

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 October 2024

DOCKET NUMBER: AR20240001264

APPLICANT REQUESTS:

- in effect, Physical Disability Evaluation System (PDES) processing for physical disability discharge
- unspecified correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to accurately reflect his military service time
- a personal appearance before the Board

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

DD Form 149 (Application for Correction of Military Record)

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:

a. He is requesting his honorable discharge be changed to disability discharge. He was released from active duty with no medical board. The reason he was sent home to the Wounded Warrior Battalion was because he could no longer wear body armor. He was injured in Afghanistan and held there for almost 1 year with no treatment to his injuries until Major (MAJ) H_____ realized he made a mistake.

b. He never received a line of duty (LOD) determination and then he was finally medically evacuated out to the Wounded Warrior Battalion, where he was told he would have to let his contract expire and go the Department of Veterans Affairs (VA). He never received a medical board or anything. He was just released with no service connection, no treatment, nothing but a pat on the back and an "FU!"

c. Also, his DD Form 214 does not accurately reflect his military service. He has far more service time than what he is being credited with and this is disrupting his

compensation because he can't get service-connection with no medical board and his paperwork being incorrect.

d. A sergeant at the Fort Benning, Wounded Warrior Battalion told him in 2013 that he had no choice but to sign the papers releasing him from the military and going to the VA, without his injuries or anything being first documented as service-connected. He has been home since 2013 and is still fighting to get his injuries correctly identified as service-connected through the VA.

e. He is getting denied because his DD Form 214 shows he doesn't have any service in massive chunks of time, which is a lie. In April 2011, he was on orders because they were training to mobilize, but never got their destination until October, but he was on orders since August 2010, because he was a member of the advanced party.

f. He didn't know that missing information in his record was going to be an issue. He has his personnel record which has all of his active duty dates in it, but that record is apparently not good enough for the VA, so he needs his DD Form 214 to accurately reflect his service.

3. A DD Form 4 (Enlistment/Reenlistment Document) shows the applicant enlisted in the Army National Guard (ARNG) on 25 August 2006.

4. A DD Form 214 shows he was ordered to active duty in support of Operation Iraqi Freedom as a member of the ARNG on 5 January 2008, with service in Kuwait/Iraq from 2 April 2008 through 9 December 2008.

a. He was honorably released from active duty on 6 January 2009, in accordance with Chapter 4 of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) due to completion of required active service and transferred back to his ARNG unit.

b. He completed 1 year and 2 months of active service, with 3 months and 15 days total prior active service, and 1 year and 25 days of total prior inactive service.

5. A second DD Form 214 shows the applicant was ordered to active duty in support of Operation Enduring Freedom as a member of the ARNG on 16 October 2011, with service in Afghanistan from 22 January 2012 through 22 July 2012.

6. U.S. Army Human Resources Command (AHRC) Orders A-08-213692, dated 3 August 2012, retained the applicant on active duty for a period of 60 days in order to participate in the Reserve Component Warriors in Transition Medical Retention Processing Program (MRP) for completion of medical evaluation, with an end date of

30 September 2012. The additional instructions show he was retained on active duty in an MRP status to complete medical care and treatment.

7. AHRC Orders A-09-216998, dated 21 September 2012, retained the applicant on active duty for a period of 179 days in order to participate in the Reserve Component Warriors in Transition MRP Program for completion of medical care and treatment with an end date of 18 March 2013. The additional instructions show he was retained on active duty in an MRP status to complete medical care and treatment.

8. The complete facts and circumstances surrounding the applicant's medical condition and/or injury for which he was retained in an MRP status are not in his available records for review, as they do not contain his medical evacuation orders, a DA Form 3349 (Physical Profile), or other pertinent medical documentation, and this information has not been provided by the applicant.

9. U.S. Army Installation Management Command, Headquarters, U.S. Army Garrison, Fort Benning Orders 039-2203, dated 8 February 2013, released the applicant from active duty, not by reason of physical disability effective 31 March 2013, and reassigned him to his ARNG unit on the day following his release from active duty. The additional instructions show returned from deployment/completion of required active duty.

10. The applicant's second DD Form 214 further shows:

a. He was honorably released from active duty on 31 March 2013, in accordance with Chapter 4 of Army Regulation 635-200 due to completion of required active service, with corresponding separation code MBK, and transferred back to his ARNG unit.

b. He completed 1 year, 5 months, and 15 days of active service, with 1 year, 3 months, and 17 days of total prior active service, and 3 years, 10 months, and 4 days of total prior inactive service.

