

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 November 2024

DOCKET NUMBER: AR20240002854

APPLICANT REQUESTS: physical disability retirement in lieu of transfer to the Retired Reserve due to medical disqualification

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

- DD Form 149 (Application for Correction of Military Record)
- three self-authored statements
- DD Form 214 (Certificate of Release or Discharge from Active Duty) covering the period ending 19 April 1997
- U.S. Army Human Resources Command (AHRC) memorandum, 14 June 2007
- Standard Form 513 (Consultation Sheet), 9 July 2007 and 10 September 2007
- DA Form 3349 (Physical Profile), 30 December 2007
- Headquarters, 81st Regional Support Command, Command Surgeon memorandum, 22 July 2010
- Piedmont Healthcare System, Department of Imaging Service, Final Report, July/August/September 2010
- DeKalb Medical Center Magnetic Resonance Imaging (MRI), 11 October 2010
- Peachtree Spine, Assessment and Plan, 27 October 2010
- Physician Assistant Certified (PA-C) letter, 7 December 2010
- Headquarters, 81st Regional Support Command letter, 8 February 2011
- Headquarters, 81st Regional Support Command memorandum, subject: Notification of Medical Retention Board Referral, 8 February 2011
- DA Form 7652 (Physical Disability Evaluation System (PDES) Commander's Performance and Functional Statement), 14 March 2011
- DA Form 2173 (Statement of Medical Examination and Duty Status), 1 April 2011
- Atlanta Department of Veterans Affairs Medical Center (VAMC) letter, 21 August 2011
- U.S. Army Reserve Personnel Command (ARPC) Form 249-E (Chronological Statement of Retirement Points), 21 May 2013
- Ellis Clinic, Independent Medical Examination, 30 October 2013
- Ellis Clinic, Summary of Records
- DA Form 4187 (Personnel Action), 20 December 2013
- Headquarters, U.S. Army Reserve Command Orders 14-094-00005, 4 April 2014

- VA letter, 4 January 2024
- Acknowledgment of Notification of Medical Unfitness for Retention, Election of Options, 19 January 2024

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 writing to formally request an upgrade of his U.S. Army discharge status from honorable to medically retired. He is a veteran with an honorable discharge and believes that his medical conditions, which became apparent during his service, warrant reconsideration for a medical retirement. His combined VA service-connected evaluation is 60 percent.

b. He served in the U.S. Army from 8 July 1986 to 19 April 1997 and received an honorable discharge on 19 April 1997. His service included deployment and assignments that exposed him to various physical and mental challenges. During his military service he encountered medical issues that significantly impacted his ability to fulfill the duties required of him. These medical conditions were thoroughly documented and led to his discharge with an honorable status. However, with the benefit of hindsight and a deeper understanding of the long-term implications of his health issues, he believes that his discharge classification should be reconsidered.

c. His medical conditions, as outlined in the attached medical records and supporting documentation, have persisted and worsened since his discharge. These conditions have had a lasting impact on his daily life, limiting his ability to engage in gainful employment and adversely affect his overall quality of life. It is his belief that a reevaluation of his discharge status to medical retirement would more accurately reflect the extent of his service-related medical issues.

d. He is reaching out to highlight the significant impact his military experiences had on his mental health. Throughout his extensive career, he served in various capacities, notably as a 63B (Mechanic), undertaking strenuous duties in combat motor pools during multiple campaigns, including cold war Grafenwoehr, Germany, the Gulf War era, and the Iran-Iraq War era.

e. The cumulative stressors and fear of hostile military terrorist activity and intimate partner violence during his military service have left an indelible mark on his mental

well-being. He has received an official diagnosis of post-traumatic stress disorder (PTSD). The nature of his service, exposure to combat environments, and the physical and emotional toll of his responsibilities as a mechanic and military spouse have led to persistent and distressing symptoms consistent with acquired psychiatric disorders.

f. In the course of his duties, he witnessed and experienced traumatic incidents, including but not limited to exposure to hazardous materials, loud noise radiation, and the physical demands of repairing combat vehicles in challenging conditions. These experiences more likely than not contributed to an overwhelming sense of hypervigilance, anxiety, emotional distress, and short-term memory loss. The result is an intermittent inability to perform occupational tasks. Additionally, the physical strain and subsequent diagnosis of degenerative arthritis in the lumbar spine have created a complex interplay between his physical and mental health. The chronic pain, limitations in physical activities, and the prospect of a future with increased challenges have added to the burden on his mental well-being.

