

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 July 2025

DOCKET NUMBER: AR20240003466

APPLICANT REQUESTS: physical disability retirement in lieu of transfer to the retired reserve due to promotion non-selection.

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

- DD Form 149 (Application for Correction of Military Record)
- Employment Development Department certification form, 5 and 8 December 1995
- Crisis Outpatient Services form, 15 December 1995
- two Social Security Administration (SSA) letters, 4 November and 10 December 1996
- Psychiatrist's letter, 17 June 2002
- DD Form 108 (Application for Retired Pay Benefits), 6 January 2023

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 was medically retired/medically separated from the U.S. Army Reserve (USAR) due to an illness that resulted in permanent disability. He was informed during his separation process that he was being transferred to the Individual Ready Reserve (IRR) as a disabled retiree.

b. He was informed by U.S. Army Human Resources Command (AHRC) Gray Area Retirees (GAR) officials on 8 January 2024, that his record does not reflect that he was medically retired and he should submit an application to the ABCMR.

c. The correction should be made because the error was just an oversight. He was an active USAR member at the onset of his disabling illness and his command was

aware of his condition, yet they allowed him to continue with Military Unit Training Assembly (MTUA) until it was just no longer possible. At that time, he was informed he was being transferred to the IRR as a medical retiree and was invited to return if or when his condition improved and the doctor released him. Due to his illness, appearing in person will be challenging, but the AHRC GAR office has his complete retirement file that was mailed to them on 6 January 2023.

3. The applicant was appointed as a Reserve commissioned officer of the Army on 9 December 1983.

4. A review of the AHRC Soldier Management System (SMS) shows a transaction was completed to reassign the applicant within the USAR from a Troop Program Unit (TPU) service to the USAR Control Group (Reinforcement) due to expiration of service obligation on 11 September 1994. A second duplicate transaction was completed on 11 January 1995, confirming the applicant's same reassignment for the same reason.

5. An Employment Development Department certification form shows:

a. On 5 December 1995, the applicant signed the form certifying he continued to be disabled and incapable of doing his regular work and he reported all wages, workers' compensation benefits, and other monies received during the claim period to the Employment Development Department.

b. On 8 December 1995, a physician signed the form certifying he was still treating the applicant; the last day of treatment was on 8 December 1995, and that the applicant's major depression continued to make him disabled and he would remain so indefinitely.

6. A Crisis Outpatient Services form, 15 December 1995, shows a Nurse Practitioner signed the form indicating the applicant was placed on temporary disability until 31 March 1996.

7. A SSA Notice of Award, 4 November 1996, informed the applicant they found he became disabled under their rules on 1 December 1995, and was entitled to monthly disability benefits beginning May 1996.

8. A U.S. Total Army Personnel Command memorandum, 6 June 1997, notified the applicant that a Department of the Army Reserve Components Mandatory Selection Board was convened to consider officers of his grade for promotion. The board examined the performance portion of his official military record and he was not among those selected for promotion by the board. The records reviewed by the Department of the Army Selection Board did not indicate he had completed the required civilian and/or military education by the date the board convened.

9. The acronym "PULHES" describes the following six physical factors used in the profiling system to classify medical readiness: "P" (Physical capacity or stamina), "U" (Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric). Physical profile ratings are permanent (P) or temporary (T). A service member's level of functioning under each factor is represented by the following numerical designations: 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.

10. A Standard Form 88 (Report of Medical Examination) shows the applicant, while assigned to the IRR, underwent medical examination on 15 March 1998, for the purpose of retention. He was found qualified for service with a physical profile rating of 1 in all factors, aside from L and H, which are blank/not rated.

11. A review of the AHRC SMS shows another transaction was completed on 18 February 1999, to transfer the applicant from the USAR Control Group (Reinforcement) to the Retired Reserve due to promotion non-selection.

12. A DA Form 5016 (Chronological Statement of Retirement Points) shows the applicant completed 10 years of qualifying service for retirement in the USAR between 9 December 1983 and 18 February 1999.