11. The applicant's National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) shows he was honorably discharged from the ARNG on 24 August 2013, due to expiration of active service commitment in the Selected Reserve, with transfer to the U.S. Army Reserve (USAR) Control Group (Reinforcement).

12. State of Michigan, Department of Military and Veterans Affairs Orders 246-107, dated 3 September 2013, honorably discharged the applicant from the ARNG due to completion of 6 years Ready Reserve obligation, and transferred him to the USAR Control Group (Reinforcement).

13. A physical profile is used to classify a Soldier's physical disabilities. PULHES is the acronym used in the Military Physical Profile Serial System to classify a Soldier's physical abilities in terms of six factors, as follows: "P" (Physical capacity or stamina), "U" (Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric) and is abbreviated as PULHES. Each factor has a numerical designation: 1 indicates a high level of fitness, 2 indicates some activity limitations are warranted, 3 reflects significant limitations, and 4 reflects one or more medical conditions of such a severity that performance of military duties must be drastically limited. Physical profile ratings can be either permanent (P) or temporary (T).

14. A review of the AHRC Soldier Management System (SMS) shows:

a. The applicant was honorably discharged from the ARNG on 24 August 2013, due to expiration of ARNG service obligation and his record was archived without transfer to the USAR Control Group (Reinforcement).

b. His PULHES was 111111, with no limitations in any factors, based on his last physical on 24 July 2012, but he did fail his Army Physical Fitness Test (APFT), with his last passed test in September 2011.

15. The applicant's available service records do not show:

- he was issued a permanent physical profile rating
- he suffered from a medical condition, physical or mental, that affected his ability to perform the duties required by his Military Occupational Specialty (MOS) and/or grade or rendered him unfit for military service
- he was diagnosed with a medical condition that warranted his entry into the Army PDES
- he was diagnosed with a condition that failed retention standards and/or was unfitting

16. 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 is in essence requesting a referral to the Disability Evaluation System (DES). He states:

“I was released from active duty with no med board. The reason I was sent home to wounded warrior is because I could not wear body armor anymore. I was injured in Afghanistan, held there for almost a year with no treatment to my injuries until major Howard realized he made a mistake and never issued me an LOD, then I was finally med evac’ed out to wounded warrior where I was told I have to let my contract expire and go to the VA, I got no med board, nothing.”

c. The Record of Proceedings outlines the applicant’s military service and the circumstances of the case. A DD 214 shows the applicant was mobilized in support of Operation Iraqi Freedom from 5 January 2008 thru 6 January 2009 with Service in Kuwait/Iraq from 2 April 2008 thru 9 December 2008. He was honorably released from active duty at the completion of his required active Service.

d. A second DD 214 shows he was mobilized in support of Operation enduring Freedom from 16 October 2011 thru 31 March 2013 with Service in Afghanistan from 22 January 2012 thru 22 July 2012. He was he was honorably released at the completion of his required active Service. His reentry code of “1” denotes he was fully qualified to reenter without limitations or a waiver.

e. His NGB Form 22 shows he entered the Army National Guard on 25 August 2006 and was honorably discharged from the Michigan Army National Guard (MIARNG) on 24 August 2014 under provisions in paragraph 6-36n of NGR 600-200, Enlisted Personnel Management (31 July 2009), Expiration of active status commitment in the Selected Reserve. His Reenlistment Eligibility code of “RE-1” denotes he was fully qualified to reenter without limitations or a waiver.

f. Two 12301-H orders published at Fort Knox, KY show the applicant was placed in the Reserve Component Warrior in Transition program for completion of medical evaluation(s), known as the Medical Retention Processing Program (MRP), starting on 2 August 2012 with an end date of 18 March 2013. Orders published by the United States Army Garrison at Fort Benning, Georgia state the applicant was released from active duty (REFRAD) “not by reason of physical disability” effective 31 March 2013.

g. No medical documentation was submitted with this application.

h. The EMR shows the applicant was evaluated and treated for a herniated lumbar disc during his time of 12301-H orders. His injury and care as summarized in his initial stateside case management encounter:

“30-year-old male activated National Guard recent return from deployment Afghanistan with rollover MVC [motor vehicle crash] FEB 2012. Chronic LBP [low back pain] since then, with progressive worsening, unable to wear IBA [Interceptor Multi-Threat Body Armor System], light duty while deployed past 2 months. Seen by physical therapy downrange approximately 4 visits without improvement. 6-7/10 pain, using NSAIDS [non-steroidal anti-inflammatory drugs], Elavil, still significant limitations.

