

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 December 2024

DOCKET NUMBER: AR20240003499

APPLICANT REQUESTS:

- a. correction of U.S. Army Reserve (USAR) discharge Orders 20-023-00006, dated 23 January 2020, to show he was discharged due to a service-connected medical disability.
- b. restoration of his post 9/11 GI Bill benefits transfer of education benefits (TEB) and refund of the money he spent on his TEB debt.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 31 July 2012
- DA Form 3349-SG (Physical Profile Record), dated 17 June 2019
- Memorandum from the USAR Command, Army Reserve Medical Management Center, subject: Notification of Medical Disqualification, dated 21 June 2019
- Statement of Understanding and Election of Options, dated 25 June 2019
- USAR Orders 20-023-00006, dated 23 January 2020
- Department of Veterans Affairs (VA) Rating Decision, dated 18 August 2020
- two letters from the VA Debt Management Center, dated 12 April 2023

FACTS:

1. The applicant states a correction should be made to his discharge order to reflect his medical discharge was service-connected. He was discharged due to a back injury for which he is receiving service-connected disability compensation from the VA.

a. The VA has acted to recoup the 9/11 GI Bill benefits used by his children stating he did not fulfill his obligation and because his discharge orders do not show his disability is service connected. However, the reason he did not fulfill his contract is due to a service-connected back injury.

b. His transfer of education benefits (TEB) should be restored and money he has paid toward the TEB debt he incurred should be refunded. His compensation has been getting deducted at a rate of approximately \$300 per month for over six months.

2. The applicant enlisted in the Regular Army on 4 March 2008. He served in Iraq from 13 December 2008 to 13 December 2009 and from 4 February to 16 November 2011. He was released from active duty and transferred to a USAR troop program unit on 31 July 2012.

3. On 7 November 2015, the applicant reenlisted in the USAR for a period of 6 years. His new expiration term of service was established as 22 February 2022.

4. A DA Form 3349-SG shows the applicant was issued a permanent physical profile on 17 June 2019 based on lower back injury/pain.

5. A memorandum from the USAR Command, Army Reserve Medical Management Center, subject: Notification of Medical Disqualification, dated 21 June 2019, informed the applicant the following:

a. It has been determined the applicant no longer meets the Army medical standards for retention in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3. Based on this determination he was required to choose to be discharged or request a Physical Disability Evaluation System (PDES) board. If he chose not to respond he may be discharged, with no appeal, except to the Army Board for Correction of Military Records (ABCMR).

b. His Retirement Points Accounting Statement (RPAS) was enclosed for his verification of years of creditable military service. His RPAS shows he currently did not have over 15 years of creditable service. In order to qualify for medical retirement, he needed over 15 years of creditable service but less than 20.

c. If he chooses PDES, he should ensure any applicable lines of duty (LOD) are complete at his unit with appropriate approval prior to the suspense above. Currently there are no LOD's on record for your medical condition. If you believe your injury or illness is service connected, you must ensure that all LODs are completed and approved.

6. On 25 June 2019, the applicant signed a Statement of Understanding and Election of Options and requested discharge from the USAR. He did not request referral to the PDES for a final determination of his medical fitness for retention and/or separation.

7. Orders 20-023-00006, dated 23 January 2020, issued by Headquarters, 81st Readiness Division (USAR), directed the applicant's discharge from the USAR effective 21 February 2020 by reason of medical unfitness, due to no fault of the Soldier.

8. The applicant's Chronological Statement of Retirement Points shows he was credited with 11 years of qualifying service for non-regular retirement.

9. The applicant's record in the U.S. Army Human Resources Command (AHRC), Soldier Management Services, Soldier Transition List, shows he inquired to AHRC about his Post-911 GI Bill TEB and was informed that his TEB was rejected because he did not fulfil his service agreement and his discharge orders show he was discharged for "medical unfitness, due to no fault of the Soldier," but his orders must reflect "medical disqualification" or "disability."

