

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 March 2025

DOCKET NUMBER: AR20240003650

APPLICANT REQUESTS: a change to his discharge from the New Jersey Army National Guard (NJARNG) to a disability/medical retirement. In addition:

- In effect, a Medical Evaluation Board (MEB)
- In effect, placement on the Permanent Disability Retirement List (PDRL)
- a personal appearance before the Board

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 9 March 2005
- Orders 036-071, dated 5 February 2008
- NGB Form 22 (National Guard Report of Separation and Record of Service)
- Orders 120-194, dated 29 April 2008
- Four letters issued by the Department of Veterans Affairs (VA)

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, in effect, he is requesting a disability/medical retirement from the NJARNG, placement on the PDRL, and an MEB. He was medically discharged instead of being medically retired due to post traumatic stress disorder (PTSD), and other injuries he incurred during his service in Iraq, for which he was awarded the Purple Heart. Due to this oversight, he was not eligible to receive benefits as a retiree. The applicant references his brother who also served during the same deployment, and was discharged for similar conditions, however he submitted an application to ABCMR (Docket Number AR20220005002) and was subsequently awarded a medical retirement. The applicant's statement and ABCMR Docket Number AR20220005002, are available in their entirety for the Board's review.

3. The applicant provides:

a. Orders 120-194, dated 29 April 2008 show he was honorably discharged from the ARNG, and as a reserve of the Army, with an effective date of 17 March 2008.

b. Four letters issued by the VA, which show a progressive increase in his disability ratings, culminating in his current combined service-connected evaluation of 80 percent (%), on 28 January 2025. On 1 November 2024 the applicant was awarded the following:

- Evaluation of PTSD, which is currently 10% disabling, is increased to 70% effective 15 June 2024
- Evaluation of radial tear of lateral meniscus, right knee, which is currently 0% disabling, is increased to 10% effective 15 June 2024
- Service connection for right knee incomplete ligament tear is granted with an evaluation of 10% effective 15 June 2024
- Service connection for tinnitus (also claimed as ringing or hissing in ears) is granted with an evaluation of 10% effective 15 June 2024

4. The applicant is authorized additional awards not currently listed on his DD Form 214 for the period ending 9 March 2005. These changes will be administratively corrected in the "Administrative Notes" section of this document without Board action.

5. The applicant has service in Iraq from 21 February 2004 through 3 February 2005, for which he was awarded the Purple Heart.

6. The applicant's service record reflects the following:

a. He enlisted in the Army National Guard (ARNG) on 24 March 2001.

b. On 2 August 2001 he was ordered to active duty (AD) for active duty training (ADT) and was honorably released on 6 December 2001. He completed 4 months and 5 days of active duty service.

c. On 9 March 2005, the Acting Governor of the State of New Jersey (NJ), R. C., under the authority of 38A:15-2, New Jersey Revised Statutes, awarded the applicant the New Jersey Distinguished Service Medal, for his distinguished meritorious service in the Southwest Asiatic Theater of Operations.

d. His DD Form 214 shows he was honorably released from active duty on 9 March 2005 for completion of required active service. He completed 1 year, 2 months, 5 days of active duty service, and 11 months, 13 days of foreign service in Iraq (21 February

2004 through 3 February 2005). His grade at the time of discharge was sergeant (SGT)/E-5. He was awarded and/or qualified for the following awards:

- Purple Heart
- Army Commendation Medal
- National Defense Service Medal
- Global War on Terrorism Expeditionary Medal
- Armed Forces Reserve Medal with a M device
- Army Service Ribbon

e. In a memorandum subject: Bravo 3-112th Field Artillery Meritorious Unit Citation Recognition/Award, shows that pursuant to Permanent Order Number 051-001, effective 20 February 2004 through 9 February 2005, the applicant was awarded the Meritorious Unit Citation. This order authorizes the award of the Meritorious Unit Citation for Bravo 3-112th Field Artillery, NJARNG for service in support of Operation Iraqi Freedom (OIF). Furthermore, this memorandum reflects the applicant's name on page 4 of 4, thus making him eligible for the award of the Meritorious Unit Citation.

f. Orders 036-071, dated 5 February 2008, show the applicant was attached to the 3rd Trainee, Transient, Holdee (Medical) and Student (TTHS) Holding Company, with an effective dated of 4 February 2008 through his expiration of term of service (ETS) or unless otherwise relieved.

g. NGB Form 22 shows he was honorably released from the NJARNG, on 17 March 2008 for being medically unfit for retention. He served for a total of 6 years, 11 months, and 24 days. His grade at the time of discharge was sergeant (SGT)/E-5. He was awarded and/or qualified for the following awards:

- Purple Heart
- Army Commendation Medal
- Army Achievement Medal
- Meritorious Unit Commendation
- National Defense Service Medal
- Global War on Terrorism Expeditionary Medal
- Army Service Ribbon
- Armed Forces Reserve Medal with a M device
- New Jersey Distinguished Service Medal

8. Army Regulation 15-185 (ABCMR), currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

9. Due to the applicant's request for a disability/medical retirement for injuries and conditions he incurred during combat, the case is being forwarded to the Behavioral Health, and Medical staff at the Army Review Boards Agency (ARBA).

