

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 August 2024

DOCKET NUMBER: AR20240001345

APPLICANT REQUESTS: correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty) to show in block 12b (Separation Date this Period): 22 October 2008.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- DD Form 214, for the period ending 2 September 2005
- Letter, subject: Formal Physical Evaluation Board (PEB) Hearing for Applicant, 8 September 2008
- Orders D09-271, 8 September 2008
- Orders D295-14, 21 October 2008 (Removal from Temporary Disability Retired List (TDRL))
- Certificate of Retirement, 22 October 2008

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 her DD Form 214 shows her release/retirement date as 1 September 2005; however, she was on the TDRL due to medial. After court reviews, she was granted full retirement on 22 October 2008, which she wants reflected on her DD Form 214 because when she applies for federal jobs her DD Form 214 and retirement certificate shows different dates and it is confusing and delays processing. All of these are related to Gulf War deployments and illnesses/injuries acquired, while on active duty in the Army.

3. A review of the applicant's service record shows:

- a. She enlisted in the Regular Army on 19 April 1989.

b. DA Form 199 (PEB Proceedings), 2 June 2005 shows the PEB found her unfit, but her condition(s) was not stable enough for final adjudication. The OEB determined her disposition is placement on the TDRL board placed her on the TDRL. She concurred with the findings and waived a formal hearing in her case.

c. Orders 178-0014, published by Headquarters, I Corps and Fort Lewis, 27 June 2005 shows her effective date of retirement was 1 September 2005 and she was placed on the temporary retired list on 2 September 2005.

d. The applicant's DD Form 214 shows she was retired from active duty on 1 September 2005, in accordance with chapter 40 of Army Regulation 635-40 (Disability Evaluation for Retirement, retention, and Separation) due to temporary disability.

e. In 2008, the applicant underwent a TDRL PEB that determined her condition(s) remained unfitting but was stable enough for final adjudication. The TDRL PEB recommended her disposition be permanent disability retirement.

f. On 21 October 2008, the U.S. Army Physical Disability Agency published Orders D295-14, removing her from the TDRL and placing her on the permanent disability retired list (PDRL) on 22 October 2008.

4. The applicant provides:

a. Letter, subject: Formal PEB Hearing for Applicant, 8 September 2008, which shows her commander was notified she was scheduled for a formal PEB hearing.

b. Memorandum Orders D09-271, 8 September 2008, informing her she was authorized temporary duty and travel from her residence and return for the purposes of appearing before the formal PEB hearing.

c. Orders D295-14, published by U.S. Army Physical Disability Agency, 21 October 2008 removed her from the TDRL and placed on the permanent disability retired list (PDRL) on 22 October 2008.

d. Certificate of Retirement shows her retirement date as 21 October 2008.

5. By regulation (AR 635-5), the DD Form 214 provides a brief, clear-cut record of active service at the time of release from active duty, retirement, or discharge.

a. Paragraph 1-4 provided that a DD Form 214 will not be prepared for members being removed from the TDRL.

b. Table 2-2 stated for item 12b, enter the date placed on the TDRL.

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 applicant was found unfit, but her condition was not sufficiently stable enough for final adjudication. As such, she was retired on 1 September 2005 due to temporary disability and placed on the TDRL on 2 September 2005. Once she was on the retired list, she was no longer on active duty, she was in a retired status. In 2008, her condition was stable enough for final adjudication. The TDRL PEB permanently retired her on 22 October 2008. A DD Form 214 is not issued for members being removed from the TDRL. The DD Form 214 is a record continuous active duty. The applicant was not on active duty from 2 September 2005 to 22 October 2008. She was in a retired status.

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 (Physical Evaluation for Retention, Retirement, or Separation), this regulation establishes the Army Physical Disability Evaluation System. It sets forth policies, responsibilities, and procedures that apply in determining whether a member is unfit because of physical disability to perform the duties of his office, grade, rank, or rating. If a member is found unfit because of physical disability, it provides for disposition of the member according to applicable laws and policies. Paragraph 4-24e, based upon the final decision of the Commanding General (CG), US Army Physical Disability Agency (USAPDA) or the Army Physical Disability Appeal Board (ADPAB), the CG, MILPERCEN (Army Military Personnel) will issue retirement orders or other disposition instruction as follows:

- Permanent retirement for physical disability.
- Placement on the Temporary Disability Retired List.
- Separation for physical disability with severance pay.
- Separation for physical disability without severance pay.

3. AR 635-5 (Separation Documents), effective 1 October 1979, prescribed the separation documents which are prepared for individuals upon retirement, discharge, or release from active military service. It established standardized policy for preparing and distributing the DD Form 214. The DD Form 214 provides a brief, clear-cut record of active service at the time of release from active duty, retirement, or discharge.

a. Paragraph 1-4 provided that a DD Form 214 will not be prepared for members being removed from the TDRL.

b. Table 2-2 stated for item 12b, enter the date placed on the TDRL.

//NOTHING FOLLOWS//