

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 October 2024

DOCKET NUMBER: AR20240002052

APPLICANT REQUESTS: physical disability discharge in lieu of administrative discharge due to medical unfitness for retention in the Army National Guard.

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. His National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) shows the authority and reason for his discharge as National Guard Regulation 600-200 (Enlisted Personnel Management), 8-25, medically unfit for retention. He is requesting a change to reflect his cause for separation was a medical discharge.

b. While his unit was called to active-duty training (ADT) for Operation Iraqi Freedom (OIF) at Camp Shelby, MS, he injured his left knee during a training exercise. At that time, he did not realize the severity of the injury. After not being selected as one of those to continue to the deployment process, after having to leave college and be on active duty for 83 days, he returned to college to finish his degree.

c. It was then that he discovered the injury he incurred while on active duty was a completely torn left anterior cruciate ligament (ACL). After having surgery for this injury, it was determined that he would not be able to continue his service with the Army. He feels that since the injury occurred while he was on active duty, the records should reflect he was discharged as a result of physical disability.

d. He didn't discover the error until 2023, while attempting to acquire a Department of Veterans Affairs (VA) home loan. His injury caused him to not be able to fulfill his

service obligation of 6 years and as a result, he has been denied a VA home loan. After learning he had 83 days on active duty and over 5 years into his service, this should suffice to reflect a change in his reason for discharge.

3. A DD Form 4 (Enlistment/Reenlistment Document) shows the applicant enlisted in the Army National Guard (ARNG) on 14 February 2000, for a period of 8 years.

4. A DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant entered ADT on 31 October 2000, was awarded the military occupational specialty (MOS) 91B (Medical Specialist), and was released from ADT on 20 April 2001, due to completion of period of ADT. He was credited with 5 months and 20 days of net active service this period.

5. Mississippi Military Department, The Adjutant General's Office Orders 252-007, dated 8 September 2004, ordered the applicant to active duty as a member of his ARNG unit in support of OIF, with reporting to the mobilization station at Camp Shelby, MS on 6 September 2004, for a period of active duty not to exceed 529 days.

6. Department of the Army, Mobilization Center Shelby Orders 309-03, dated 4 November 2004, released the applicant from active duty, not by reason of physical disability, effective 4 November 2004, and reassigned him back to his ARNG unit in Jackson, MS, on the date immediately following his release from active duty.

7. The applicant's second DD Form 214 shows he was honorably released from active duty on 4 November 2004, in accordance with chapter 4 of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) due to completion of required active service with corresponding separation code and transferred back to his ARNG unit. He was credited with 1 month and 29 days of net active service this period.

8. A Joint Force Headquarters, Mississippi National Guard memorandum, dated 18 March 2005, shows:

a. The applicant was informed his current medical condition and/or physical defects pertaining to his knee did not meet medical fitness standards for retention under the provisions of Army Regulation 40-501 (Standards of Medical Fitness), chapter 3.

b. He was advised he must select one of the following options:

(1) Accept these findings and be medically discharged by the suspense date. If he had at least 15 years, but less than 20 years of creditable service for retired pay, he would be issued a retirement eligibility memorandum and be entitled to receive retirement benefits at age 60. If he had 20 years or more creditable service for retired

pay, he would receive a 20-year letter memorandum and be entitled to receive retirement benefits at age 60.

(2) Request a non-duty related Physical Evaluation Board (PEB), which would determine his fitness for further military service. This board would review all pertinent medical information pertaining to his disqualifying condition, both from his military records and documents provided by his personal physician.

9. On 30 March 2005, the applicant acknowledged having read and understood the 18 March 2005 memorandum advising him of the medical fitness standards for retention. He indicated he accepted the findings and requested separation from the Mississippi ARNG. He understood that if he met retirement eligibility requirements, he would be transferred to the Retired Reserve.

10. State of Mississippi, Military Department, The Adjutant General's Office Orders 094-132, dated 4 April 2005, honorably discharged the applicant from the ARNG and as a Reserve of the Army effective 4 April 2005, under the provisions of National Guard Regulation 600-200, paragraph 8-26, with assign/loss reason code MG (Physical or mental condition failing to meet medical retention standards).

11. The applicant's NGB Form 22 shows he was honorably discharged on 4 April 2005, under the provisions of National Guard Regulation 600-200, paragraph 8-26, due to medical unfitness for retention. He was credited with 5 years, 1 month, and 21 days of net service this period.

12. The applicant's NGB Form 23B (ARNG Retirement Points History Statement), dated 17 May 2005, shows he completed 5 years of creditable service for retired pay.

