

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 October 2024

DOCKET NUMBER: AR20240001148

APPLICANT REQUESTS:

- correction of his records to show he was separated due to physical disability
- correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show his correct social security number (SSN).

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214
- Social Security Administration card

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 had not paid attention to this mistake until the disability board made him aware that they could not locate time served. He adds that his military personnel and medical records are filed under the incorrect SSN.
3. Regarding the social security number (SSN), the Board will not consider the applicant's request for correction of his DD Form 214 to show the SSN reflected on his Social Security Administration card; this portion of the applicant's request will be addressed through an administrative correction without action by the Board.
4. The applicant enlisted in the U.S. Army Reserve (USAR) Delayed Entry/Enlistment Program on 30 January 1981. His DD Form 4 (Enlistment/Reenlistment Document) listed his SSN as XXX-█-XXXX.
5. He enlisted the Regular Army on 12 August 1981 for a period of four years. He held military occupational specialty 11B, Infantryman.

6. The applicant was honorably released from active duty and transferred the to the USAR Control Group (Reinforcement) on 9 August 1985 by reason of expiration term of service (ETS). His DD Form 214 lists his SSN as XXX-█-XXXX, the same SSN shown on his DD Form 4.

7. Following his release from active duty, the applicant was assigned to D Company, 2nd Battalion, 397th Infantry, 100th Division (Institutional Training), troop program unit of the USAR.

8. On an unspecified date, the applicant was informed, by his commander, he was initiating action to separated him from the USAR under the provisions of Army Regulation 135-178 (Army National Guard and Army Reserve Separation of Enlisted Personnel), chapter 7 (Misconduct), paragraph 7-11 (Commissioned of a Serious Offense), with a general under honorable conditions characterization of service.

9. Orders A-313-06, published on 9 November 1999, directed the applicant's discharge from the USAR effective 9 November 2009 under the provisions of Army Regulation 135-178, chapter 7, with a general under honorable conditions character of service. The orders show is SSN as shown on his DD Form 4.

10. There is no evidence in the applicant's available records (e.g., physical profile) indicating he was unable to perform military duties due to a medical disability.

11. The applicant provides a social security card reflective of his name and the SSN XXX-█-XXXX (the number 9 in the fourth digit).

12. 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 (EMR – AHLTA and/or MHS Genesis), 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 requesting "Reconsideration of a disability request." He states: "I had not paid attention to this mistake until the Disability Board made me aware that they could not locate time served."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 shows he entered the regular Army on 12 August 1981 and was honorably discharged on 9 August 1985 after having completed his required active service under provisions provided in chapter 4 of AR 635-200, Active Duty Enlisted Administrative Separations (5 July 1984).

d. The applicant does not identify the condition(s) he is requesting be reconsidered.

e. No medical documentation was submitted with the application. His period of Service predates the EMR and he is not in JLV.

f. There is no evidence the applicant had a physical or mental health condition which 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. 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 her office, grade, rank, or rating prior to his discharge.

g. It is the opinion of the ARBA medical advisor there is no evidence to support his request and it should therefore be denied.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The available evidence shows the applicant was separated from the USAR for misconduct, commissioned of a serious offense, with a general under honorable conditions characterization of service. The Board also considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board agreed with the medical reviewer's finding no evidence the applicant had a physical or mental health condition which 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. 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 her office, grade, rank, or rating prior to his discharge. Based on a preponderance of evidence, the Board determined that the reason for the applicant's separation from the USAR was 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:

Except for the correction addressed in Administrative Note(s) below, 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.

ADMINISTRATIVE NOTES: correct block 3 (Social Security Number) of his DD Form 214 to show the social security number reflected on his Social Security Administration card (with the number 9 instead of the number 8 in the fourth digit).

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 135-178 (Army National Guard and Army Reserve Separation of Enlisted Personnel), chapter 7 of the regulation in effect at the time, prescribed the procedures for separation of enlisted members of the USAR for misconduct by reason of one or more of the following: minor disciplinary infractions; a pattern of misconduct; commission of a serious offense; and conviction by civil authorities. Action would be taken to separate a member for misconduct when it is clearly established that:

- a. Despite attempts to rehabilitate or develop them as a satisfactory Soldier, further effort is unlikely to succeed.
- b. Rehabilitation is impractical or they are not amenable to rehabilitation measures.
- c. An unfit medical condition, per Army Regulation 40-501 (Standards of Medical Fitness), is not the direct or substantial contributing cause of the misconduct.

3. Army Regulation 40-501 provides that for an individual to be found unfit by reason of physical disability, they must be unable to perform the duties of their office, grade, rank, or rating. Performance of duty despite impairment would be considered presumptive evidence of physical fitness.

4. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation) establishes the Army Disability Evaluation System (DES) 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 their office, grade, rank, or rating. It provides that a Medical Evaluation Board is convened to document a Soldier's medical status and duty limitations as far as duty is affected by the Soldier's status. A decision is made as to the Soldier's medical qualifications for retention based on the criteria in Army Regulation 40-501.

- 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 service.

- b. When a member is being processed for separation for reasons other than physical disability (e.g., retirement, resignation, relief from active duty, administrative separation, completion of required active service, ETS, etc.), his or her continued performance of duty, until he or she is referred to the DES for evaluation for separation for reasons indicated above, creates a presumption that the member is fit for duty.

5. Army Regulation 635-5 (Separations Documents), in effect at the time, prescribed the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It established 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 service. It provides a brief, clear-cut record of active Army service at the time of release from active duty, retirement, or discharge.

6. Section 1556 of Title 10, U.S. Code, 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 ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//