

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 November 2024

DOCKET NUMBER: AR20240003522

APPLICANT REQUESTS: in effect, correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show he was discharged due to a disability.

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

- DD Form 293 (Application for Review of Discharge)
- DA For 5181-R (Screening Note of Acute Medical Care)
- DD Form 214
- Department of Veterans Affairs (VA) Benefits letter

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 sustained physical injuries and suffered from depression while serving on active duty.
 - a. He contends that he was diagnosed with depression and anxiety while on active duty and he did not receive treatment for his mental health condition. The VA has service-connected his major depressive disorder and anxiety.
 - b. He further contends he never received any treatment for his head injury.
3. Prior to his enlistment in the military the applicant completed a medical examination on 20 June 1981 wherein he reported being in good health. The military physician found the applicant qualified for enlistment.
4. On 4 March 1981, the applicant enlisted in the Regular Army.
5. His military health records contain documents which show the applicant:

- was treated for injuries related to a motor vehicle accident in July 1981(cuts, abrasions, sprain, stiches to head)
- was enrolled in the Alcohol and Drug Abuse Prevention and Control Program on 7 April 1983 and satisfactorily completed the program on 28 April 1983
- reported falling and hitting his head in the field and experiencing dizziness

6. On 26 December 1984, the applicant underwent a separation physical examination. He reported having a head injury, depression or excessive worry, and nervousness. He was found qualified for separation.

7. The applicant was honorably released from active duty on 1 March 1985 for completion of required service. He completed 3 years, 11 months, and 28 days of active service.

8. The applicant provides a VA Benefits letter which shows that his depressive disorder, mild recurrent (also claimed as anxiety) is service-connected and he is receiving disability compensation at the 50 percent rate.

9. 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.

10. By regulation:

a. The mere presence of an impairment does not, of itself, justify a finding of unfitness because of physical disability. In each case considered, it is necessary to correlate the nature and degree of physical disability which is present with the requirements of the duties which the member reasonably may be expected to perform by virtue of his office, grade, rank, or rating.

b. A member being processed for separation for reasons other than physical disability is presumed fit for duty as shown by his continued performance of duty. Such a member should not be referred to a Physical Evaluation Board unless his physical defects raise substantial doubt that he would be fit were he to continue the duties of his office, grade, rank, or rating.

11. The Board should consider the applicant's overall record and provided statement in accordance with the published equity, injustice, or clemency determination guidance.

12. MEDICAL REVIEW:

1. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The applicant requests medical disability for Other Mental Health and physical injuries.

2. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The applicant entered service 04Mar1981. His MOS was 13E10 Cannon Fire Direction Specialist. He served overseas in Germany. The record did not show combat deployment. He was honorably discharged on 19850301 at the completion of required service.

3. Summary of available medical records and related while in service.

a. 20Jan1981 Report of Medical Exam (SF 88) and Report of Medical History (SF 93) for enlistment showed no disqualifying defects/diseases.

b. 18Jul1981 car accident last Saturday: Sprained left arm (splinted); laceration on center of head (required sutures); abrasions on face and left knee. The exam also revealed a mild sub optical hematoma, left eye. X-rays were negative for fracture.

c. 30Jul1981. This note stated he had been involved in a motorcycle accident. He had left elbow pain, weakness, and decreased ROM. Self-exercises were recommended. The applicant returned for follow-up on 13Aug1981. The left elbow exam was normal except extension was to 160 degrees (almost full extension). End extension was painful. He was placed on profile and was advised to follow up in one week. Another elbow x-ray was ordered. No further follow-up was found. The results of the x-ray were not available for this review.

d. 07Apr1983 Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) enrollment for alcohol. The applicant was released from the program on 28Apr due to completion of the program.

e. 12Dec1983 Screening Note of Acute Medical Care. He was hit on the head and reported dizziness and headache. There was a small laceration left parietal scalp repaired with one suture. He was advised bedrest 24 hours, no PT for 2 days and return for follow-up on 16Dec1983. No further follow-up was found.

