

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 January 2025

DOCKET NUMBER: AR20240005040

APPLICANT REQUESTS: reconsideration of his prior request for a medical retirement.

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

- DD Form 149 (Application for Correction of Military Record)
- medical statement from Neurology Consultants of Montgomery (Alabama), dated 10 May 2024
- VA medical Progress Notes (one page)
- Department of Veterans Affairs (VA) rated disabilities document
- letter from the applicant to the VA with various related documents
- release from active duty orders

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) on 11 February 1970.

2. The applicant states:

a. He was released and separated by the Army command at Fort Hood, TX (currently known as Fort Cavazos). While he was at the hospital, he was on the Temporary Disability Retired List but should have been placed on the Permanent Disability Retired List. He was injured in Vietnam, awarded the Purple Heart, and sent to the hospital in Japan then to Walter Reed Army Hospital. His entire life he has been fighting for justice. He is providing evidence showing he is receiving service-connected disability compensation from the VA.

b. He is providing a medical document he received from a neurologist showing he was diagnosed with neurodegenerative disease and vascular dementia and traumatic brain injury (TBI). Please, acknowledge this illness as it has progressed from the time they were hit by enemy fire in Vietnam in 1968. He received the Purple Heart without being medically discharged like his Anglo-Saxon comrades. One Soldier died on

contact. He continues to suffer from TBI, he still has metal in the head and in his eye, and he cannot blink to this day.

3. The applicant record shows he was inducted into the Army on 9 June 1967.

4. The applicant's DA Form 20 (Enlisted Qualification Record) shows he arrived in Vietnam on 2 November 1967. The DA Form 20 also shows he was reassigned to Camp Zama, Japan, in a patient status on 27 September 1968 and to Lyster Army Hospital, Fort Rucker, Alabama on 29 September 1968 and then to Fort Hood (casual) on 16 December 1968.

5. Orders issued on 28 May 1969 directed the applicant's release from active, not by reason of physical disability, effective 6 June 1969.

6. The applicant's DD Form 214 shows he was released from active duty and transferred to the U.S. Army Reserve on 6 June 1969 by reason of expiration of term of service. The DD Form 214 confirms he was awarded the Purple Heart.

7. The applicant provided:

a. A medical statement from Neurology Consultants of Montgomery (Alabama), showing he was diagnosed with neurodegenerative disease secondary to vascular dementia and TBI.

b. A VA rated disabilities document showing he was granted service-connected disability compensation for various conditions with a combined disability rating of 50%.

8. The applicant's records show he submitted an application to the ABCMR, dated 28 July 1969, requesting correction of his records by changing his type of separation to a disability retirement.

9. On 9 January 1970, in connection with the processing of the applicant's request, the ABCMR requested a medical review from the Army Office of the Surgeon General (OTSG), Physical Standards Division. The OTSG provided a medical evaluation memorandum, dated 15 January 1970, stating the following:

a. The applicant seeks medical disability retirement in lieu of his separation for term of service on 6 June 1969. In support of his claim, he submits a Veterans Administration letter awarding a combined 50% disability rating for scars, chest, multiple, with keloid formation, residuals of shell fragment wound, 30%, (VA Code 7805), wound, muscle group III, left, residuals of shell fragment wound, 20%, (VA Code 5203). and scars, face, neck and scalp, residuals of shell fragment wound, 10%, (VA Code 7800).

b. He sustained multiple fragment wounds to his anterior chest and left arm when a rocket propelled grenade round struck a tank in which he was riding on 10 September 1968 in the Republic of Vietnam. He was initially treated and debrided at the 95th Evacuation Hospital and then transferred to Camp Zama, Japan, where delayed primary closure of the chest, neck and left arm was done on 16 September 1968. He was then transferred to Lyster Army Hospital, Fort Rucker, Alabama for further care.

c. Skin grafts were applied to his left shoulder with 100% take. On 7 November a large piece of shrapnel was removed from the right anterior chest. He subsequently regained full use of his extremities. It was felt that he could be returned to duty with a temporary profile and should be ready for full duty in two months .

d. After a thorough review of all available records in this case by the consultant staff to the Surgeon General, it is the opinion that the applicant was medically fit for retention at the time of his separation on 6 June 1969. He has no condition that would render him unfit under the provisions of Army Regulation 40-501 (Standards of Medical Fitness).

10. On 11 February 1970, the ABCMR considered the applicant's application and records and determined that insufficient evidence was presented to indicate probable material error or injustice. Accordingly, his application was denied. The Army Adjutant General notified the applicant of the ABCMR's denial of his application by letter dated 27 February 1970.

11. 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.

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 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 reconsideration of their prior denial of his request for a referral to the Disability Evaluation System (DES).

c. The Record of Proceedings outlines the applicant's military service and the circumstances of the case. His DD 214 shows he entered the regular Army 9 June 1967 and received an honorable discharge on 6 June 1969 under the provisions provided in in section VI, Chapter 2, of AR 635-200, Personnel Management – Enlisted Personnel (1 June 1967) at the expiration of his term in service. The applicant's separation program number (SPN) was 201 for expiration term of service.

d. This request was previously denied by the ABCMR in February 1970. Rather than repeat their findings here, the board is referred to the record of proceedings and the OTSG medical review for that case. This review will concentrate on the new evidence submitted by the applicant.

e. In a 10 May 2024 To Whom This May Concern memorandum, the provider states the applicant "has been diagnosed with neurodegenerative disease secondary to vascular dementia and traumatic brain injury." Additional post-service documentation shows the applicant screened positive for PTSD, diagnosed with hypertensive heart disease, and was diagnosed with sleep apnea.

f. There is insufficient probative evidence the applicant had any permanent medical condition which would have failed the medical retention standards of chapter 3, AR 40-501 prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System.

g. JLV shows he has been awarded multiple VA service-connected disability ratings, including PTSD in 2008, arteriosclerotic heart disease in 2011, and loss of eye in 2012. 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 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 ARBA Medical Advisor that a referral of his case to the Disability Evaluation System remains 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 findings and recommendation outlined in the medical review, the Board concluded there was insufficient evidence of an error or injustice warranting changing the applicant's narrative reason for separation to medical retirement.

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.

//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.

REFERENCES:

1. Army Regulation 40-501 (Standards of Medical Fitness) provides that for an individual to be found unfit by reason of physical disability, he or she must be unable to perform the duties of his or her office, grade, rank or rating. Performance of duty despite impairment would be considered presumptive evidence of physical fitness.
2. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation) establishes the Physical Disability Evaluation System (PDES) 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 or her office, grade, rank, or rating. It provides that a Medical Evaluation Board is convened to document a Soldier's medical status and duty limitations insofar as duty is affected by the Soldier's status. A decision is made as to the Soldier's medical qualifications for retention based on the criteria in Army Regulation 40-501.
 - 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. The Army must find that a service member is physically unfit to reasonably perform his or her duties and assign an appropriate disability rating before he or she can be medically retired or separated.
 - c. When a member is being processed for separation for reasons other than physical disability (e.g., retirement, resignation, relief from active duty, administrative separation, expiration term of service, etc.), his or her continued performance of duty, until he or she is referred to the PDES for evaluation for separation for reasons indicated above, creates a presumption that the member is fit for duty.
3. Title 38, U.S. Code, 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.
4. Title 38, Code of Federal Regulations, Part IV is the VA Schedule for Rating Disabilities. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge. As a result, the VA, operating under different policies, may award a disability rating where the Army did not

find the member to be unfit to perform his duties. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

5. Section 1556 of Title 10, U.S. Code, 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.

//NOTHING FOLLOWS//