

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 December 2024

DOCKET NUMBER: AR20240003195

APPLICANT REQUESTS: correction of his records to show he was discharged from the U.S. Army Reserve (USAR) due to physical disability.

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

- DD Form 149 (Application for Correction of Military Record)
- U.S. Army Human Resources Command (AHRC) Orders C-07-609831, dated 22 July 2016 (Retired Reserve)
- Department of Veterans Affairs (VA) Prescription History

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 he was forced to retired effective 22 July 2016. He was deployed as a Department of Defense civilian during this time. He should have been medically discharged. He was denied a proper medical discharge before his forced retirement from the USAR. His application indicates his request is related to post-traumatic stress disorder (PTSD) and Other Mental Health; however, the documentation he provides speaks to physical and mental health conditions.
3. Following enlisted service in the Regular Army and in the Army National Guard (ARNG), the applicant was appointed as Reserve commissioned officer on 29 November 2004 in the rank of second lieutenant (2LT). His enlisted service includes service in Iraq from 11 April 2003 to 13 April 2004.
4. The applicant was appointed in the ARNG in the rank of 2LT effective 3 January 2006. He was promoted to the rank of first lieutenant effective 30 November 2006.

5. Orders published on 22 October 2009 ordered the applicant's separation from the ARNG and his assignment to the U.S. Army Reserve (USAR) Control Group (Individual Ready Reserve) effective 31 October 2009 by reason of selective retention action.

6. AHRC orders published on 16 December 2010 promoted the applicant to captain effective 29 May 2010.

7. The applicant's record contains various orders showing his assignment/reassignment history as follows:

- from the USAR Control Group (Reinforcement) to a USAR troop program unit (TPU) effective 20 January 2011, reason-voluntary
- from USAR TPU to USAR Control Group (Reinforcement) effective 4 November 2011, reason-overseas residency/employment
- from USAR Control Group (Reinforcement) to USAR TPU effective 21 December 2011, reason-voluntary
- from USAR TPU to USAR Control Group (Annual Training), effective 10 September 2014, reason-unresolvable employment conflict
- from USAR Control Group (Annual Training) to USAR Control Group (Reinforcement) effective 30 January 2015, reason-mandatory

8. AHRC Orders C-07-609831, dated 22 July 2016, directed the applicant's reassignment to the Retired Reserve effective 22 July 2016 by reason of non-participation.

9. The applicant's DA Form 5016 (Chronological Statement of Retirement Points) shows he was credited with 25 years, 10 months, and 21 days of qualifying service for non-regular retirement.

10. The applicant provided his VA prescription history beginning on 13 September 2022 and last updated on 21 December 2023.

11. 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, the Army Aeromedical Resource Office (AERO), and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR in essence requesting a referral to the Disability Evaluation System (DES). He has indicated on his DD 149 that PTSD and Other Mental Health conditions are issues related to his request. He states:

“I was forced retirement effective 22 July 2016 and I was deployed as a DOD civilian during this time. I should have been medically discharged from the US Army - I was denied proper medical discharged before my forced retirement from the US Army Reserves.”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. Orders published by the U.S. Army Human Resources Command on 22 July 2016 show the applicant was to be reassigned to the Retired Reserve effective 22 July 2016 for Non-Participation. It shows the applicant had 20 or more years of creditable service for a non-regular retirement.

d. The only medical documentation submitted is a VA prescription history published after 26 March 2024 showing the applicant was taking a number of medications associated with the likely treatment of type two diabetes, hypercholesterinemia, high blood pressure, and a mental health condition.

e. Neither the applicant’s separation packet nor documentation addressing his involuntary separation was submitted with the application or uploaded into iPERMS.

f. The only permanent physical profile available for review was found in iPERMS. It shows the applicant had non-duty limiting wrist and knee pain. No other conditions were listed on the profile. The applicant was marked as capable of performing all the functional activities required of all Soldiers, including live in an austere environment. The profile simply allowed the applicant to perform an alternate aerobic event in lieu of the 2-mile run event and not perform the push-up event for his Army Physical Fitness Test (APFT). No further permanent profiles were identified.

g. His final Officer Evaluation Report (OER) (DA Form 67-9) was an annual covering 12 December 2012 thru 20 December 2013 and shows he was a successful officer. He passed his Army Physical Fitness Test and met the Army height/weight standard. His senior rater marked him as fully qualified and opined:

“CPT [Applicant] has demonstrated his unique ability as a Detachment Commander throughout the rating period. He ensured all the necessary requirements were completed. By any measure a successful Commander during the previous rating period. CPT [Applicant] has good promotion potential. Enroll in CCC [Captains

Career Course] and promote with peers when applicable. Rated Officer unavailable for signature.”

h. The applicant’s Chronological Statement of Retirement Points (DA Form 5016) show no inactive duty points (drill) or active-duty points from 26 February 2015 thru his discharge on 22 July 2016.

i. There is insufficient probative evidence the applicant had a mental health or other condition would have failed the medical retention standards of chapter 3, AR 40-501 prior to his voluntary discharge for non-participation; or that prevented the applicant from attending drills and/or maintaining contact with his chain of command, something a Soldier with 20years of Service knew was required. 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 discharge.

