

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 September 2024

DOCKET NUMBER: AR20240000514

APPLICANT REQUESTS: in effect,

- correction of block 12b (Separation Date This Period) of his DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 14 November 2019 to show 9 October 2021 instead of 14 November 2019.
- back pay for the period 14 November 2019 to 9 October 2021; and
- a personal appearance hearing before the Board via video or telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- Constituent Service Request Form, 16 September 2019
- 1-page Progress Notes, October 2019
- DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings, 30 August 2021
- Memorandum, U.S. Army Physical Disability Agency (USAPDA), 9 September 2021

FACTS:

1. The applicant states, in effect, he received injuries and the onset of various medical conditions during his activation and deployment in support of Operation Enduring Freedom. Ultimately, he was unable to perform his assigned duties; however, Army leadership at the Warrior Transition Unit (WTU) mistakenly asserted he was fit for duty and transferred him back to his Reserve unit. At the time of his transfer, he had received two surgeries on his left knee, was receiving treatment, and was unable to walk without the assistance of crutches or a cane.
2. The applicant had prior service in the U.S. Army Reserve (USAR) and the Army National Guard (June 2008 to March 2012).
3. He enlisted in the USAR on 23 March 2012 and held military occupational specialty 12N (Horizontal Construction Engineer)

4. On 28 January 2017, he was ordered to active duty in support of Operation Enduring Freedom. He served in Kuwait from 27 March to 13 December 2017.

5. Headquarters, U.S. Army Medical Command retained him on active duty to participate in the Reserve Component Warrior in Transition Medical Retention Processing Program for completion of medical evaluation beginning 9 January 2018. Orders were repeatedly published and/or amended to retain him on active duty to complete medical care and treatment in accordance with 10 U.S. Code 12322.

6. The applicant provides a Progress Note in which he highlights an entry for, "left knee pain with October 2019, Magnetic Resonance Imaging impression: Evidence of prior arthroscopic surgery. Signal abnormality of the medial meniscus as described, suspicious for tear. Blunting of the central meniscal margin of the lateral meniscus, possible small radial tear. Recommend correlation of findings with surgical history. Mild subchondral edema of the posterior lateral tibial plateau, cannot exclude osteochondral injury. Small popliteal cyst. Agreed to follow-up with Ortho for next step in care."

7. On 26 September 2019, U.S. Army Garrison, Fort Belvoir, VA published Orders 269-0013 ordering the applicant's release from active duty not by reason of physical disability effective 14 November 2019, and return to his troop program unit, 417th Engineer Company, Bellville, NY.

8. The applicant was honorably released from active duty upon the completion of his required active service on 14 November 2019, under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), chapter 4 (Separation Code MBK). The DD Form 214 he was issued shows he completed 2 years, 9 months, and 17 days of net active service this period.

9. After his release from active duty due to completion of his required active service, the applicant continued his Reserve duty with his troop program unit, 417th Engineer Company.

10. On 30 August 2021, while a drilling member of the USAR, and informal physical evaluation board (IPEB) convened and found the applicant physically unfit with a rating of 100 percent, and that the applicant's disposition be Permanent Disability Retirement. The medical conditions which were unfitting are:

a. Post-traumatic stress disorder and mild traumatic brain injury with residuals. The condition began in 2008, while serving in the USAR. The behavioral health providers attributed this condition to combat stressors the Soldier experienced, while deployed to Iraq in 2004 and aggravated by his deployment to Kuwait in 2017.

b. Lumbar spine multilevel degenerative disc disease, with HNP L1/2, L3/4, multilevel arthritis; multilevel central canal and neuroforaminal stenosis; multilevel ligament flavum hypertrophy; intervertebral disc syndrome. The applicant first sought treatment in March 2004 while deployed to Iraq. The condition was caused by an improvised explosive device (IED) blast. Condition aggravated during 2017 deployment to Kuwait due to a fall.

c. Right shoulder rotator cuff tears, labral tear, calcific tendonitis, bursitis, osteoarthritis, tenosynovitis, adhesive capsulitis, and impingement status post surgery. The applicant first sought treatment for the condition in March 2004, while deployed to Iraq. Condition caused by an IED that knocked him out of a truck. Condition aggravated during 2017 deployment to Kuwait due to a fall.

d. Left knee medial and lateral meniscal tears; osteochondral defect; chondromalacia; medial collateral ligament sprain, chronic; Baker's cyst; tri-compartmental arthritis; status post surgeries x2. Applicant first sought treatment in February 2017, while stationed at Fort Bliss, TX. Applicant hurt knee lifting heavy equipment and aggravated in April 2017, in Kuwait and again in December 2017, after a fall.

e. Left lower extremity radiculopathy. Applicant first sought treatment for shoulder and back pain in March 2004, while deployed to Iraq. Pain caused by IED blast. Aggravated during 2017 deployment to Kuwait due to a fall and the conditions included radiating pain/numbness.