13. 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 for a left knee injury which was apparently the cause of his separation from the Army National Guard. He states:

“While my unit was called to active-duty training for Operation Iraq Freedom at Camp Shelby in Mississippi, I injured my left knee during a training exercise. At that time, I did not realize the severity of the injury. After not being selected as one to continue to the deployment process after having to leave college and be on Active Duty for 83 days, I returned to college to finish my degree.

It was then that I discovered the injury while being on active duty was determined to be my Left ACL [anterior cruciate ligament] being completely torn. After having surgery for this injury, it was determined that I would not be able to continue my service with the U.S. Army.

I feel that as since the injury occurred while on active duty, the records should reflect this change and should be determined that I was discharged as a result of a disability at that time.”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. His Report of Separation and Record of Service (NGB Form 22) shows he entered the Army National Guard on 14 February 2000 and received an honorable discharge from the Mississippi Army National Guard (MSARNG) 4 April 2005 under authority provided in paragraph 8-26j(1) of NGR 600-200, Enlisted Personnel Management (1 March 1997): Medically unfit for retention per AR 40-501 (Standards of Medical Fitness).

d. No medical documentation was submitted with the application and there are no encounters in the EMR or MEDCHART. JLV shows the applicant is not registered with the VA.

e. The only documentation addressing the medical disqualifying condition was an 18 March 2005 memorandum from the MSARNG to the applicant informing him he had a knee injury which did not meet the medical fitness standards for retention and he was to make his election on how he desired to proceed by 18 April 2005. On 30 March 2005, the applicant accepted the findings and requested that he be separated from the MSARNG.

f. There is no probative evidence the applicant’s knee injury was incurred during or permanently aggravated by his military Service. Thus, there is no cause for a referral to the DES.

g. It is the opinion of the Agency Medical Advisor that a referral of his case to the Disability Evaluation System 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 and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and the medical review, the Board Concurred with the advising official finding that referral of the applicant's case to the Disability Evaluation System (DES) is not warranted. The opine noted, no medical documentation was submitted with the application and there are no encounters in the EMR or MEDCHART. The Board agreed there is insufficient evidence to support the applicant's contention for a physical disability discharge in lieu of administrative discharge due to medical unfitness for retention in the Army National Guard. Therefore, the Board denied relief.

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 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 (Disability 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; 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.

4. Army Regulation 40-501 provides information on medical fitness standards for induction, enlistment, appointment, retention, and related policies and procedures. Soldiers with conditions listed in chapter 3 who do not meet the required medical standards will be evaluated by an MEB and will be referred to a PEB as defined in Army Regulation 635-40 with the following caveats:

a. U.S. Army Reserve (USAR) or Army National Guard (ARNG) Soldiers not on active duty, whose medical condition was not incurred or aggravated during an active duty period, will be processed in accordance with chapter 9 and chapter 10 of this regulation.

b. Reserve Component Soldiers pending separation for In the Line of Duty injuries or illnesses will be processed in accordance with Army Regulation 40-400 (Patient Administration) and Army Regulation 635-40.

c. Normally, Reserve Component Soldiers who do not meet the fitness standards set by chapter 3 will be transferred to the Retired Reserve per Army Regulation 140-10 (USAR Assignments, Attachments, Details, and Transfers) or discharged from the Reserve Component per Army Regulation 135-175 (Separation of Officers), Army Regulation 135-178 (ARNG and Reserve Enlisted Administrative Separations), or other applicable Reserve Component regulation. They will be transferred to the Retired Reserve only if eligible and if they apply for it.

d. Reserve Component Soldiers who do not meet medical retention standards may request continuance in an active USAR status. In such cases, a medical impairment incurred in either military or civilian status will be acceptable; it need not have been incurred only in the line of duty. Reserve Component Soldiers with non-duty related medical conditions who are pending separation for not meeting the medical retention standards of chapter 3 may request referral to a PEB for a determination of fitness in accordance with paragraph 9-12.

5. National Guard Regulation 600-200 (Enlisted Personnel Management) prescribes the criteria, policies, processes, procedures and responsibilities to classify, assign, utilize, transfer within and between States, provides special duty assignment pay, separate and appoint to and from Command Sergeant Major ARNG and Army National Guard of the United States enlisted Soldiers. Paragraph 8-26, in effect at the time, provides for the separation of Soldiers found medically unfit for retention per Army Regulation 40-501.

6. 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.

7. 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.

//NOTHING FOLLOWS//