

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 February 2025

DOCKET NUMBER: AR20240004390

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
- his pay grade/rank was private (PV2)/E-2

He also requests 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 (Voided)
- Army Discharge Review Board (ADRB) Docket Number AR20190010226
- DD Form 214 (New Corrected Copy)
- Department of Veterans Affairs (VA) Rating Decisions and Benefits letters

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 –

a. The VA has granted him a 50% disability rating for his service-connected lumbosacral strain (claimed as back condition), cervical degenerative arthritis and degenerative disc disease (claimed as cervical strain), and hearing loss. He requests the narrative reason for his discharge be corrected to show he was discharged due to disability resulting from his service-connected conditions.

b. He is currently only eligible for certain healthcare benefits through the VA. This correction will allow him to be eligible for education and home loan benefits. He deserves to receive these benefits.

c. He contends that the ADRB erred when they did not correct his rank and pay grade to show PV2/E-2.

3. On 24 April 2003, the applicant enlisted in the Texas Army National Guard.

4. The complete facts and circumstances of the applicant's discharge are not available for review. However, the record contains:

a. A DA Form 4187, Personnel Action, 21 January 2005, which shows his commander approved the applicant's discharge based on failure to meet the medical procurement standards in Army Regulation (AR) 40-501, Medical Services-Standards of Medical Fitness, chapter 2. The authority for discharge is as National Guard Regulation (NGR) 600-200, Personnel-General-Enlisted Personnel Management, paragraph 8-26b(3). This form lists the applicant's pay grade as E-1.

b. His DD Form 214, which shows he completed 1 month, and 14 days of net active service for the period, and 1 year, 2 months, and 20 days of prior inactive service. His DD Form 214 further shows in:

- Block 4a, Grade, Rate or Rank – PV1
- Block 4b, Pay Grade – E01
- Block 24, Character of Service – Uncharacterized
- Block 25, Separation Authority – AR 635-200, Personnel Separations-Active Duty Enlisted Administrative Separations, Paragraph 5-17
- Block 28, Narrative Reason for Separation – Physical Condition, Not a Disability

c. Texas Military Force, Land Component Command, Adjutant General's Department Orders 032-1071, 1 February 2005. These orders show the applicant was being discharged from the Army National Guard and as a Reserve of the Army, effective on 28 August 2004 and that his service was "uncharacterized."

d. An NGB Form 22, Report of Separation and Record of Service, which shows the applicant was discharged on 28 August 2004. The authority and reason for discharge were listed as "NGR 600-200 8-26b(3) Failure to meet Medical procurement standards." The applicant's rank and pay grade were listed as PV1/E-1.

5. Subsequent to his discharge the applicant petitioned the ADRB for an upgrade to the characterization of his service. On 28 August 2020, the ADRB conducted a records review and determined his discharge was inequitable based on the circumstances

surrounding the discharge (service-connected military sexual trauma and post-traumatic stress disorder (PTSD)). Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to honorable and changed the separation authority to AR 635-200, paragraph 5-3, and a narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF. There are no Behavioral Health or Medical records attached to this case.

6. As a result of the ADRB's decision the applicant was issued a new DD Form 214 on 23 November 2020 which shows in:

- Block 24 - Honorable
- Block 25 - AR 635-200, paragraph 5-3
- Block 28 - Secretarial Authority

7. On 9 October 2024, the Texas Army National Guard corrected the applicant's previously issued NGB Form 22 to show his rank and pay grade as PV2/E-2 with a date of rank of 24 October 2003.

8. The applicant provides several documents showing he is currently receiving compensation from the VA based on a combined disability rating of 50%. These documents further show that as of 29 March 2023, the VA rendered a decision on several of the applicant's claimed conditions which included the following evaluations:

- lumbrosacral strain (claimed as back condition) - 20%
- cervical degenerative arthritis and degenerative disc disease (claimed as cervical strain) -20%
- hearing loss -20%
- a decision on entitlement for bipolar disorder with anxiety and depression was deferred
- a decision for PTSD disorder was deferred

9. By regulation:

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 service.

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

c. When a commander believes that a Soldier of their command is unable to perform the duties of their office, grade, rank, or rating because of physical disability, the commander will refer the Soldier to the responsible Medical Treatment Facility for evaluation.

10. Title 38, U.S. Code, permits the Department of Veterans Affairs (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 error or injustice in the Army not separating the individual for physical unfitness. An Army disability rating is intended to compensate an individual for interruption of a military career after it has been determined that the individual suffers from an impairment that disqualifies him or her from further military service.

11. The ABCMR will decide cases on the evidence of record. It is not an investigative body. 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.

