

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 January 2025

DOCKET NUMBER: AR20240005011

APPLICANT REQUESTS: in effect, correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) by changing the narrative reason for his separation and corresponding Separation Program Designator (SPD) code to show he was discharged as a result of a medical disability.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 2807-1 (Report of Medical History), 1 March 2024
- DD Form 2808 (Report of Medical Examination), 1 March 2024
- DD Form 214, effective 13 March 2024
- Department of Veterans Affairs (VA) Rating Decision, 13 March 2024
- VA Benefits Decision, 15 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 he sustained injuries through airborne operations which led to prolonged processes for recovery and resulted in him being referred to medical boards four different times. Due to lingering pain and concern expressed by medical care providers, it was determined he could no longer perform duties required of a Soldier in his Military Occupation Specialty (MOS). The medical board denied him medical retirement under the assumption that reclassifying to a different MOS would be appropriate. Due to administrative decisions involving retention and manning shortages, medical retirement was denied, in favor of reclassification to a new MOS and the issuance of a permanent profile. The applicant indicates on his DD Form 293 that post-traumatic stress disorder (PTSD) and traumatic brain injury (TBI) are related to his request.

3. The applicant served in [REDACTED] Air Force National Guard from 7 January 2006 until 5 May 2018, when he was honorably discharged in the rank/pay grade of airman first class/E-3.
4. On 14 September 2020, the applicant enlisted in the Regular Army in the rank/pay grade of private first class/E-3 for a period of 3 years and 26 weeks. Upon completion of training, he was awarded MOS 19D (Cavalry Scout) and assigned to a unit in Germany.
5. Although the applicant's Enlisted Record Brief shows he was assigned a permanent Level-2 hearing profile, his available personnel record is void of documentation showing he underwent an MOS Medical Review Board, that he was referred to the Physical Disability Evaluation System, or that he was reclassified to a different MOS during his period of service.
6. The applicant underwent a separation medical examination on 1 March 2024.
  - a. His DD Form 2807-1 shows he self-reported a history of several medical conditions and indicated he had applied for VA benefits sustained from military service.
  - b. His DD Form 2808 shows:
    - (1) The examining physician noted the applicant had:
      - Shoulder weakness
      - Left Lower Extremity weakness
      - Thrombotic Thrombocytopenic Purpura Lumbosacral spine
      - History of PTSD
      - Hearing aids
      - Permanent Level-2 profile for Lower Extremities
      - Permanent Level-3 profile for Hearing
    - (2) The applicant was not medically qualified for retention due to the following significant or disqualifying diagnoses:
      - Patellofemoral Pain Disorder, bilateral
      - Chronic daily headaches and migraines
      - Hearing loss
      - Gastroesophageal Reflux Disease
      - Erectile dysfunction
7. Orders and his DD Form 214 show he was honorably discharged in the rank/grade of specialist/E-4 on 13 March 2024, under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 4, by reason of Completion

of Required Active Service. He was assigned SPD code "KBK" and Reentry code "1." He was credited with completion of 3 years and 6 months of active service.

8. The applicant provides:

a. A VA Rating Decision letter dated 13 March 2024, which shows the VA granted him service connection and disability ratings for several conditions, including PTSD and TBI.

b. A VA Benefits Decision letter dated 15 March 2024, which shows the applicant was awarded a combined disability rating of 100 percent and provides him information and guidance about his benefits.

9. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

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 (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, 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 in essence requesting a referral to the Disability Evaluation System (DES): He states:

"While on active service, injuries were sustained through airborne operations which lead to prolonged processes for recovery, which ended in being submitted for a medical board 4 different times. Medical board denied medical retirement under the assumption that a MAR2 [Military Occupational Specialty Administrative Retention Review] reclass would be appropriate. But due to lingering pain and the concern from medical providers, recommended medical retirement as duties that were part of being a soldier were unable to be met with the injuries. Due to administrative decisions involving retention and manning shortages, Medical retirement was denied in favor of reclass and permanent profile."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 for the period of Service under consideration

shows the former cavalry scout entered the regular Army on 14 September 2020 and was honorably discharged at the completion of his required active service on 13 March 2024 under provisions provided in AR 635-200, Active Duty Enlisted Administrative Separations (28 June 2021). It does not show a period of Service in a hazardous duty or imminent danger pay area.

d. The applicant's EMR entries for his last twelve (12) months of service were reviewed.