g. His mental health challenges have significantly affected his daily life, making it difficult to engage in routine activities without heightened anxiety. He experiences recurrent nightmares, flashbacks, and intrusive thoughts related to his military service. These symptoms often lead to disruptions in sleep, mood swings, difficulties concentrating on tasks, and spatial disorientation. Recognizing the toll on his mental health, he has sought professional help to address these symptoms. He is currently undergoing therapy to manage the effects of traumatic experiences and to develop coping mechanisms.

h. He is also writing in support of his claim for disability compensation for conditions related to his right shoulder and torn rotator cuff. During his military career, he served in the military occupational specialty (MOS) of 63B in various combat motor pools, engaging in strenuous mechanical duties in adverse conditions. His responsibilities included assembling, repairing, and modifying combat and tactical vehicles, which involved constant use of tools and equipment. This physically demanding work, coupled with exposure to adverse working conditions, has taken a toll on his physical health.

i. He has been diagnosed with unfavorable ankylosis of the entire cervical spine, degenerative arthritis in the lumbar spine, traumatic arthritis, and decreased motion of the right shoulder with supraspinatus and infraspinatus tears, along with tendinosis of the subscapularis muscle. The physical effort involved in his military occupation has led to inevitable physical limitations, including constant pain and discomfort in his right shoulder. The torn rotator cuff and associated conditions have significantly impacted his daily life, making simple tasks challenging and causing a considerable decrease in his overall physical capability.

j. Moreover, the unfavorable working conditions, including exposure to exhaust fumes, solvents, chemicals, and loud noise radiation, have contributed to the development and exacerbation of his health issues, aligning with the conditions outlined in the Gulf War Syndrome and PACT Act legislation. He has attached relevant medical documentation supporting his diagnoses and detailing the impact of these conditions on his daily life. The physical strain, coupled with the psychological distress stemming from these health challenges, has created a domino effect, affecting his confidence, mental well-being, and social interactions.

k. He is seeking a comprehensive evaluation and acknowledgement of the mental health and physical challenges he faces due to his military service. He kindly requests assistance in processing his claim for PTSD and considering the cumulative impact of his experiences on his mental and physical well-being. He believes that a fair and accurate representation of his mental health and physical struggles is essential for appropriate compensation and access to the necessary support and resources. He kindly request a thorough review of his claim, taking into account the cumulative impact of his military service on his physical and mental health. Your attention to this matter is sincerely appreciated.

3. A DD Form 214 shows the applicant enlisted in the Regular Army on 8 July 1986 and was awarded the MOS 63B (Light Wheeled Vehicle Mechanic).

4. The applicant served in Southwest Asia from 26 June 1992 to 3 November 1992.

5. 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).

6. A Standard Form 88 (Report of Medical Examination) shows the applicant underwent medical examination on 12 March 1997, for the purpose of separation/expiration term of service (ETS). He was found qualified for separation with a PULHES of 111111.

7. A DD Form 4 (Enlistment/Reenlistment Document) shows the applicant enlisted in the U.S. Army Reserve (USAR) on 14 March 1997.

8. The applicant's DD Form 214 shows he was honorably discharged from the Regular Army on 19 April 1997, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) due to reduction in force, with transfer to a Troop Program Unit (TPU) in the USAR. He was credited with 10 years, 9 months, and 12 days of net active service and entitled to full involuntary separation pay in the amount of \$21,153.42, based on his reduction in force administrative discharge.

9. The applicant served successfully in various troop program units of the U.S. Army Reserve.

10. An AHRC memorandum, 14 June 2007, notified the applicant of his eligibility for retired pay at age 60 (20 Year Letter), based on his completion of the required years of qualifying Reserve service.

11. A Standard Form 513 shows:

a. On 14 June 2007, the Atlanta VAMC requested a routine consult for the applicant with General Outpatient Psychiatry due to his unstable PTSD and non-responsiveness to a 6-week trial of antidepressants. The applicant did not want medication and wanted to speak with a mental health provider instead. His provisional diagnosis is listed as possible PTSD.

b. The follow-up Mental Health Psychiatry Consult note on 10 September 1997, shows he wanted to talk about withdrawing from people and feeling as if the room just closes in on him. His past medical history shows sleep apnea on continuous positive airway pressure (CPAP), muscle twitching, asthma, let/knee/ankle problems. The impression shows anxiety, not otherwise specified with claustrophobic features; no history of significant trauma.

