

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 January 2025

DOCKET NUMBER: AR20240004301

APPLICANT REQUESTS: physical disability retirement in lieu of honorable administrative discharge due to reduction in authorized strength.

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

- DD Form 149 (Application for Correction of Military Record)
- self-authored statement
- Department of Veterans Affairs (VA) Rating Decision, 20 December 2019
- VA Rating Decision, 5 February 2020
- wife's statement, 12 March 2024

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 is requesting a change of his honorable discharge to medical retirement. In June 2022, he was informed he could appeal to have his discharge changed.

b. In January 1987, while on duty as a U.S. Army Recruiter, he was involved in a serious car accident. He was stopped behind three cars when he looked in his rearview mirror and noticed a Biloxi, MS, city bus bearing down on him. He realized the bus wasn't going to be able to stop before hitting him. He watched the bus coming toward him until right before it hit his car. The next thing he knew, he woke up with his head resign on the back seat. His seatbelt and shoulder harness were still fastened, but his seat back had broken. He remembered wondering if he was dead or alive. He closed his eyes and when he opened them back up, he knew he had to get out of the car.

c. After exiting the vehicle, he was approached by a fireman. He informed him that the bus had pushed all four cars about 200-300 feet down the road. He told him that he

didn't remember the bus hitting him and that he had not heard any of the various sirens from the emergency vehicles. He stayed at the scene until his car was loaded on the tow truck.

d. He has no idea how he got to Keesler Air Force Base (AFB) Hospital. He remembers his car being loaded on the town truck and the next thing he knew he was at the hospital. He told the doctors about the accident, including that he had lost consciousness. He was treated for a severe whiplash and back injuries. No neurological tests, including concussion protocols, were ever performed. He was informed that in 10 years he would be lucky to be able to play with his kids.

e. The next couple of weeks were a complete blur and remain so. He doesn't remember much of what transpired. He knows he informed his first sergeant and company commander, but he can't tell you when he did and what was said. He does know that he was incapable of performing his duties as a recruiter and a Station Commander and relayed that information to his commander. He had very little ability to concentrate, was anxious all the time, had a very short attention span, and was suffering from depression and constant headaches.

f. His company commander ordered him to see a psychiatrist. After meeting with the psychiatrist, it was recommended he be given 2 weeks off duty. He stated there was no way he could function properly with all he was mentally suffering from paired with the pressure of recruiting duty. Both his company and battalion commanders turned down the request and he was left to deal with his problems by himself. He received no services or help.

g. Unfortunately, all of his medical records disappeared after the VA took control of his records in July 1987. The VA decision letters show he was experiencing post-traumatic stress disorder (PTSD), depression, migraines, and back issues when he was discharged. He never received any type of counseling about being discharged, benefits that were available, or what rights he had. He was sent to Fort Rucker, AL, 3 days before his expiration term of service (ETS). He believes all the evidence proves he should have been medically retired.

3. After a prior period of honorable Regular Army service amounting to 2 years, 9 months, and 1 days, the applicant reenlisted in the Regular Army on 14 May 1976. His prior DD Form 214 (Certificate of Release or Discharge from Active Duty) detailing this period of his service is not in his available records for review.

4. The complete facts and circumstances surrounding the applicant's discharge are unknown, as his discharge packet is not in his available service records for review.

5. A Standard Form 93 (Report of Medical History) shows the applicant provided his medical history on 1 May 1987, for the purpose of ETS medical examination. He indicated he had:

- frequent or severe headaches
- head injury
- broken bones
- cyst
- painful or trick shoulder or elbow
- recurrent back pain
- was in a motor vehicle accident on 2 January 1987

6. The acronym "PUHLES" 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.

7. A Standard Form 88 (Report of Medical Examination) shows the applicant underwent medical examination on 1 May 1987, for the purpose of ETS. He was found qualified for ETS with a PULHES of 111221. Disqualifying defects and diagnoses is blank.

8. The applicant's available service records do not contain a DA Form 3349 (Physical Profile) nor do they show:

- he was issued a permanent physical profile rating
- he suffered from a medical condition, physical or mental, that affected his ability to perform the duties required by his Military Occupational Specialty (MOS) and/or grade or rendered him unfit for military service
- he was diagnosed with a medical condition that warranted his entry into the Army Physical Disability Evaluation System (PDES)
- he was diagnosed with a condition that failed retention standards and/or was unfitting

9. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably discharged on 6 June 1987, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 16-8, due to reduction in authorized strength, with corresponding Separation Code. He was

credited with 11 years and 21 days of net active service this period and 2 years, 9 months, and 1 day of total prior active service.

10. A VA Rating Decision, 20 December 2019, shows effective 8 February 2019, the applicant was granted service connection for the following conditions:

- headaches, 30 percent
- degenerative arthritis of the spine with intervertebral disc syndrome (IVDS) status post disc replacement, 20 percent
- scar, anterior trunk, 0 percent

11. A second VA Rating Decision, 5 February 2020, shows effective 8 February 2019, the applicant was granted service connection for PTSD with adjustment disorder and depressed mood with an evaluation of 50 percent.