f. 26Dec1984 Report of Medical Exam (SF 88) and Report of Medical History (SF

93) for ETS. Although the applicant endorsed 'good' health, he acknowledged multiple symptoms/illnesses/conditions the most notable being: Head injury, dizziness or fainting spells, hypersensitivity to light, anxiety, depression (due to family and personal problems), nervousness, motion sickness, pain or pressure in the chest and occasional palpitations, gastrointestinal symptoms, occasional muscle cramps, pes planus and a history of broken bones. The examiner noted that he had a history of head injury with laceration with loss of consciousness, hepatitis, upper respiratory tract infection, bleeding excessively after tooth extraction, left wrist fracture, and left elbow injury. The physical exam was normal except for the presence of scars and hemorrhoids. He was not on profile. He was not on any medication. He was deemed qualified for ETS.

4. JLV searched showed that the applicant's first VA facility encounters were in 2016. Records indicate that 2 years after discharge, he got married in 1986. He endorsed having a good married and good relationship with his family. He completed a bachelor's degree in cinematography [REDACTED] in 1988. He worked as an elementary teacher for 30 years and retired in 2017. The year prior to retirement, a transfer from a county school to an urban school proved too much of an adjustment for him and ultimately, he retired in January 2017. During the adjustment time frame, the applicant reported having participated in a psychiatric day hospitalization program.

5. Summary/Opinion

a. There were few service treatment records available for this review. There were no behavioral health service treatment records available for this review. JLV search revealed that the applicant was service connected by the VA at 50% total for the following: Major Depressive Disorder 50%; Hemorrhoids 0%; and Impaired Hearing 0%. A formal TBI diagnosis was not found in the current record; however, based on the description of the event (head injury with laceration requiring suturing and report of LOC and dizziness), more likely than not the applicant sustained a TBI.

b. Although he reported multiple medical symptoms/illnesses/conditions at the time the separation physical exam was completed; there were no clinical records in the twelve months prior to ETS, corroborating the need for ongoing treatment for any condition. The applicant was cleared to ETS with physical profile 111111. The first available treatment records after discharge began in 2016. Based on records available for review, medical evidence was insufficient to support that the applicant had a condition which failed medical retention standards of AR 40-501 chapter 3 at the time of discharge from service. Referral for medical disability processing is not warranted at this time.

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 finding insufficient evidence to support that the applicant had a condition which failed medical retention standards of at the time of discharge from service and referral for medical disability processing not being warranted.

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.

4/2/2025

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. 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 Army Board for Correction of Military Records (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) 635-40, Personnel Separations-Physical Evaluation for Retention, Retirement, or Separation, in effect at the time, establishes the Army Physical Disability Evaluation System and set forth policies and responsibilities for retention, retirement, or separation of a member who was determined to be unfit to perform the duties of his office, grade, rank or rating because of physical disability.

a. The mere presence of an impairment does not, of itself, justify a finding of unfitness because of physical disability. In each case considered, it is necessary to correlate the nature and degree of physical disability which is present with the requirements of the duties which the member reasonably may be expected to perform by virtue of his office, grade, rank, or rating.

b. The fact that the member has one or more defects sufficient to require his referral for evaluation, or that may be unfitting for members in a different office, grade, rank, or rating, does not justify a decision of unfitness.

c. A member being processed for separation for reasons other than physical disability is presumed fit for duty as shown by his continued performance of duty. Such a member should not be referred to a Physical Evaluation Board unless his physical defects raise substantial doubt that he would be fit were he to continue the duties of his office, grade, rank, or rating.

3. Title 38, U.S. Code, section 1110, General - Basic Entitlement: 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.

4. Title 38, U.S. Code, section 1131, Peacetime Disability Compensation - Basic Entitlement: 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.

5. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

6. 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.

7. 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.

8. 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.

9. AR 15-185, Boards, Commissions, and Committees-ABCMR, prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

//NOTHING FOLLOWS//