12. A DA Form 3349, Physical Profile, shows the applicant was given a permanent PULHES rating of 3-3-1-1-2-1 on 8 June 2009, due to asthma, sleep apnea, and shoulder pain. His limitations include inability to walk with field gear and ruck sack, unable to deploy, and unable to participate in the run event of the Army Physical Fitness Test (APFT).

13. A Headquarters, 81st Regional Support Command, Command Surgeon memorandum, 22 July 2010, informed the applicant's commander that a medical records review for the applicant indicated he does not meet the medical retention standards of Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, due to asthma, sleep apnea, and shoulder pain. Please refer to the applicant's physical profile for a complete description of his disqualifying conditions and begin the process for separation in accordance with Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

14. The applicant provided multiple civilian medical records, dated between July – December 2010, which in pertinent part show:

a. A Piedmont Healthcare System, Department of Imaging Services record shows a July 2010 history shows shoulder and elbow pain. In August 2010, a computed radiography (CR) of the shoulder was completed. A Final Report interpreted on 28 September 2010 shows findings of glenohumeral joint appears unremarkable; there is mild hypertrophic degenerative change of the acromioclavicular (AC) joint with mild spurring of the lateral clavicle and an impression of AC joint degenerative change.

b. A DeKalb Medical Center MRI of the right shoulder without contrast on 11 October 2010, shows an impression of undersurface tearing of the supraspinatus/infraspinatus junction, involving less than 50 percent of the cuff thickness. Tendinosis of the subscapularis insertion is noted. Intact long bicipital tendon. No gross displaced hyaline cartilage defects or labral injuries.

c. A Peachtree Spine, Assessment and Plan, 27 October 2010, shows the applicant was assessed with pain in shoulder joint, lumbago, herniated intervertebral disc; lumbar disc without myelo, and rotator cuff tendinosis. He was given work restrictions of no lifting, pushing or pulling over 20 pounds.

d. A 7 December 2010 letter from the applicant's treating PA-C shows he was treating the applicant for his right shoulder pain. The applicant had a history of recurrent impingement syndrome with tendinitis which is aggravated with overhead activities, especially heavy weight. He has had extensive treatment, to include injections, which help until he has to perform overhead work activities. He would benefit from a change in positions with less overhead activities and light lifting. Please consider him for a different work position to accommodate his limitations.

15. Headquarters, 81st Regional Support Command letter, 8 February 2011, shows:

a. The applicant was notified that he recently received a permanent profile rating of 3 or 4 and was medically disqualified for continued service in the USAR under the provisions of Army Regulation 40-501, chapter 3. All Soldiers who receive a P3 or P4 profile must be medically evaluated for continued service in the USAR.

b. He was advised he had the right to choose which option he would like to pursue in order to properly adjudicate his medical fitness. If he requested to go to a Physical Evaluation Board (PEB) for determination of medical fitness retention standards, the type of board (duty versus non-duty) would depend on his ability to produce a valid line of duty (LOD) for the profiled condition.

c. He was advised his election of options must be received by no later than the suspense date indicated on the Notification of Medical Retention Board Referral Memorandum.

16. Headquarters, 81st Regional Support Command memorandum, subject: Notification of Medical Retention Board Referral, 8 February 2011, shows:

a. The applicant was notified that as a result of his medical evaluation, he was medically disqualified for continued service in the USAR under the provisions of Army Regulation 40-501, chapter 3. The reasons for his medical disqualification were included in his DA Form 3349 and 81st Regional Support Command, Surgeon's Office memorandum.

b. He was advised he was required to complete the "Acknowledgment of Notification of Medical Unfitness for Retention and Elections Option," indicating his option regarding his medical disqualification. He had 30 days in which to return his response and an additional 30 days to provide all required documentation. Failure to respond to this correspondence within 30 days or supply required documents within the allotted timeframe would result in his case being labeled as "non-compliant" and administrative actions would be initiated. The listed suspense for submission of his "Acknowledgment of Notification of Medical Unfitness for Retention and Elections Option" is 8 March 2011.