11. The IPEB considered the applicant fit for two other Medical Evaluation Board (MEB) diagnoses not present. The combined effect was considered in the fitness determination for conditions referred by the MEB.

a. The IPEB found:

(1) The disability disposition was based on disease or injury incurred in the line of duty (LOD) in combat with an enemy of the United States and as a direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a period of war;

(2) The evidence of record shows the applicant was not a member or obligated to become a member of an armed force or Reserve thereof; and,

(3) The disability did result from a combat-related injury.

b. His case was adjudicated as part of the Integrated Disability Evaluation System (IDES) and the applicant concurred with the PEB findings and waived formal hearing on 2 September 2021.

12. The USAPDA authenticated and approved the findings and recommendations on behalf of the Secretary of the Army on 9 September 2021.

13. Order D 252-07, Headquarters, USAPDA, 9 September 2021, released the applicant from assignment and duty because of physical disability incurred while entitled to basic pay and under conditions that permit his retirement for permanent physical disability. He was placed on the retired list on 9 October 2021 in the rank/grade of staff sergeant/E-6.

14. Army Regulation 15-185 (ABCMR) states an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

15. Army Regulation 635-8 (Separation Processing and Documents) prescribes the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It establishes standardized policy for the preparation of the DD Form 214. It states the DD Form 214 is a synopsis of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of active Army service at the time of release from active duty, retirement, or 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 counsel's statement, 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 petition and available military records, the Board determined there is insufficient evidence to support the applicant's contention for correction of his DD Form 214, block 12b (Separation Date This Period) to show separation date 9 October 2021 instead of 14 November 2019. The Board found the applicant was properly released from active duty upon the completion of his required active service on 14 November 2019. Evidence shows the applicant after his release from active duty due to completion of his required active service, continued his Reserve duty with his troop program unit, 417th Engineer Company.

2. The Board agreed the applicant's DD Form 214 accurately captures his period of active service. The Army has an interest in maintaining the integrity of its records for

historical purposes. The information in those records must reflect the conditions and circumstances that existed at the time the records were created. In the absence of evidence that shows a material error or injustice, there is a reluctance to recommend that those records be changed. Based on the preponderance of evidence, the Board found no error or injustice and denied relief.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.

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. Army Regulation 635-8 prescribes the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It establishes standardized policy for the preparation of the DD Form 214. It states the DD Form 214 is a synopsis of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of active Army service at the time of release from active duty, retirement, or discharge.

2. The Army Recovery Care Program (ARCP) previously known as the Warrior Care and Transition Program, is a program that helps Soldiers transition back to the military or to veteran status. The program provides medical case management, rehabilitation, professional development, and assistance with achieving personal goals. The ARCP offers services to Soldiers who need complex care and are expected to receive a profile of more than six months. The complexity of a Soldier's condition is determined by medical professionals who assess the severity of their illness, degree of impairment, and level of care management required. The ARCP also provides resources and advocacy for the families and caregivers of Soldiers in the program. The Army Reserve Warrior Transition Program aids with administrative, legal, and medical concerns for Army Reserve Soldiers in transition. The Remote Medical Management Program provides medical case management for Army National Guard and Army Reserve Soldier who are authorized for continued evaluation and/or treatment while on active-duty orders.

3. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), in effect at the time, established the Army's disability evaluation system and set forth policies, responsibilities, and procedures governing the evaluation for physical fitness of Soldiers who might be unfit to perform their military duties because of physical disability. Paragraph 3-1 (Standards of Unfitness Because of Physical Disability) stated the mere presence of impairment did not alone justify a finding of unfitness because of physical disability. In each case, it was necessary to compare the nature and degree of the physical disability with the requirements of the Soldier's duties, as required by his or her office, rank, grade or rating.

4. DOD Manual 1332.18, Volume 2, prescribes policies and procedures for the processing of Soldiers with duty-related disabling medical conditions.

a. The IDES is a joint DOD and Department of Veterans Affairs (VA) process by which it is determined if Soldiers who have been wounded, ill, or injured are fit for continued military service.

b. In consultation with the Soldier's commander and on approval by the MEB convening authority, a military medical provider refers a Soldier with disabling medical conditions to IDES.

(1) The VA provides the medical examinations (identified as compensation and pension or C&P examinations) of the disabling conditions. Then, based on the VA's medical examinations, an MEB makes an assessment to identify those medical conditions that fail to meet medical retention standards. All conditions failing retention standards are referred to a PEB for a fitness determination.

(2) Conditions found by the PEB to be unfitting are sent to the VA for a disability rating. In determining the rating(s) to be assigned, the VA uses the VA Schedule for Rating Disabilities (VASRD). Each rated disability is assigned a code by VA in accordance with the schedule of ratings within the VASRD.

(3) Upon receipt of the disability rating(s) from the VA, the results are finalized and the disposition can include the Soldier being returned to duty or separated (either with severance pay, if the total disability rating is 20 percent or less, or retired, for those cases where the disability rating is 30 percent or higher).

5. Army Regulation 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 may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires. The ABCMR considers individual applications that are properly brought before it. The ABCMR will decide cases on the evidence of record. It is not an investigative body. 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//