of duty (15-year notice of eligibility)," authorizes the Secretary concerned to treat a member of the Selected Reserve who no longer meets the qualifications for membership in the Selected Reserve solely because the member is unfit due to physical disability not incurred in the line of duty as having met the service requirements for years of service computed under 10 U.S. Code § 12732. The Secretary can then provide the member with a notification that the member has completed at least 15, and less than 20 of service. This "15-year Notice of Eligibility" authorizes a non-regular retirement.
- k. Review of his 22 February 2021 VBA Ratings Decision code sheet shows he was first awarded a 10% SC disability rating for PTSD effective 2 June 2015. The VASRD shows this rating is for "Occupational and social impairment due to mild or transient symptoms which decrease work efficiency and ability to perform occupational tasks only during periods of significant stress, or symptoms controlled by continuous medication." This was increased to 70% effective 11 September 2020.

l. 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.

m. It is the opinion of the ARBA Medical Advisor that neither a referral of his case to the Disability Evaluation System nor the issuing of a 15-year notice of eligibility is warranted.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was 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, medical review and U.S. Army Human Resourced Command -Gray Retirement Branch advisory, the Board considered the medical advising official opine finding that neither a referral of his case to the Disability Evaluation System nor the issuing of a 15-year notice of eligibility is warranted.

2. However, the Board concurred with the USAHRC advising official recommendation finding the applicant should be granted a 15-year letter which will make him eligible for non-regular retirement, at age 60. The Board determined there is sufficient evidence to support partial relief based on the USAHRC opine for issuance of a 15-year notice of eligibility for non-regular retirement from the U.S. Army Reserve (USAR) at the age of 60. Based on this, the Board granted partial relief.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:                :                :                GRANT FULL RELIEF

■                ■                ■                GRANT PARTIAL RELIEF

:                :                :                GRANT FORMAL HEARING

:                :                :                DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by showing issuance of a 15-year notice of eligibility for non-regular retirement from the U.S. Army Reserve (USAR) at the age of 60..

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to issuance of a 20-year notice of eligibility for retirement from the U.S. Army Reserve (USAR) and/or medical retirement.

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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. 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. In pertinent part, it states that 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. The ABCMR will decide cases based on the evidence of record. The ABCMR is not an investigative agency.

3. Army Regulation 140-185 (Training and Retirement Point Credits and Unit Level Strength Accounting Records) contains Army policy for U.S. Army Reserve (USAR) training and retirement point credit. It also prescribes guidance for USAR unit level strength accounting.

a. Paragraph 1-7 (Service requirement for a satisfactory year of service for non-regular retirement) states, a qualifying year of service for non-regular retired pay is a full year during which a Reserve Component (RC) member is credited with a minimum of 50 retirement points. Except as otherwise provided by law, an accumulation of 20 such years is one requirement necessary to qualify for non-regular retired pay.

b. Paragraph 3-5 (DA Form 5016) provides that, these statements — (1) Provide a permanent record of the total retirement points Soldiers earn during an anniversary year. (2) Inform Soldiers whether they earned sufficient points for a qualifying year for retirement or retention in an active status. (3) Provide Soldiers an opportunity to review their retirement points to request corrections. The DA Form 5016 is initiated and prepared by HRC from the processing of data furnished manually and utilizing automation. Prepared for Soldiers under HRC command to include obligated enlisted Soldiers who have earned at least one retirement point. Prepared to cover a full anniversary year of active duty for training or active duty. Prepared for all Soldiers regardless of the number of points awarded. Issued annually and upon correction to a record.

4. Army Regulation 135-180 (Retirement for Non-Regular Service) implements statutory authorities governing the granting of retired pay for non-regular service to Soldiers in the Army National Guard (ARNG), Army National Guard of the United States (ARNGUS) or the USAR.

a. Paragraph 2-2 (Basic qualifying service requirements) states, to be eligible for retired pay at or after the age (60 years of age) specified in paragraph 2–1 (Age requirements), an individual need not have military status at the time of application, but must have completed one of the following: (1) A minimum of 20 years of qualifying

service computed under Title 10, U.S. Code (USC), section 12732; or, (2) Fifteen (15) years of qualifying service, and less than 20, computed under Title 10, USC, section 12732, if the individual is to be separated because the Soldier has been determined unfit for continued Selected Reserve service, and none of the conditions in 10 USC 12731b(b) exist.