17. The applicant provided an "Acknowledgement of Notification of Medical Unfitness for Retention – Election of Options", referenced in the prior two 8 February 2011 memoranda from the 81st Regional Support Command.

a. It shows he acknowledged receipt of notification of medical unfitness for retention and the options available to him. He initialed the form indicating he requested an Informal PEB to review his medical records for a final determination of his medical fitness for retention. He further indicated he would provide additional documentation in the attached checklist (MEB or non-duty PEB) depending on the type of board for which he believed he was eligible.

b. The form is inexplicably signed and dated 19 January 2024, the same date of the applicant's DD Form 149 to this Board, 13 years after his notification of medical disqualification for continued service in the USAR. It is unclear from this retroactively dated submission whether the applicant never completed and submitted an initial "Acknowledgment of Notification of Medical Unfitness for Retention and Elections Option" by the March 2011 suspense, or whether this newer submission reflects a different election option than that which was chosen and submitted in February/March 2011. An "Acknowledgment of Notification of Medical Unfitness for Retention and Elections Option" contemporaneous to the applicant's service and notification of medical

unfitness for retention in 2011 is not in his available records for review and has not been provided by the applicant.

18. A DA Form 7652 shows on 14 March 2011, the applicant's immediate commander provided his performance and functional statement pertaining to the applicant for the PDES. It shows:

- the applicant was performing duties in his MOS
- he was assigned in an appropriate position for his grade and MOS
- his medical conditions/limitations did not affect the unit accomplishing its mission
- his commander recommended retaining the applicant

19. A DA Form 2173, signed by the applicant's unit commander on 1 April 2011, shows:

a. On 17 June 2010, at Fort McCoy, WI, while on active duty for training, the applicant felt a pull in his right shoulder while loading and positioning oxygen and acetylene bottles for transport to the refill facility.

b. The applicant was seen as an outpatient at Piedmont Heath Care System on 28 September 2010 for this injury.

c. The applicant's immediate commander signed the form indicating a formal LOD investigation was not required and the injury was considered to have been incurred in the LOD.

20. An Atlanta VAMC letter, 21 August 2011, shows a recent lumbar spine x-ray of the applicant indicated degenerative arthritis.

21. The applicant's ARPC Form 249-E, shows effective 21 May 2013, he completed 24 years, 10 months, and 4 days of qualifying service for non-regular retirement. The applicant will turn 60 years of age in S___ 2028.

22. An Ellis Clinic, Independent Medical Exam, 30 October 2013, provided the VA with an expert medical opinion concerning the applicant's service-connected disabilities and shows their independent opinion is the applicant's service-connected injuries, diseases, and conditions and ratings should include:

- asthma, bronchial, 30 percent
- sleep apnea syndrome requiring CPAP machine, 50 percent
- following radical surgery, pansinusitis requiring continuous treatment and multiple episodes of treatment with antibiotics and prednisone inhaler, 50 percent
- lumbosacral strain/intervertebral disc syndrome, 60 percent

- sciatic nerve right L4, L5 and S1 spinal nerve impingement; 40 percent
- decreased penile erectile power due to spinal nerve impingement, 10 percent
- decreased voiding efficiency due to spinal nerve impingement to the bladder, 10 percent
- decreased rectum and bowel function due to spinal nerve impingement to the rectum, 10 percent
- medical collateral ligament laxity of the right knee due to weakness of the lower leg due to spinal nerve impairment into the muscle groups of the right lower leg, 10 percent
- traumatic arthritis and decreased motion of the right shoulder with supraspinatus and infraspinatus tear and tendinosis of the subscapularis muscle, 30 percent
- traumatic arthritis and medical lateral epicondylitis of the right elbow, 30 percent
- moderate incomplete paralysis of the ulnar nerve at the right elbow, 30 percent
- tendonitis of the right wrist, 10 percent
- moderate incomplete paralysis of the median nerve, i.e., carpal tunnel syndrome (right wrist), 10 percent
- noise induced hearing loss, no listed suggested percentage
- noise induced tinnitus, 10 percent
- strain and weakness of the lateral ligaments of the right ankle, 10 percent
- strain and weakness of the lateral ligaments of the left ankle, 10 percent

24. It is unclear from the available service records whether or not the applicant underwent a non-duty related PEB.

24. A DA Form 4187 shows on 20 December 2013, the applicant requested retirement and transfer to the Retired Reserve with an effective date of 29 January 2014.