10. 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 requesting a referral to the Disability Evaluation System (DES). He states I part:

"I was medically discharged from the New Jersey Army National Guard during my second deployment mobilization with 6 years and 11 months of service due to having a 50% total combined VA rated disability for PTSD, shrapnel wound right leg, shrapnel wound right knee, shrapnel wound right armpit, and shrapnel wound right forearm all stemming from combat operations in support of OIF [Operation Iraqi Freedom] II in 2004-2005. This was supposed to be a disability/medical retirement according to the guidelines, however I was never put through an MEB [medical evaluation board]."

c. The Record of Proceedings outlines the applicant's service and the circumstances of the case. The Report of Separation and Record of Service (NGB Form 22) shows he enlisted in the Army National Guard on 24 March 2001 and was honorably discharged from the New Jersey Army National Guard (NJARNG) on 17 March 2008 under authority provided of paragraph 6-35I(8) of NGR 600-200, Enlisted Personnel Management: Medically unfit for retention per AR 40-501. His NGB 22 shows 6 years, 11 months, and 24 days of total service for retired pay.

d. There are no encounters in AHLTA.
A 31 March 2008 VA Benefits Letter shows the applicant was awarded a 50% VA service-connected disability rating for PTSD effective 1 April 2005 and 0% ratings on 10 March 2005 for shrapnel wounds to his right leg and right knee.

e. The applicant's final NCO Evaluation Report was an annual covering 1 December 2006 thru 30 November 2007 and shows he was a successful NCO. He passed his Army Physical Fitness Test on 16 September 2007 and met the Army's height and weight standards. His rater marked him as a success for all NCO values and responsibilities and blocked him as "Fully Capable." His senior rater blocked him with 3's on a scale of 1 to 5 for both overall performance and overall potential stating:

- o sent to next BNCOC [Basic NCO Course] course
- o valuable asset to the unit and Army
- o promote with peers"

f. Neither the applicant's separation packet nor documentation addressing his separation was submitted with the application nor uploaded into iPERMS. There is no Physical Profile (DA 3349) in MEDCHART. Thus, the medical condition which led to his separation and its relationship to his service is unknown.

g. While the applicant did have PTSD, this condition is not automatically disqualifying for continued service and many Soldiers with this condition continue to serve. His final NCOER covers the period after he was awarded the VA rating for PTSD and shows that despite having PTSD, he was a successful Soldier.

h. It is the opinion of the ARBA Medical Advisor there is currently insufficient evidence to warrant a referral of his case to the DES.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation and the findings and recommendation outlined in the medical review, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's narrative reason for separation.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. 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.
2. Prior to closing the case, the Board noted the administrative notes below and recommended those changes be completed to more accurately reflect the military service of the applicant.

//SIGNED//

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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's records shows he is authorized additional awards not currently listed on his DD Form 214 for the period ending 9 March 2005. As a result, amend his DD Form 214 by adding to item 13 (Awards):

- Meritorious Unit Citation
- Overseas Service Ribbon
- Global War on Terrorism Service Medal

REFERENCES:

1. Title 10, United States Code (USC) (Armed Forces), 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 15-185 (ABCMR), currently in effect, 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. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. Title 10, United States Code (USC) (Armed Forces), 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 Department of Defense (DOD) Directive 1332.18 and AR 635-40 (Physical 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 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 the Informal Physical Evaluation Board (PEB) Proceedings. 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. Title 38, United States Code (USC) (Veterans' Benefits), 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.

5. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), establishes the Army Physical Disability Evaluation System according to the provisions of Title 10, United States Code (USC), Chapter 61, (10 USC 61) and Department of Defense Directive (DODD) 1332.18. It 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 or her office, grade, rank, or rating. If a Soldier is found unfit because of physical disability, this regulation provides for disposition of the Soldier according to applicable laws and regulations. The objectives of this regulation are to maintain an effective and fit military organization with maximum use of available manpower, provide benefits for eligible Soldiers whose military service is terminated because of a service-connected disability, provide prompt disability processing while ensuring that the rights and interests of the Government and the Soldier are protected.

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 an MEB; when they receive a permanent physical profile rating of "3" or "4" in any functional capacity factor and are referred by a Military

Occupational Specialty Medical Retention Board; and/or they are command-referred for a fitness-for-duty medical examination or directed by medical providers.

b. The disability evaluation assessment process involves two distinct stages: the MEB and PEB. The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his or 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 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 whose medical condition did not exist prior to service who are determined to be unfit for duty due to disability are either separated from the military or are permanently retired, depending on the severity of the disability. 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 percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Ratings are assigned from the Veterans Affairs Schedule for Rating Disabilities (VASRD). The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting or ratable condition is one which renders the Soldier unable to perform the duties of his or her office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of his or her employment on active duty. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. 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.

d. Physical disability evaluation will include a determination and supporting documentation on whether the Soldiers disability compensation is excluded from Federal gross income under the provisions of Title 26, United States Code (USC), section 104. The entitlement to this exclusion is based on the Soldier having a certain status on 24 September 1975 or being retired or separated for a disability determined to be combat related as set forth in this paragraph. The determination will be recorded on the record of proceedings of the Soldier's adjudication.

6. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation) in effect at the time, prescribes Army policy and responsibilities for the disability evaluation and disposition of Soldiers who may be unfit to perform their military duties due to physical disability. Any medical condition incurred or aggravated during

one period of active Service or authorized training in any of the Armed Forces that recurs, is aggravated, or otherwise causes the Soldier to be unfit, should be considered incurred in the line of duty (LOD), provided the origin of such impairment or its current state is not due to the Soldier's misconduct or willful negligence, or progressed to unfitness as the result of intervening events when the Soldier was not in a duty status.

7. Title 10, United States Code (USC) (Armed Forces), 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%. Title 10, United States Code (USC) (Armed Forces), 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%.

8. Title 10, United States Code (USC) (Armed Forces), section 1556 (Ex Parte Communications Prohibited) 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 applicant's (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//