10. The applicant provides:

a. A VA Rating Decision, dated 18 August 2020, showing he is receiving service-connected disability compensation for degenerative arthritis of the lumbar spine with intervertebral disc syndrome, radiculopathy, right lower extremity, sciatic nerve, and post-traumatic stress disorder (PTSD) (previously rated as generalized anxiety disorder (previously rated as anxiety disorder, not otherwise specified, with features of PTSD)).

b. Letters from the VA Debt Management Center, dated 12 April 2023, showing he incurred a debt in the amount of \$13,759.02 for an overpayment of benefits due to payments he was not entitled from housing allowance, chapter 33 kicker or supplemental payment because his benefits were reduced and \$1,300 from books, supplies, work study, etc., also because his benefits were reduced.

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 requesting referral to the Disability Evaluation System (DES). He states:

“A correction should be made to my discharge order to reflect that the medical discharge was service connected. I was discharged due to a back injury for which I receive service-connected compensation. The VA has acted to recoup the 9/11 GI Bill benefits used by my children stating that I did not fulfill my obligation and because my discharge order does not say service connected. It needs to be amended.

I did 300 combat patrols over 23 months in Iraq in support of my country. My kids have suffered enough and deserve this educational benefit and I earned it for them. The back injury put me out of the reserves and, again, I receive service-connected compensation for it. Apparently, it is just the wording of my discharge. I don't know why it wasn't written to say "service connected" at the time and did not question it because I didn't realize that would cause the VA to rob my kids of their benefits.”

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. Orders published on 23 January 2020 by Headquarters, 81<sup>st</sup> Readiness Division (USAR) show the applicant was honorably discharged effective 21 February 2020 for “Medical unfitness, due to no fault of the Soldier.

d. The Physical Profile Record (DA Form 33349) submitted with the application shows the applicant was placed on a duty limiting permanent physical profile for “Lower Back Injury / Pain (Right) effective 17 June 2019.

e. A Summary of Care by Non-Military Medical Provider in MEDCHART shows the applicant had a history of chronic back pain with radiculopathy:

“Chronic lumbar radiculopathy. Severe pain at times. Followed by pain specialist, gets epidural steroid injections.”

f. On 21 June 2019, the United States Army Reserve Command's Army Reserve Medical Management Center informed him of his medical disqualification, presented him with his options, and gave him a suspense date of 4 August 2019 to make his election. On 25 June 2019, the applicant elected/requested “an Honorable Discharge from the U.S. Army Reserve (page 7 of the supporting documents).

g. The EMR shows the applicant was briefly and successfully treated with conservative management for low back pain in April 2011. He presented with a 3-day history of atraumatic low back pain on 15 April 2011 and was started on conservative management. The 18 April 2011 physical encounter shows he was much improved:

"Patient is here today for follow-up exam for LBP. Patient reports symptoms are 'a lot better' since initial exam. Has been compliant with his HEP [home exercise program] focusing on core stability exercises; states 'I feel stronger in that area'. 0/10 [pain]- states he has not had pain since the initial exam."

h. His DD 214 for this period of Service shows he had entered the Regular Army on 4 March 2008 and was honorably discharged on 31 July 2012 under provisions in chapter 4 of AR 635-200 after having completed his required active service. His reentry code of "1" indicates he was fully qualified to reenlist.

i. JLV encounters show the applicant was next evaluated and treated for low back pain in 2018, being treated for L5-S1 intervertebral disc disease and other degenerative changes.

j. There is no probative evidence the applicant's medically disqualifying low back pain was incurred during or permanently aggravated by his military service. It is therefore not eligible for referral to the DES for duty related processing.

k. JLV shows he has been awarded multiple VA service-connected disability ratings, including a 10% rating for intervertebral disc syndrome and 10% for mild radiculopathy of his right sciatic nerve. However, the DES compensates an individual only for military service incurred, i.e., In the Line of Duty, medical 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. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

l. It is the opinion of the ARBA Medical Advisor that referral of his case to the DES 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 review based on law, policy, and regulation.