Upon demobilization, seen by ortho spine - MRI shows left L5/S1 herniated disk fragment in left paracentral location with recommendation for minimally invasive left L5/S1 laminotomy/excision of herniated disk fragment.

Patient agreeable to this intervention. Will recommend referral to MTF on MRP orders for evaluation/consideration of surgical repair of his herniated disk with neurosurgery.

i. A 25 October 2012 nurse case management encounter states that neurosurgery had recommended against surgery and the applicant was being conservatively managed by the pain management clinic. A 6 December 2012 encounter shows marked improvement in the applicant's condition: “Patient states overall better. Still complaining of LBP with extension.”

j. He was frequently seen for care at Veterans Administration Hospital Administration (VHA) facilities in May 2013 following his REFRAD, and some encounters were for low back pain. However, he was not seen again until 7 August 2013 with the VHA encounter stating the applicant fractured the 5th metatarsal in his left foot while running.

k. MEDCHART contains a series of temporary duty limiting profiles for low back pain with the final one expiring on 29 August 2013. He was never placed on a permanent profile.

l. There is no probative medical evidence the applicant's back injury or any other medical condition would have failed the medical retention standards of chapter 3, AR 40-501 prior to his voluntary discharge; 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 his office, grade, rank, or rating prior to his voluntary discharge.

m. JLV shows he has been awarded multiple VA service-connected disability ratings, including ratings for his lumbar spine and mild bilateral lower extremity radiculopathies. 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.

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

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 the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation.

2. Upon review of the applicant's petition, available military records, and the medical review, the Board concurred with the advising official finding that the applicant's Department of Veterans Affairs rating determinations are based on the roles and authorities granted by Congress to the Department of Veterans Affairs and executed under a different set of laws. Based on this, the Board determined referral of his case to the Disability Evaluation System (DES) is not warranted.

3. Upon review of the applicant's petition and military records, the Board concluded his DD Form 214 accurately reflects the conditions at the time of his release from active duty on 31 March 2013 and therefore no correction is warranted.

4. 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.

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. Title 10, U.S. Code, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system (DES) and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 (Discharge Review Board (DRB) Procedures and Standards) and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in a Medical Evaluation Board (MEB); when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an Military Occupational Specialty (MOS) Medical Retention Board (MMRB); 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/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 or not 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 either are 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 one-time 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 a 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 a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

3. Army Regulation 635-40 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. 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 military service.

b. Soldiers who sustain or aggravate physically-unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

(1) 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.

(2) The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

c. The percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Ratings are assigned from the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD). The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting, or ratable condition, is one which renders the Soldier unable to perform the duties of their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. 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.

4. Title 10, U.S. Code, 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, U.S. Code, 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.

5. Army Regulation 635-5 (Separation Documents), in effect at the time, prescribes policies and procedures regarding separation documents, including the standardized preparation of the DD Form 214 (Certificate of Release or Discharge from Active Duty). The DD Form 214 is a summary of the Soldier's most recent period of continuous active duty.

a. A DD Form 214 will be prepared for all personnel (except as stated in b) at the time of their retirement, discharge, or release from the Active Army. Included in the personnel issued a DD Form 214 are members of the ARNG and USAR separated after completing 90 days or more of continuous Active Duty Training (ADT), Full Time Training Duty (FTTD), or active duty support and after completing initial ADT which resulted in the award of a Military Occupational Specialty (MOS), even though the active duty was less than 90 days.

b. The specific guidance for preparation of the numbered items on the DD Form 214 shows the following:

- item 12a (Date Entered Active Duty This Period) enter the beginning date of the enlistment period or tour of duty for which a DD Form 214 was not issued
- item 12b (Separation Date This Period) enter the separation date this period. Separation date may not be the contractual date if extended for makeup of lost time or Soldier has been held over for the convenience of the Government.
- item 12c (Net Active Service This Period) enter amount of service this period by subtracting 12a from 12b (Separation Date this Period)
- item 12d (Total Prior Active Service) enter the total amount of prior active military service less any lost time
- item 12e (Total Prior Inactive Service) enter the total amount of prior inactive service, less lost time

6. 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.

7. 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.

a. Paragraph 2-11 states applicants do not have a right to a formal hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

b. 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//