

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 October 2024

DOCKET NUMBER: AR20240001250

APPLICANT REQUESTS:

- a medical retirement vice being honorably discharged from the U.S. Army Reserve
- personal appearance before the Board

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

- DD Form 149, Application for Correction of Military Record
- Standard Form 600-Chronological Record of Medical Care
- DD Form 214, Certificate of Release or Discharge from Active Duty
- Letter of Instruction-Excused Absence
- Orders 13-353-000089
- Progress Notes
- Long Term Disability letter
- Benefits Center Letters
- Radiology Reports
- Patient Inquiry
- Social Security Administration letters
- Department of Veterans Affairs (VA) document
- Hospital records
- Personal 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 indicates his request is related of post-traumatic stress disorder (PTSD). He states, in effect, that he was not properly out-processed from his unit. He was scheduled for cervical fusion (C5-C6) surgery on 31 March 2014. He was also

receiving treatment for PTSD at the local VA hospital. His conditions should have been evaluated by a medical board for a medical retirement.

3. Having prior enlisted service in the Regular Army, the applicant enlisted in the U.S. Army Reserve on 4 May 2007. He held military occupational specialty 12N, Horizontal Construction Specialist.

4. He entered active duty on 13 April 2010. He completed foreign service in Afghanistan from 5 June 2010 to 10 April 2011.

5. The DD Form 214 that he received for this period of active duty shows he was honorably released from active duty on 14 June 2011 in accordance with chapter 4 of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) due to completion of his required active service (Separation Code MBK). His DD Form 214 shows he was awarded the Combat Action Badge.

6. On release from active duty, he was reassigned to his troop program unit, 377th Engineer Company, San Antonio, TX.

7. On 19 December 2013, he was honorably discharged from the U.S. Army Reserve, in the rank of specialist/E-4, in accordance with Army Regulation 135-178 (Enlisted Administrative Separations). His discharge order shows he was held beyond his normal discharge date.

8. The applicant provides the following:

a. A Medical Record-Chronological Record of Medical Care, 11 October 2010. This form shows the applicant was exposed to a 50-100 pounds IED blast. He was evaluated for lower back pain and a slight headache.

b. Letter of Instructions-Unexcused Absence, 19 September 2013, which shows he missed training on 14 September 2013.

c. Letter of Instructions-Unexcused Absence, 18 November 2013, which shows he missed training on 16 November 2013, and 17 November 2013.

d. Medical treatment records from a Bone and Joint Institute, 13 February 2014, which shows was evaluated for right upper extremity pain lasting greater than six months. The medical provider recommended a C5-C6 anterior cervical discectomy and fusion.

e. Hospital treatment records, 31 March 2014, which show the applicant underwent a cervical spondylotic radiculopathy.

- f. A diagnosis of cervicobrachial syndrome, 27 May 2014.
 - g. An approval, 5 November 2014, for long term health care benefits.
 - h. A notification, 5 November 2014, of approval of extended medical leave of absence.
 - i. A physician's release and return to work, 5 May 2015. This document shows a diagnosis of lumbar disc prolapse SE with radiculopathy, cervical spondylosis.
 - j. Radiology Reports which found a mild endplate deformity was present at the superior endplate of L3 and there was disc space loss at L3/L4 and L5/S1.
 - k. Several documents related to the applicants claim for disability. These documents show the applicant applied for disability compensation for lumbar prolapse with radiculopathy, cervical spondylosis, spinal fusion of the C5-C6, PTSD based on the award of the Combat Action Badge, and a neck injury resulting from an IED blast. After evaluation received a combined disability rating of 80 percent, effective 1 December 2014.
 - l. A Social Security Administration notification (2018-2019) which show the applicant was awarded disability benefits.
 - m. A VA Rating Decisions rendered between 31 July 2014 to 30 September 2019 which show the applicant is service-connected for post anterior C5/C6 fusion and spondylosis and PTSD.
 - n. Medical records from 2013 to present which contains laboratory results, office visits, medications, and radiology reports related to all the applicant's medical issues.
 - o. A witness statement and a sworn statement from his fellow Soldiers which recall the IED incident in Afghanistan and how the applicant was injured.
9. The Board should consider the applicant's overall record and provided statement in accordance with the published equity, injustice, or clemency determination guidance.
10. By regulation -
- a. The mere presences of an impairment does not, of itself, justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier reasonably may be expected to perform because of their office, grade, rank, or rating.

b. When a Soldier is being processed for separation or retirement for reasons other than physical disability, continued performance of assigned duty commensurate with his or her rank or grade until the Soldier is scheduled for separation or retirement, creates a presumption that the Soldier is fit.

11. The ABCMR will decide cases on the evidence of record. It is not an investigative body. 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. Additionally, applicants may be represented by counsel at their own expense.

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 in essence requesting a referral to the Disability Evaluation System (DES). He asserts that he had PTSD and was scheduled for a single-level cervical spine at the time of his separation. He states:

“277th Engineer Company did not contact me for pre-separation checklist that would have afforded me to seek a medical evaluation board for medical retirement. I was not correctly out-processed from the 277th Engineer Company. I was scheduled for a cervical fusion C5-C6 March 31, 2014. I was going through PTSD Tele-mental Health at Olin E. Teague Veterans Hospital in Temple Texas.”