25. A DA Form 2166-8 (Noncommissioned Officer Evaluation Report (NCOER)), covering the period from 30 March 2013 through 29 March 2014, shows the applicant was rated in his principal duty as Senior Mechanic.

a. Part IV (Rater) (Values/NCO Responsibilities) shows he received a rating of "Success" in all portions of that section.

b. Bullet comments included:

- no APFT this rating period; unable to run, walk, push-up, sit-up or any alternate event
- Soldier unable to perform basic leadership duties within MOS

26. Headquarters, U.S. Army Reserve Command Orders 14-094-00005, 4 April 2014, released the applicant from his USAR TPU and transferred him to the Retired Reserve effective 1 May 2014, under the provisions of Army Regulation 140-10 (USAR

Assignments, Attachments, Details, and Transfers) due to medical disqualification, not the result of own misconduct.

27. A VA letter, 4 January 2024, shows the applicant the applicant has one or more service-connected disabilities with a combined evaluation of 60 percent and he is not considered to be totally and permanently disabled due solely to his service-connected disabilities.

28. The Army rates only conditions determined to be physically unfitting at the time of discharge, which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career. The VA does not have authority or responsibility for determining physical fitness for military service. The VA may compensate the individual for loss of civilian employability.

29. 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 (AHLTA), 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 DES for PTSD and physical "limitations."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. Orders published by the Headquarters, United States Army Reserve Command on 4 April 2014 show the former drilling USAR Soldier was transferred to the Retired Reserve effective 1 May 2014 under authority in AR 140-10, Assignments, Attachments, Details, and Transfers. While they do not cite a paragraph, it was likely paragraph 6-1a(8): Medically disqualified, not as a result of own misconduct, for retention in an active status or entry on active duty. The applicant had received his notification of eligibility for retired pay at non-regular retirement (20-Year Letter) on 14 June 2007.

d. On 22 July 2010, the USAR Command Surgeon notified the applicant's commander he had three (3) medical conditions which did not meet medical retention standards:

“A review of the medical records submitted on SSG [Applicant], 123-45-6789, indicates that this Soldier does not meet the medical retention requirements IAW AR 40-50 1, Chapter 3-27a(2)(b)(c) (asthma); 3-41c (sleep apnea); 3-12(shoulder pain). Please refer to paragraph 10 on the attached profile for complete description of disqualifying condition(s) and begin process for separation IAW 635-40.”

e. He was so notified by the 81st Regional Support Command (RSC) on 8 February 2011 and given a suspense for elections of 8 March 2011. As seen on page 28 of the supporting documents, the applicant requested a non-duty related PEB, apparently on 19 January 2024.

f. A non-duty related physical evaluation board (NDR PEB) allows Reserve Component (RC) Service Members who are not currently on a call to active duty of more than 30 days and who are pending separation for non-duty related medical conditions but desire to remain in their component to enter the Disability Evaluation System (DES) for a determination of fitness. The NDR PEB affords these Soldiers the opportunity to have their fitness for duty determined under the standards that apply to Soldiers who have the statutory right to be referred to the DES for a duty related medical condition. After 2014, these boards also look to see if the referred condition(s) were duty related. When there is some evidence one or more conditions was likely duty related, they return them to the sending organization for entrance into the duty related processes of the DES.

g. A search for an NDR-PEB found none in the supporting documents or in ePEB, and the United States Army Physical Disability Agency (USAPDA) does not have one for him in their files.

h. On his 14 March 2011 Physical Disability Evaluation System (PDES) Commander's Performance and Functional Statement, his company commander indicated the applicant was fit for duty. Imaging studies revealed he had degenerative changes in the right acromioclavicular (AC) joint and a partial rotator cuff tear.

i. The applicant requested a physical evaluation board, it is unclear if it was to be duty related or non-duty related.

For each item, mark Yes, No, or N/Obs (not observed).

1. Soldier performs duties in MOS (to include assigned MOS duties in unit): YES

2. Soldier In appropriate TO&E [Table of Organization and Equipment] or TDA [Table of Distribution and Allowances] position for grade and MOS: YES

3. Soldier's medical conditions/limitations affect unit accomplishing mission: NO

4. I recommend retaining this Soldier: YES

j. His final permanent duty limiting physical profile in MEDCHART was for sleep apnea, right elbow and shoulder pain, low back pain with radiculopathy, and bilateral ankle pain on 13 December 2013. He was also noted to have non-duty limiting "depressive mood." The profiling physician wrote:

Reviewed medical documents show that Soldier is being treated for profiled conditions and has functional limitations. Soldier has reached MRDP [Medical Retention Determination Point] and does not meet the retention standards in chapter 3 of AR 40-501.

Soldier is stable with CPAP. Soldier must have access to a reliable electrical source and replacement tubing/masks/etc. for the CPAP. If Soldier is without CPAP for greater than 72 hours he cannot fire a weapon, drive a vehicle, operate dangerous equipment, stand guard, or perform roles that require constant attention.