b. Paragraph 2-4 (Notification of Eligibility for Retired Pay at Age 60 (20 Year Letter)) states, (1) Under Title 10, USC, section 12731a, RC Soldiers who complete the eligibility requirements in section I will be notified in writing within 1 year after completion of the required service in accordance with AR 140–185. The Notification of Eligibility for Retired Pay at Age 60 (20 Year Letter) will be issued to Soldiers credited with 20 years of qualifying service and should be issued prior to discharge or transfer to the Retired Reserve. The Notification of Eligibility for Retired Pay at Age 60 (20 Year Letter) will be issued by HRC for all USAR Soldiers except for those who are within 2 years of qualifying for an active duty retirement and can remain on active duty to complete the required service. The Notification of Eligibility for Retired Pay at Age 60 (20 Year Letter) will be issued in the format determined by HRC. After a Soldier has been notified of their eligibility for retired pay for non-regular service, the Soldier's eligibility for retired pay may not be denied or revoked on the basis of any error, miscalculation, misinformation, or administrative determination of years of service performed, unless it resulted directly from the fraud or misrepresentation of the individual concerned. However, the number of years of creditable service upon which retired pay is computed may be adjusted to correct any error, miscalculation, misinformation, or administrative determination, and when such a correction is made the person is entitled to retired pay in accordance with the number of years of creditable service, as corrected, from the date they are granted retired pay.

5. Public Law 102-484, section 4403 of the Fiscal Year 1993 National Defense Authorization Act, dated 23 October 1992, was the first authorization to allow the U.S. Army to create an early retirement program, the Temporary Early Retirement Authorization (TERA) for Active Component and Active Guard and Reserve Soldiers who had completed 15 years of Active Federal Service (AFS), but less than 20 years of AFS at their separation date and who requested retirement in lieu of separation. The TERA was enacted by Congress to assist in the military drawdown of forces and to permit selected military members to retire early between 15 and 20 years of service and for Regular Army Soldiers to accrue additional military retirement points through service in Reserve Components (RC) or employment in qualifying public or community service organizations. The Secretaries of the respective services designated the ranks and military specialties that were eligible to apply according to the needs of the specific service. Retirement under this program was not a right; it was granted on an individual basis according to the requirements of the service.



6. Title 10 USC, section 12731 (Age and service requirements) provides the legal age and service requirements for age and service for Reserve non-regular retirement. It states that, upon application, a person is entitled to retired pay if the person has attained the applicable eligibility age, has performed at least 20 years of service computed under section 12732 of this Title; and is not entitled, under any other provision of law, to retired pay from an armed force or retainer pay as a member of the Fleet Reserve or the Fleet Marine Corps Reserve.

7. Title 10 USC, section 12731a (Temporary special retirement qualification authority) provides for retirement with at least 15 years of service. The Secretary concerned may, during the period described in the subsection below, determine to treat a member of the Selected Reserve of a RC of the armed force under the jurisdiction of that Secretary as having met the service requirements of 10 USC 12731, subsection (a)(2), and provide the member with the notification required by subsection (d) of that section if the member:

a. As of 1 October 1991, has completed at least 15, and less than 20, years of service computed under section 12732 of this title; or

b. After that date and before the end of the period described in subsection (b), completes 15 years of service computed under that section; and

c. Upon the request of the member submitted to the Secretary, transfer the member to the Retired Reserve.

d. The period referred to above is the period beginning 23 October 1992 and ending 31 December 2001.

8. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation) 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. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with AR 40-501, chapter 3, as evidenced in a medical evaluation board (MEB); when they receive a permanent physical profile rating of "3" or "4" in any functional capacity factor and are referred by a Military Occupational

Specialty Medical Retention Board; 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 or 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 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 are either 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 onetime 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 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 medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

9. Title 10, USC, 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, USC, 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.

10. Army Regulation 40-501 (Standards of Medical Fitness), provides policies and procedures on medical fitness standards for induction, enlistment, appointment, and retention. Paragraph 3-33 (anxiety, somatoform, or dissociative disorders) states the causes for referral to an MEB are as follows:

- persistence or recurrence of symptoms sufficient to require extended or recurrent hospitalization; or
- persistence or recurrence of symptoms necessitating limitations of duty or duty in protected environment; or
- persistence or recurrence of symptoms resulting in interference with effective military performance

11. Title 38, USC, sections 1110 and 1131, permits the VA to award compensation for disabilities that were incurred in or aggravated by active military service. However, an award of a higher VA rating does not establish error or injustice on the part of the Army. The Army rates only conditions determined to be physically unfitting at the time of discharge which disqualify the Soldier from further military service. The VA does not have the authority or responsibility for determining physical fitness for military service. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge, to compensate the individual for loss of civilian employability. These two government agencies operate under different policies. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

12. 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.

//NOTHING FOLLOWS//