e. In early 2023, the applicant was found to have significant sensorineural hearing loss for which he received hearing aids. A 31 May 2023 encounter shows the applicant was doing with his hearing aids and he was directed to follow-up as needed.

f. His pre-separation medical examination shows his hearing loss was the only condition which did not meet retention standards and this is the condition which would have been referred to a MAR2.

g. From paragraph 3-1 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (19 January 2017):

"The MAR2 is an administrative process for Soldiers who meet the medical retention standards of AR 40-501, but who nonetheless may not be able to satisfactorily perform the duties of their PMOS [primary military occupational specialty] or AOC [area of concentration] in a worldwide field or austere environment because of medical limitations. The MAR2 process is used to determine whether a Soldier will be retained in their PMOS or AOC or reclassified into another PMOS or AOC."

h. No evidence of a MAR2 submitted with the application or found in iPERMS.

i. A two-year history of chronic right knee pain was the only other significant condition for which the applicant was seen during his last year of service. The applicant was evaluated by orthopedics on 8 March 2023. He was diagnosed with patellofemoral syndrome for which conservative treatment was recommended:

"ASSESSMENT: Persistent left and right knee pain associated to patellofemoral pain and overuse syndrome.

COMMENT: Discussed diagnosis, medication(s)/treatment(s), alternatives, and potential side effects with the patient who indicated their understanding. Medical reconciliation performed with the patient. No learning or language barriers noted during clinical encounter.

Discussed with the patient the physical and radiographic findings. Recommended a trial of Visco-supplementation for pain management. The risks and benefits were discussed with the patient and he consented to proceed. The plan is to continue with activity modifications, nonsteroidal anti-inflammatory medications, profiling and disposition by his primary care provider and range of motion exercises.”

j. The applicant underwent his pre-separation medical examination of 1 March 2024. The provider documented shoulder weakness on exam, left lower extremity weakness more than the right side, tenderness to palpation of the lumbosacral spine, and a history of PTSD. The significant diagnoses were patellofemoral pain disorder, chronic daily headaches/migraine, hearing loss, gastroesophageal reflux disease, and erectile dysfunction. As noted earlier, the applicant’s hearing loss was the only potentially duty limiting condition noted on the examination and for which the applicant was referred to a MAR2. There is no evidence the MAR2 occurred, possibly because he elected to separate at the end of his required active service. His lumbar spine and lower extremity issues were noted to only cause non-duty limiting limitations. There are no listed limitations for his upper extremities of mental health.

k. A search in ePEB shows no record of the initiation of DES processing.

l. There is insufficient probative evidence the applicant had medical condition which warranted referral to the Disability Evaluation System prior to his voluntary separation at the completion of his required active service. Thus, there was no cause for referral to the Disability Evaluation System.

m. The DES compensates Soldiers when their career is terminated prior to retirement due to a service incurred medical condition. Paragraph 1-1b of AR 635–40, Physical Evaluation for Retention, Retirement, or Separation (19 January 2017) states a purpose of the DES is to:

“Provide benefits for eligible Soldiers whose military Service is terminated because of a service-connected disability.”

n. JLV shows he has been awarded multiple VA service-connected disability ratings for a combined rating of 100%. These include PTSD, irritable colon, sleep apnea, and lumbosacral strain. However, the DES only compensates an individual for service incurred medical condition(s) which have been determined to disqualify him or her from further military service and thus prematurely terminate their military 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.

o. It is the opinion of the Agency 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. 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.

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.

4/8/2025

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 (USC), Section 1552(b), provides that applications for correction of military records must be filed within three 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 three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Title 10, USC, Section 1556 provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
3. Army Regulation 15-185 prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that 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. It is not an investigative body.
4. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel.
  - a. Paragraph 3-7a provides that an honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.
  - b. Chapter 4 provides a Soldier will be separated upon expiration of enlistment or fulfillment of service obligation.
5. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. This regulation prescribed that the separation code "KBK" was the appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, Chapter 4, based on completion of required active service. Additionally, the SPD/RE Code Cross Reference Table established that RE code "1" was a proper reentry code to assign to Soldiers separated under this authority and for this reason.