12. The applicant's wife provided a statement, indicating:

a. In January 1987, she received a phone call from the hospital at Kessler AFB, informing her that her husband had been in a serious car accident. This was the beginning of an exceedingly difficult time in their lives. Her husband sustained injuries, but he did not receive the necessary medical treatment he needed and deserved. He continuously complained of back, neck, leg and headache pain and years later had extensive back surgery.

b. Her husband became withdrawn, had mood swings, was aggressive, inpatient, disillusioned and ill tempered as well as prone to angry outbursts. He was unable to perform or function, and got easily overwhelmed and anxious, especially in traffic around larger vehicles like trucks and buses.

c. They went to the Judge Advocate General's Corps (JAG) office on three separate occasions to get legal counsel. The verdict was they "sympathized with his injuries as long as they didn't interfere with his military career." Her husband should not have been discharged due to his injuries in the first place but was released regardless. He should have received a medical discharge or retirement.

d. They had four young children at the time. This accident caused an extreme hardship on all of them. There were displaced and faced an uncertain future. Her husband was injured while on duty and he did not receive the medical treatment he deserved. This accident most definitely ended his military career.

13. 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.

14. Title 38, USC, Sections 1110 and 1131, permit the VA to award compensation for disabilities which were incurred in or aggravated by active military service. However, an award of a VA rating does not establish an error or injustice on the part of the Army.

15. 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 in essence a referral to the Disability Evaluation System (DES) and a medical retirement. He states he was involved in a motor vehicle accident in January 1987 and goes on to say:

“Unfortunately, all of my medical records disappeared after the VA took control of my records in July 1987. The VA decision letters show that I was experiencing PTSD, depression, migraines, and back issues when I was discharged. I never received any type of counseling about being discharged, benefits that were available, or what rights I had. I was sent to Ft. Rucker, AL three days before my ETS. I believe all the evidence proves that I should have been medically retired.”

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 shows he entered the regular Army on 14 May 1976 and was honorably discharged on 4 June 1987 under the separation authority provided by paragraph 16-8 of AR 635-200, Active Duty Enlisted Administrative Separations (30 January 1987): Reduction in Authorized Strength.

d. Because of the period of Service under consideration, there are no encounters in AHLTA or documents in iPERMS.

e. The only medical documentation are his pre-separation Report of Medical History and Report of Medical Examination. The Report of Medical History shows the applicant was in a motor vehicle accident on 2 January 1987, had frontal headaches relieved with

extra strength Tylenol, and had residual soreness of his neck and left shoulder from the accident. On the Report of Medical Examination, the provider noted an illegible abnormality with external rotation of the left shoulder, did not list any diagnoses of defects, and found the applicant qualified for separation.

f. There is no probative evidence the applicant had a permanent medical condition which failed the medical retention standards of chapter 3, AR 40-501, Standards of Medical Fitness (1 December 1983) prior to his discharge. Thus, there is no cause for a referral to the DES.

g. JLV shows he has been awarded multiple VA service-connected disability ratings on 8 February 2019, including ratings for PTSD, migraine headaches, in intervertebral disc syndrome. However, the DES only compensates an individual for permanent service incurred medical condition(s) which have been determined to disqualify him or her from further military service and consequently prematurely ends their career. 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 authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

h. It is the opinion of the Agency Medical Advisor that a referral of this case to the DES is unwarranted.

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 recommendations outlined within 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:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	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. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRBs) and Boards for Correction of Military/Naval Records (BCM/NRs) when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), sexual assault, or sexual harassment.

Boards are to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based, in whole or in part, on those conditions or experiences.

3. 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 (DES) 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 (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 Military Occupational Specialty (MOS) Medical Retention Board (MMRB); 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.

4. 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.

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 Department of Veterans Affairs (VA) 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 their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their 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.

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. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of enlisted members for a variety of reasons. Paragraph 16-8 (Reduction in authorized strength) states enlisted personnel may be discharged or released from active duty, as appropriate, prior to the expiration of their terms of service or periods for which ordered to active duty when specifically authorized as set forth below:

a. When budgetary or authorization limitation requires a reduction in enlisted strength, the Secretary of the Army or his designee, will authorize such reduction.

b. Personnel to be separated per this paragraph will be notified through channels by commanders specified in paragraph .1-21.

c. Personnel designated for separation per this paragraph. will be discharged or released from active duty, as appropriate, not later than 3 months after receipt of notification. A date will be set for separation within this period which will cause the least hardship on the. member.

d. Members who are within 2 years of qualifying for retirement per chapter 12 on the scheduled separation date will not be .processed per this paragraph unless such action is directed by the Secretary of the Army.

e. The service of members separated per this paragraph will be characterized as honorable unless an entry level separation is required by chapter 3 section III..

7. 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.

8. 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.

9. 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.

10. Army Regulation 15-185 (Army Board for Correction of Military Records (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//