

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 September 2024

DOCKET NUMBER: AR20240000777

APPLICANT REQUESTS:

- correction of his NGB Form 22 (Report of Separation and Record of Service) to show in block 23 (Authority and Reason) "service-connected disability" in lieu of "Medically Unfit for Retention"
- an opportunity to provide a video or be allowed to telephonically appear before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 2173 (Statement of Medical Examination and Duty Status)
- DA Form 199 (Physical Evaluation Board (PEB) Proceedings), Page 1
- NGB Form 22 (Report of Separation and Record of Service)
- Department of Veterans Affairs (VA) Rating Decision)
- DA Form 5893-R (Physical Evaluation Board Liaison Officer Counseling Checklist/Statement)

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 discharged due to a service-connected disability that included a left ankle fracture, and surgery which resulted in a 10 percent (%) disability rating.
3. On 2 August 2001, he enlisted in the Army National Guard (ARNG) for 8 years in pay grade E-1.
4. Orders 152-14, from the Military Entrance Processing Station (MEPS), [REDACTED] ordered him to initial active-duty training (IADT) for a period of approximately 16

weeks or until completion of military occupational specialty (MOS) training. He was assigned to Fort Benning, GA, for completion of One Station Unit Training (OSUT) on 7 January 2002.

5. The applicant provided and his service record contains a DA Form 2173 (Statement of Medical Examination and Duty Status), 26 February 2002, showing while in basic training, during a group run, on 25 February 2002, he tripped and fell causing a pile-up. He complained that his foot hurt, and he was put on the trail vehicle. He was seen at Martin Army Community Hospital, Fort Benning, GA, in an outpatient status. The injury he sustained was a left ankle fracture. Another Soldier ran into the applicant's back causing him to hyperflex his ankle. His injury was determined to be in the line of duty (ILOD), on 8 March 2002. He was able to continue training.

6. His DA Form 2-1 (Personnel Qualification Record) confirms on 30 August 2002, he was awarded MOS 11B. On the same date, he was released from IADT, and he was transferred to [REDACTED] ARNG ([REDACTED] ARNG).

7. On 30 August 2002, he was issued a DD Form 214 (Certificate of Release or Discharge from Active Duty) confirming he was released from IADT in the rank/grade of private first class/E-3. He completed 7 months and 24 days of net active service this period. His DD Form 214 also contains the following pertinent information:

- Type of Separation – Release from Active-Duty Training
- Character of Service – Honorable
- Separation Authority – Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel – Chapter 4
- Narrative Reason for Separation – Completion of Required Active Service

8. After he was released to the [REDACTED] ARNG, he was advanced to specialist four/E-4 on 1 January 2003. He continued to serve in the [REDACTED] ARNG for an additional 2 years, 7 months, and 29 days.

9. He provided page 1 of his PEB Proceedings confirming a PEB convened on 14 February 2005 and determined his, "chronic knee pain, and left ankle status post arthroscopic surgery was rated as slight, not recurring daily, narcotic therapy/constant," was rated 10 % disabling. Based on a review of the objective medical evidence of record, the findings of the PEB were his medical and physical impairment prevented reasonable performance of duty required by his grade and military specialty. The PEB found him physically unfit and recommended a combined rating of 10% and that his disposition be separation with severance pay, if otherwise qualified.

10. Orders 110-066, from Joint Force Headquarters, [REDACTED] Office of the Adjutant General, dated 20 April 2005, ordered the applicant's discharge under the provisions of National Guard Regulation (NGR) 600-200 (Enlisted Personnel Management), paragraph 8-26j(1), due to being medically unfit for retention.

11. Accordingly, on 29 April 2005, he was discharged from the [REDACTED] ARNG. His NGB Form 22 shows he was discharged from the [REDACTED] ARNG in the rank/pay grade of specialist four/E-4. He held MOS 11B. He completed 3 years, 8 months, and 28 days of net service this period. Additionally, the NGB Form 22 shows in:

- Authority and Reason – NGR 600-200, paragraph 8-26j(1) (Medically Unfit for Retention), per AR 40-501, chapter 3
- Character of Service – “Honorable”
- Reenlistment Eligibility (RE) [Code] – “3”

12. Physical Disability Board of Review (PDBR) proceedings, dated 30 January 2017, show the applicant was a member of National Guard, E-4, Infantryman, medically separated for “chronic pain, left ankle...” with a disability rating of 10%. Additionally, this document also shows in:

a. Analysis Summary: Left Ankle. According to service treatment records and the Medical Evaluation Board (MEB) narrative summary (NARSUM), his left ankle condition began in February 2002 after a squad run. Radiographic studies showed a left ankle fracture. Magnetic Resonance Imaging in December 2003 showed scarring with thickening of the anterior talofibular ligament. He underwent left ankle arthroscopic surgery in February 2004 that resulted in a post-operative diagnosis of left ankle impingement and left ankle synovitis with debridement of a lateral ankle lesion.