a. Medical Disability. Deny. Upon review of the applicant's petition, available military records, and the medical review, the Board concurred with the advising official finding

that the applicant's Department of Veterans Affairs rating determinations are based on the roles and authorities granted by Congress to the Department of Veterans Affairs and executed under a different set of laws. Based on this, the Board determined referral of his case to the Disability Evaluation System (DES) is not warranted.

b. Transfer of Education Benefits. Deny. The Board determined the applicant did not fulfill his 4 year service obligation and therefore was not entitled to the transfer of education benefits.

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.

3/26/2025

X

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. Army Regulation 40-501 (Standards of Medical Fitness) provides information on medical fitness standards for induction, enlistment, appointment, retention, and related policies and procedures. Chapter 3 gives the various medical conditions and physical defects which may render a Soldier unfit for further military service and which fall below the standards required. These medical conditions and physical defects, individually or in combination, are those that:

- a. Significantly limit or interfere with the Soldier's performance of their duties.
- b. May compromise or aggravate the Soldier's health or well-being if they were to remain in the military Service. This may involve dependence on certain medications, appliances, severe dietary restrictions, or frequent special treatments, or a requirement for frequent clinical monitoring.
- c. May compromise the health or well-being of other Soldiers.
- d. May prejudice the best interests of the Government if the individual were to remain in the military Service.

2. Army Regulation 40-501, also states in:

a. Paragraph 9-10, normally, Reservists who do not meet the fitness standards set by chapter 3 will be transferred to the Retired Reserve or discharged from the USAR. They will be transferred to the Retired Reserve only if eligible and if they apply for it. Reservists who do not meet medical retention standards may request continuance in 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. Reservists 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.

b. Paragraph 9-12, Reserve Component (RC) Soldiers with non-duty related medical conditions who are pending separation for failing to meet the medical retention standards of chapter 3 of this regulation are eligible to request referral to a PEB for a determination of fitness. Because these are cases of RC Soldiers with nonduty related medical conditions, medical evaluation boards are not required, and cases are not sent through the physical evaluation board liaison officers at the medical treatment facilities. Once a Soldier requests in writing that his or her case be reviewed by a PEB for a fitness determination, the case will be forwarded to the PEB and will include the results of a medical evaluation that provides a clear description of the medical condition(s) that cause the Soldier not to meet medical retention standards.

3. Army Regulation 621-202 (Army Educational Incentives and Entitlements) establishes a reference for educational incentives and entitlements authorized by public law. It provides Regular Army, Army National Guard, and Army Reserve-unique policies, responsibilities, and procedures governing these educational benefits for Soldiers and former Soldiers of the Active and Reserve Components. It states in:

a. Paragraph 4-15c (Overpayment and recoupment), Soldiers who fail to fulfill the TEB service obligation will have the previously approved TEB rejected and the Soldier and dependent may incur an overpayment debt from the VA.

b. Paragraph 4-15d (Authorized exceptions for failure to complete TEB service agreement), if a Soldier fails to complete the service agreement for reasons other than those listed below, the amount of any transferred entitlement used by the dependent shall be treated as an overpayment of educational assistance and will be subject to the recoupment by the VA. Exceptions are as follows:

(1) Death of the Soldier.

(2) Discharge or release from the Army for a medical condition, which pre-existed the service of the Soldier and was not service-connected.

(3) Discharge or release from the Army for hardship.

(4) Discharge or release from the Army for a physical or a mental condition not characterized as a disability and which did not result from the Soldier's own willful misconduct, but did interfere with the performance of duty. For USAR Soldiers, the USAR order must reflect "medical disqualification."

(5) Discharge or release from the Army for a disability. For USAR Soldiers, the USAR order must reflect "Disability."

4. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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//