j. JLV shows the applicant has multiple VA service-connected disability ratings, including PTSD and sleep apnea awarded on 24 March 2017, and irritable colon and paralysis of his left arm’s ulnar nerve awarded 16 March 2021. However, the DES compensates an individual only for service incurred 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 authority were granted by Congress to the Department of Veterans Affairs and are executed under a different set of laws.

k. It is the opinion of the Agency Medical Advisor there is insufficient probative evidence upon which to recommend referral of his case to the Disability Evaluation System.

l. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? YES: PTSD

(2) Did the condition exist or experience occur during military service? YES: The condition has been service connected by the VA

(3) Does the condition or experience actually excuse or mitigate the discharge? NO: Thou the condition is associated with avoidant behaviors, there is no probative evidence it prevented this 20-year Officer and former detachment commander from either maintaining contact with his chain of command or seeking medical assistance for evaluation of his fitness for duty. In addition, the applicant states he was deployed as a DOD civilian at the time of his separation, something someone with duty limiting PTSD would be highly unlikely to be able to execute.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, the evidence found within the military record, and applicable regulations, the Board found that relief was not warranted.

2. The Board carefully considered the applicant’s contentions, his record of service, his military service records to include evaluations, the reason for his separation from the USAR (unsatisfactory participation) and his transfer to the retired reserve. The Board considered the applicant’s statement, the review and conclusions of the Agency medical advisor and the applicant’s VA disability ratings after his transfer. The Board did not find evidence in his records or evaluations, and the applicant did not provide sufficient evidence for the Board to conclude that he had an unfitting condition at the time of his transfer to the Retired Reserve. Based on a preponderance of evidence, the Board determined that there is insufficient probative evidence upon which to recommend referral of his case to the Disability Evaluation System and that the reason for the applicant’s separation at the time of his transfer to the Retired Reserve was not in error or unjust.

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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CHAIRPERSON

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) 40-501 (Standards of Medical Fitness) provides that for an individual to be found unfit by reason of physical disability, he or she must be unable to perform the duties of his or her office, grade, rank, or rating. Performance of duty despite impairment would be considered presumptive evidence of physical fitness.
3. AR 635-40 (Disability Evaluation for Retention, Retirement, or Separation) prescribes the Army Disability Evaluation System (DES) 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.
 - a. The objectives are to maintain an effective and fit military organization with maximum use of available manpower; provide benefits to eligible Soldiers whose military service is terminated because of a service-connected disability; provide prompt disability evaluation processing ensuring the rights and interests of the Government and Soldier are protected; and, establish the Military Occupational Specialty Administrative Retention Review (MAR2) as an Army pre-DES evaluation process for Soldiers who

require a P3 or P4 (permanent profile) for a medical condition that meets the medical retention standards of AR 40-501.

b. Public Law 110-181 defines the term, physical DES, as a system or process of the Department of Defense for evaluating the nature and extent of disabilities affecting members of the Armed Forces that is operated by the Secretaries of the military departments and is composed of medical evaluation boards, physical evaluation boards, counseling of Soldiers, and mechanisms for the final disposition of disability evaluations by appropriate personnel.

c. The DES begins for a Soldier when either of the events below occurs:

(1) The Soldier is issued a permanent profile approved in accordance with the provisions of AR 40-501 and the profile contains a numerical designator of P3/P4 in any of the serial profile factors for a condition that appears not to meet medical retention standards in accordance with AR 40-501. Within (but not later than) 1 year of diagnosis, the Soldier must be assigned a P3/P4 profile to refer the Soldier to the DES.

(2) The Soldier is referred to the DES as the outcome of MAR2 evaluation.

d. A medical evaluation board is convened to determine whether a Soldier's medical condition(s) meets medical retention standards per AR 40-501. This board may determine a Soldier's condition(s) meet medical retention standards and recommend the Soldier be returned to duty. This board must not provide conclusions or recommendations regarding fitness determinations.

e. The physical evaluation board determines fitness for purposes of Soldiers' retention, separation, or retirement for disability under Title 10, U.S. Code, chapter 61, or separation for disability without entitlement to disability benefits under other than Title 10, U.S. Code, chapter 61. The physical evaluation board also makes certain administrative determinations that may benefit implications under other provisions of law.

f. Unless reserved for higher authority, the U.S. Army Physical Disability Agency approves disability cases for the Secretary of the Army and issues disposition instructions for Soldiers separated or retired for physical disability.

g. The Chief, Army Reserve will ensure eligible Soldiers of the USAR Ready Reserve are referred for evaluation by MAR2 and DES, as applicable, in a timely manner, and in accordance with this regulation.

h. Unit commanders will ensure medical profiles containing a P3/P4 or temporary (T) 3/T4 in one of the serial profile factors are reviewed according to the standards of AR 40-501. Among the duties required, a unit commander will provide a non-medical

assessment by completing DA Form 7652 (DES Commander's Performance and Functional Statement).

i. Soldiers will not be referred for MAR2 if the Soldier's request for regular retirement, non-regular retirement, or transfer to the Retired Reserve has been approved.

4. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//