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. Orders published by the 63rd Regional Support Command show the applicant was honorably discharged from the USAR on 19 December 2013 under authority of AR 135-178, Enlisted Administrative Separations (17 December 2009). The orders do not cite a reason for separation, an authorizing paragraph, or authorizing chapter.

d. There are no encounters in the EMR.

e. In his 18 November 2013 Memorandum to the applicant, the company commander informed him that his absences from the November unit training assembly

(UTA) caused him to have accrued 14 unexcused absences, and without one or more of them being excused with 15 days with receipt of this memorandum to request such via affidavit or certificate, it was possible he would be involuntary separated for unsatisfactory participation. A possible response from the applicant is not available for review. He was discharged the following month.

f. Submitted documentation shows he was evaluated by a surgeon for a six month plus history of right upper extremity pain on 13 February 2014. He stated he had some neck pain four years ago related to the blast from an improvised explosive device, but his current symptoms were more insidious and he rated both his cervical and arm pain were 7/10. The MRI showed a large, herniated disc in contact with the exiting right C6 nerve root. He underwent anterior cervical decompression with fusion on 31 March 2014.

g. A 5 November 2014 benefits letter from CIGNA group insurance show he was receiving benefits for a disability incurred on 8 June 2013. A 5 November 2014 memorandum from the Halliburton Benefits Center show he had been transitioned to Extended Medical Leave of Absence. "This type of absence falls under the Halliburton's Medical Leaves of Absence (MLOA) Business Practice 4-11310."

h. The remainder of the submitted medical documentation is also post-service and not relevant to the applicant's request.

i. Drilling RC members not retiring are entitled (versus required) to a pre-separation medical examination if they request. Pre-separation counseling checklist include this option but there is no option for the Soldier to simply elect entrance into the DES.

j. MEDCHART contains no temporary or permanent physical profiles, and no documentation supporting a duty related condition was the cause for his separation was submitted or found in the EMR.

k. Submitted documents and review of his records in JLV shows he has been awarded multiple VA service-connected disability ratings, including ratings for PTSD and status post cervical fusion originally effective on 24 February 2014. However, the DES compensates an individual only for service incurred medical condition(s) which have been determined to disqualify him or her from further military service. 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.

l. There is no probative evidence indicating the applicant had a permanent service incurred 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 discharge; or which prevented him from attending inactive duty for training and/or maintaining contact with his chain of command prior to his voluntary discharge. Thus, there was no cause for referral to the Disability Evaluation System

m. Paragraph 3-1 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (20 March 2012) states:

“The mere presence of an impairment does not, of itself, justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier reasonably may be expected to perform because of their office, grade, rank, or rating.”

n. It is the opinion of the ARBA medical advisor that referral of his case to the DES is not warranted.

BOARD DISCUSSION:

1. The Board determined 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.

2. 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 applicant was honorably discharged from the USAR under Reserve regulations. The Board reviewed and agreed with the medical reviewer's determination that there is no probative evidence indicating the applicant had a permanent service incurred 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 discharge; or which prevented him from attending inactive duty for training and/or maintaining contact with his chain of command prior to his voluntary discharge. Thus, the Board determined that there was no cause for referral to the Disability Evaluation System.

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. 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 (AR) 635-40, Personnel Separations-Physical Evaluation for Retention, Retirement, or Separation, in effect at the time, governed- the evaluation for physical fitness of Soldiers who may be unfit to perform their military duties because of physical disability.

a. The mere presence of an impairment does not of itself, justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the soldier reasonably may be expected to perform because of his or her office, grade, rank, or rating.

b. 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 they can no longer continue to reasonably perform because of a physical disability incurred or aggravated in service.

c. Under the laws governing the Army PDES, Soldiers who sustain or aggravate physically unfitting disabilities must meet the following LOD criteria to be eligible to receive retirement and severance pay benefits. 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 (IDT).

d. When a Soldier is being processed for separation or retirement for reasons other than physical disability, continued performance of assigned duty commensurate with his or her rank or grade until the Soldier is scheduled for separation or retirement, creates a presumption that the Soldier is fit. The presumption of fitness may be overcome if the evidence establishes that -

(1) The Soldier was, in fact, physically unable to perform adequately the duties of his or her office, grade, rank or rating for a period of time because of disability. There must be a causative relationship between the less than adequate duty performance and the unfitting medical condition or conditions.

(b) An acute, grave illness or injury or other significant deterioration of the Soldier's physical condition occurred immediately prior to, or coincident with processing for separation or retirement for reasons other than physical disability and which rendered the Soldier unfit for further duty.

3. Title 38, USC, section 1110, General - Basic Entitlement: For disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

4. Title 38, USC, section 1131, Peacetime Disability Compensation - Basic Entitlement: For disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

5. Title 10, U.S. Code, section 1556 of 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.

6. AR 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 will decide cases on the evidence of record. It is not an investigative body. 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. Additionally, applicants may be represented by counsel at their own expense.

//NOTHING FOLLOWS//