6. Army Regulation 40-501 (Standards of Medical Fitness), in effect at the time, provides information on medical fitness standards for induction, enlistment, appointment, retention, and related policies and procedures. Chapter 3 (Medical Fitness Standards for Retention and Separation, Including Retirement), provides a listing of all medical conditions and specific causes for referral to a medical evaluation board (MEB). It states:

a. The various medical conditions and physical defects which may render a Soldier unfit for further military service and which fall below the standards required for all enlisted Soldiers of the Active Army, Army Reserve National Guard, and United States Army Reserve. The medical conditions and physical defects, individually or in combination, are those, that:

(1) Significantly limit or interfere with the Soldier's performance of their duties.

(2) 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.

(3) May compromise the health or well-being of other Soldiers.

(4) May prejudice the best interests of the Government if the individual were to remain in the military Service.

b. Soldiers with conditions listed in Chapter 3, who do not meet the required medical standards will be evaluated by an MEB. Possession of one or more of the conditions listed in this chapter does not mean automatic retirement or separation from service. Physicians are responsible for referring Soldiers with conditions listed in Chapter 3 to an MEB.

7. Army Regulation 635-8 (Personnel Separations - Separation Processing and Documents), in effect at the time, prescribed the separation documents that must be prepared for Soldiers at the time of retirement, discharge, or release from active duty service or control of the Active Army. It established standardized policy for preparing and distributing the DD Form 214. The specific instructions for the following stated:

- Block 24 (Character of Service) - characterization or description of service is determined by directives authorizing separation
- Block 25 (Separation Authority) - obtain correct entry from regulatory or directives authorizing the separation

- Block 26 (Separation Code) - enter the correct SPD representing the reason for separation (see Army Regulation 635-5-1)
- Block 27 (RE Code) - enter reentry eligibility code (see Army Regulation 601-210 (Personnel Procurement Qualifications and Procedures for Processing Applicants for Enlistment and Reenlistment in the Regular Army))
- Block 28 (Narrative Reason for Separation) - enter the reason for separation as shown in Army Regulation 635-5-1 based on the regulatory or other authority

8. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) establishes the Physical Disability Evaluation System according to the provisions of Title 10, USC, chapter 61, Retirement or Separation for Physical Disability, and Department of Defense Directive 1332.18. It states:

a. The mere presence of an impairment does not, 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 the requirements of the duties the Soldier reasonably may be expected to perform because of tier office, grade, rank or rating. To ensure all solders are physically qualified to perform their duties in a reasonable manner, medical retention qualification standards have been established in Army Regulation 40-501. These guidelines are used to refer Soldier to an MEB.

b. 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 they can no longer continue to reasonably perform because of a physical disability incurred or aggravated in service.

c. When a Soldier is being processed for separation or retirement for reasons other than physical disability, continued performance of assigned duty commensurate with his or her rank or grade until the Soldier is scheduled for separation or retirement, creates a presumption that the Soldier is fit. An enlisted Soldier who reenlistment has not been approved before the end of his or her current enlistment, is not processing for separation; therefore, this rule does not apply. The presumption of fitness may be overcome if the evidence establishes that:

(1) The Soldier was, in fact, physically unable to perform adequately the duties of his or her office, grade, rank or rating for a period of time because of disability. There must be a causative relationship between the less than adequate duty performance and the unfitting medical condition or conditions.

(2) An acute, grave illness or injury or other significant deterioration of the Soldier's physical conditions occurred immediately prior to, or coincident with

processing for separation or retirement for reasons other than physical disability and which rendered the Soldier unfit for further duty.

d. The fact that a Soldier has a condition listed in the Department of Veterans Affairs schedule for Rating Disabilities does not equate to 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.

e. The medical treatment facility commander with the primary care responsibility will evaluate those referred to him/her and will, if it appears as though the member is not medically qualified to perform duty or fails to meet retention criteria, refer the member to a MEB. Those members who do not meet medical retention standards will be referred to a Physical Evaluation Board (PEB) for a determination of whether they are able to perform the duties of their grade and MOS with the medically disqualifying condition. The PEB evaluates all cases of physical disability equitably for the Soldier and the Army. The PEB investigates the nature, cause, degree of severity, and probable permanency of the disability of Soldiers whose cases are referred to the board. Finally, it makes findings and recommendations required by law to establish the eligibility of a Soldier to be separated or retired because of physical disability.

9. 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 (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; Traumatic Brain Injury; 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 to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

10. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

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, BCM/NRs

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.

//NOTHING FOLLOWS//