13. The applicant's available service records do not contain his discharge orders from the USAR transferring him to the Retired Reserve.

14. A Psychologist's letter, 17 June 2002, shows the applicant has a chronic mental illness and is being treated in their clinic. He would not be appropriate for jury duty and his disability is permanent.

15. The applicant completed a DD Form 108 on 6 January 2023, indicating his retired pay was to begin 28 June 2021, handwriting his dates of service beginning with Reserve Officer Training Corps (ROTC) in August 1980 and ending with his retirement in February 1999.

16. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of physical disability retirement in lieu of transfer to the retired reserve due to promotion non-selection. He contends he experienced an undiagnosed mental health condition, including PTSD, that warrants this change.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following:

- The applicant was appointed as a Reserve commissioned officer of the Army on 9 December 1983.
- A review of the AHRC Soldier Management System (SMS) shows a transaction was completed to reassign the applicant within the USAR from a Troop Program Unit (TPU) service to the USAR Control Group (Reinforcement) due to expiration of service obligation on 11 September 1994. A second duplicate transaction was completed on 11 January 1995, confirming the applicant's same reassignment for the same reason.
- A review of the AHRC SMS shows another transaction was completed on 18 February 1999, to transfer the applicant from the USAR Control Group (Reinforcement) to the Retired Reserve due to promotion non-selection.
- A DA Form 5016 (Chronological Statement of Retirement Points) shows the applicant completed 10 years of qualifying service for retirement in the USAR between 9 December 1983 and 18 February 1999.
- The applicant's available service records do not contain his discharge orders from the USAR transferring him to the Retired Reserve.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts he was retired/medically separated from the USAR due to an illness that resulted in a permanent disability and was transferred to the IRR as a disabled retiree. However, the GAR indicated his record does not reflect that he was medically retired. He indicated PTSD and "other mental health" as issues or conditions related to his request. The application included an Employment Development Department document dated 5 December 1995, which showed that the applicant was diagnosed with Major Depressive Disorder (MDD) and would "indefinitely" not be able to perform regular work. A document from the County of Riverside showed that the applicant was placed on a temporary state of disability until 31 March 1996. A letter from the Social Security Administration indicated the applicant is disabled effective 1 December 1995. A letter from a psychiatrist dated 17 June 2002 provided documentation of the applicant's chronic mental illness with indication that the condition is permanent. A Report of Medical Examination dated 15 March 1998 showed the applicant underwent a retention examination after 15 years of military service and was determined to be qualified for service with no indication of any psychiatric symptoms or profile. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed no history of mental health related

treatment or diagnoses. The applicant is eligible for humanitarian/emergency services only.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a condition that warrants a disability retirement. The applicant provided documentation of a diagnosis of Major Depressive Disorder in 1995 with indication of "indefinitely" being unable to perform regular work, and a letter from the Social Security Administration stating he had been placed on disability effective 1 December 1995. There were also documents indicating a temporary disability until 31 March 1996 and a permanent disability for chronic mental illness in 2002. However, a DoD Standard Form 88, Report of Medical Examination, dated 15 March 1998 showed the applicant was evaluated for retention and was determined to be qualified for service and meet retention standards with no psychiatric or physical symptoms noted. There is insufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition, including PTSD, that would warrant a referral to the Disability Evaluation System (DES) and/or a medical retirement.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? NA; request is for disability retirement

(2) Did the condition exist or experience occur during military service? NA; request is for disability retirement

(3) Does the condition or experience actually excuse or mitigate the discharge? NA; request is for disability retirement

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 review based on law, policy, and regulation. Upon review of the applicant's petition, available military records, and the medical review, the Board concurred with the advising official. Based on this, the Board determined the applicant did not have a condition warranting referral to the Disability Evaluation System at the time of separation and a change in his retired status or change to a physical disability retirement is not warranted.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XX	:XX	:XX	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.

X //signed//

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. 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. 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.

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.

//NOTHING FOLLOWS//