12. 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/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is again applying to the ABCMR with several requests. He states:

"Currently, as it stands, the VA has me service connected at 50% service-connected disability. I am asking for the disability to be upgraded and to be reflected on my DD 214 so I can receive the added benefits for my educational and for my VA backed home loan benefits. Because of how my DD 214 is written out I am unable to receive any benefits other than certain healthcare criteria. I am asking this to help me so I can get what benefits I did and should be deserved."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His original DD 214 for the period of Service under consideration shows he entered the Regular Army on 14 July 2004 and was honorably discharged on 27 August 2004 under the separation authority provided by paragraph 5-

17 of AR 635-200, Active Duty Enlisted Administrative Separations (1 November 2000): Other designated physical or mental conditions.

d. In November 2020, the ADRB found the applicant to have PTSD secondary to military sexual trauma and issued a new DD 214 showing his separation authority was under paragraph 5-3 of AR 635-200: Secretarial Authority.

e. No medical documentation was submitted with the application and there are no encounters in AHLTA.

f. There is insufficient evidence that a mental health condition had failed treatment or the medical retention standards of chapter 3, AR 40-501 prior to his administrative separation. Thus, there would have been no cause for referral to the Disability Evaluation System at that time.

g. Paragraph 3-1 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (1 September 1990) states:

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

h. JLV shows he has been awarded multiple VA service-connected disability ratings in 2020, including ratings for lumbosacral or cervical strain, degenerative arthritis of the spine, and impaired hearing. He has no service-connected disability rating for a mental health condition but PTSD is on his medical problem list.

i. 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. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

j. A Soldier's VA ratings are not listed on their DD 214.

k. It is the opinion of the ARBA Medical Advisor that neither the listing of his VA ratings on his DD 214 nor a referral of his case to the DES is 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. Disability discharge. 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 an increase in the applicant's rating decision at the time of separation was not appropriate and referral of his case to the Disability Evaluation System (DES) is not warranted.

b. Rank to PV2/E-2. Deny. The Board found insufficient evidence to support the applicant was advanced to PV2/E-2, including a DA Form 4187 or other document. The applicant served a period of 1 month and 14 days. The Board determined relief was not warranted.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>
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BOARD DETERMINATION/RECOMMENDATION:

X //SIGNED//

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. Army Regulation (AR) 635-200, Personnel Separations-Active Duty Enlisted Administrative Separations, sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 5 prescribed policy for separation for convenience of the Government. (1) Unless the reason for separation requires a specific characterization, a Soldier being separated for the convenience of the Government will be awarded a character of service of honorable, under honorable conditions, or an uncharacterized description of service if in entry-level status. (2) No Soldier will be awarded a character of service under honorable conditions under this chapter unless the Soldier is notified of the specific factors in his/her service record that warrant such a characterization, using the notification procedure. Such characterization is normally inappropriate for Soldiers separated under the provisions of paragraphs 5-4, 5-11, 5-12, 5-15, 5-16, or 5-17.

b. Paragraph 5-17 states commanders may approve separation under this paragraph on the basis of other physical or mental conditions not amounting to disability and excluding conditions appropriate for separation processing under paragraph 5-11 (Separation of Personnel Who Did Not Meet Procurement Medical Fitness Standards) or 5-13 (Separation Because of Personality Disorder) that potentially interfere with assignment to or performance of duty. Such conditions may include, but are not limited to:

- chronic airsickness
- chronic seasickness
- enuresis
- sleepwalking
- dyslexia
- severe nightmares
- claustrophobia
- other disorders manifesting disturbances of perception, thinking, emotional control or behavior sufficiently severe that the Soldier's ability to effectively perform military duties is significantly impaired

c. Paragraph 5-17b states when a commander determines that a Soldier has a physical or mental condition that potentially interferes with assignment to or

performance of duty, the commander will refer the Soldier for a medical examination and/or mental status evaluation per AR 40-501, Medical Services-Standards of Medical Fitness. A recommendation for separation must be supported by documentation confirming the existence of the physical or mental condition.

d. Paragraph 5-17c states separation processing may not be initiated under paragraph 5-17 until the Soldier has been counseled formally concerning deficiencies and has been afforded ample opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records.

e. Paragraph 5-17e states prior to involuntary separation under paragraph 5-17, the notification procedure in chapter 2, section I; or the administrative board procedure will be utilized. The notification procedure in chapter 2 states that when the reason for separation requires notification procedure, the commander will notify the Soldier in writing that his/her separation has been recommended.

(1) The commander will cite specific allegations on which the proposed action is based and will also include the specific provisions of this regulation authorizing separation.

(2) The soldier will be advised of –

(a) Whether the proposed separation could result in discharge, release from active duty to a Reserve Component, or release from custody and control of the Army.

(b) The least favorable characterization of service or description of separation he/she could receive.

(c) The type of discharge and character of service recommended by the initiating commander and that the intermediate commander(s) may recommend a less favorable type of discharge and characterization of service than that recommended by the initiating commander.

3. AR 635-40, Physical Evaluation for Retention, Retirement, or Separation, in effect at the time, established the PDES and set forth the 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. It stated that after establishing the fact that a Soldier is unfit because of a physical disability, and that the Soldier is entitled to benefits, the PEB must decide the percentage rating for each unfitting disability. The VASRD, as modified in the regulation, is used to establish this rating. This regulation states:

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 service.

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

c. When a commander believes that a Soldier of their command is unable to perform the duties of their office, grade, rank, or rating because of physical disability, the commander will refer the Soldier to the responsible Medical Treatment Facility for evaluation.

d. 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.

4. 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.

5. AR 15-185, Board, Committees, and Commissions-ABCMR prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR will decide cases on the evidence of record. It is not an investigative body. 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. Additionally, applicants may be represented by counsel at their own expense.

//NOTHING FOLLOWS//