Soldier may use his inhaler as needed and as directed by medical provider for asthma condition. Red warning tag is required.

Soldier should have a ready access to medicine refills and medical health care as directed by medical providers. If the Soldier or the command feels that a change in profile limitation is required, additional documentation may be submitted to the profiling authority in the Soldier's chain of command.

k. No probative evidence was identified demonstrating this drilling Soldier's chronic conditions were incurred during and/or permanently aggravated by his military service, i.e., incurred in the line of duty. Hence, they are not eligible for evaluation in the duty related DES process or would be eligible for subsequent compensation if found unfitting for continued military service.

l. JLV shows he has been awarded multiple VA service-connected disability ratings, including ratings for depressive mood disorder (effective 19 January 2024), sleep apnea (effective 6 September 2006), and hemorrhoids (effective 19 January 2024). However, the DES only compensates an individual for service incurred medical condition(s) which

have been determined to disqualify him or her from further military service and consequently prematurely ends their career. 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.

m. It is the opinion of the Agency Medical Advisor that a referral to the Disability Evaluation System is not warranted.

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 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. Upon review of the applicant's request, available military records and the medical review the Board concurred with the advising official finding that a referral to the Disability Evaluation System is not warranted. The opine noted, the record is absent evidence that identified demonstrating the drilling applicant's chronic conditions were incurred during and/or permanently aggravated by his military service, i.e., incurred in the line of duty. The Board found insufficient evidence to support the applicant's contentions for a physical disability retirement in lieu of transfer to the Retired Reserve due to medical disqualification. The Board agreed, based on the opine and the applicant's medical evidence, his contentions are without merit. 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.

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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. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRBs) and Boards for Correction of Military/Naval Records (BCM/NRs) when considering requests by veterans for modification of their discharges

due in whole or in part to: mental health conditions, including post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), sexual assault, or sexual harassment. Boards are to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based, in whole or in part, on those conditions or experiences.

3. 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.

4. 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.

5. 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.

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. Army Regulation 140-10 (Assignments, Attachments, Details, and Transfers), provides policy and procedures for assigning, attaching, removing, and transferring USAR Soldiers. Chapter 6 (Transfer to and from the Retired Reserve) states assignment to the Retired Reserve is authorized, with the exception of enlisted Soldiers subject to involuntary separation. Eligible Soldiers may be allowed to transfer to the Retired Reserve if the following applies:

a. They are entitled to receive retired pay from the U.S. Armed Forces because of prior military service or disability.

b. They have 20 qualifying years of service for retired pay at age 60 and are eligible to receive the notification of eligibility (NOE) of Retired Pay at age 60 (20-year Letter).

c. They are medically disqualified for retention in an active status, not as a result of their own misconduct, and have completed at least 15 qualifying years of service, but less than 20 qualifying years of service for retired pay, and are eligible to receive the NOE for Retired Pay at Age 60 (15-Year Letter). The 15-Year NOE pertains only to members of the Selected Reserve and that loss of qualification to continue in the Selected Reserve must be solely due to medical disqualification.

d. They have completed a total of 20 years of active service in the U.S. Armed Forces.

8. The Sergeant First Class (SFC) Heath Robinson Honoring our Promise to Address Comprehensive Toxics (PACT) Act, signed into law in August 2022, addresses health care, presumption of service-connection, research, resources and other matters related to veterans who were exposed to toxic substances during military service. It expands the Department of Veterans Affairs (VA) health care and benefits for veterans exposed to burn pits, Agent Orange, and other toxic substances. The PACT Act brings these changes:

- a. Expands and extends eligibility for VA health care for veterans with toxic exposures and veterans of the Vietnam, Gulf War, and post-9/11 eras.
- b. Add 20 plus more presumptive conditions for burn pits, Agent Orange, and other toxic exposures, asthma being among them.
- c. Adds more presumptive-exposure locations for Agent Orange and radiation, Afghanistan being among them.
- d. Requires VA to provide a toxic exposure to screening to every veteran enrolled in VA healthcare.
- e. Helps improve VA research, staff education, and treatment related to toxic exposures.

9. Title 38, U.S. Code, section 1110 (General – Basic Entitlement) states 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.

10. Title 38, U.S. Code, section 1131 (Peacetime Disability Compensation – Basic Entitlement) states 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.

11. 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//