b. Following surgery further treatment did not result in improvement sufficient to allow unrestricted duty. The MEB forwarded “chronic left ankle pain...” for PEB adjudication.

c. The MEB NARSUM (narrative Summary): Examination on 5 January 2005, 3 months prior to separation, noted complaints of persistent ankle pain, swelling, popping, and grinding, and decreased left ankle strength. The physical examination showed 8 degrees of dorsiflexion and 25 degrees of plantar flexion with no pain and mild tenderness. He was able to heel and toe walk, had normal vascular and neurological functioning, and motor function was intact. He failed to report for the 11 June 2007 VA Compensation and Pension evaluation.

d. The matter of the left ankle condition and in accordance with Veterans Affairs Schedule for Rating Disabilities, section 4.71a, the PDBR unanimously recommended no change in the PEB adjudication. There were no other conditions within the PDBR's scope of review for consideration. The PDBR, therefore, recommended that there be no re-characterization of his disability and separation determination.

13. On 11 April 2017, the Deputy Assistant Secretary of the Army, reviewed the Department of Defense (DOD) PDBR recommendation and record of proceedings pertaining to the applicant and accepted the PDBR's recommendation and thereby denied his application. The decision was final. The applicant was notified of this decision.

14. On 11 April 2017, the Army Review Boards Agency notified the applicant that the DOD PDBR reviewed his application and found his separation disability rating and separation from the Army for disability with severance pay was accurate. The Board's recommendation and record of proceedings were reviewed, and the recommendation was accepted. He was informed that his application to the PDBR was denied. The decision was final. His recourse within the DOD or the Department of the Army was exhausted; however, he had the option to seek relief by filing suit in a court of appropriate jurisdiction. He was provided a copy of the PDBR Proceedings.

15. An advisory opinion was obtained from the NGB in the processing of this case. The Chief, Special Actions Branch, NGB, Arlington, VA recommended disapproval of the applicant's request. The Chief further opined that:

a. The applicant was discharged in 2005 due to being found unfit for military service by the Army PEB. He was discharged under the provisions of NGR 600-200, paragraph 8-26j(1), [due to being] medically unfit for retention standards.

b. A review of his claim by the ARNG Transition Office supports the authority and reason used on his NGB Form 22. His request to have the reason changed from "medically unfit for retention" to "service-connected disability" is not supported by NGR 600-200 as a proper reason for discharge.

c. His service-connected disability is a part of his military records, it is recorded on his statement of medical examination, duty status form, and PEB Proceedings.

d. It is the opinion of the NGB Office in coordination with the ARNG Transition Office that the applicant's NGB Form 22 is properly recorded and there is no need for correct.

16. On 30 July 2024, the applicant's application was placed in a hold status, the NGB Advisory was referred to the applicant, and he was given an opportunity to provide a rebuttal or response. He did not respond during the allotted time.

17. In addition to the applicant's submissions already addressed, he provided a VA Rating Decision, dated 8 November 2023, confirming his combined service-connected evaluation remained at 10%. His submissions were provided to the Board in their entirety.

18. NGR 600-200 set forth the basic authority for the personnel management of enlisted personnel of the ARNG. Paragraph 8-26j(1), in effect at the time, stated a Soldier would be discharged from the ARNG for being medically unfit for retention standards.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted.
2. The Board concurred with the conclusion of the advisory official that the relief the applicant seeks is not authorized by the governing regulation. Based on a preponderance of the evidence, the Board determined the authority and reason for separation shown on the applicant's NGB Form 22 are not in error or unjust.

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.

3/10/2025

X

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. Army Regulation 15-185 (ABCMR) provides Department of the Army policy, criteria, and administrative instructions regarding an applicant's request for the correction of a military record. It states the ABCMR considers individual applications that are properly brought before it. In appropriate cases, it directs or recommends correction of military records to remove an error or injustice. Paragraph 2-11 states 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.
3. Army Regulation 40-501 (Standard of Medical Fitness) governs medical fitness standards for enlistment, induction, appointment including officer procurement programs, retention, and separation including retirement. Chapter 10 sets basic policies, standards, and procedures for medical examinations and physical standards for the ARNG.
4. National Guard Regulation 600-200 (Enlisted Personnel Separation) governs procedures for enlisted personnel of the ARNG. Paragraph 8-26, in effect at the time, covered reasons, applicability, codes, and board requirements for administrative discharges from the Reserve of the Army and/or the State ARNG. Paragraph 8-26j(1)

stated a Soldier would be discharged from the ARNG for being medically unfit for retention standards.

//NOTHING FOLLOWS//