

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 June 2025

DOCKET NUMBER: AR20240005466

APPLICANT REQUESTS: to be retained in the U.S. Army Reserve (USAR) in lieu of involuntary retirement. He further requests a personal appearance hearing 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)
- Federal Bureau of Investigation Form FD948 (FBI Certificate of Duty Status)
18 September 2019
- Memorandum, U.S. Army Reserve Command, 19 January 2021
- Letter, Aspera Development, 13 April 2021
- Memorandum, Headquarters, 10-80th OES Battalion, 14 April 2021
- Memorandum, Evans Army Community Hospital, 21 April 2021
- Memorandum, 80th Regiment, 10th Battalion Headquarters (OES), 25 April 2021
- Memorandum, Headquarters, 11th Battalion/95th Regiment (OES), 25 April 2021
- Memorandum, U.S. Military Academy, 26 April 2021
- Letter, MECC Chief, 27 April 2021
- DA Form 7652 (Disability Evaluation System (DES) Commander's Performance and Functional Statement), 28 April 2021
- Memorandum, MCTD2, 2nd Brigade, 91st Training Division, 29 April 2021
- Memorandum, 10th Battalion, 80th Regiment (OES), 30 April 2021
- Memorandum, U.S. Army Legal Services Agency, 30 May 2023
- DA Form 3349-SG (Physical Profile Record)
- DA Form 199-1 (Formal Physical Evaluation Board (PEB) Proceedings), 2 June 2023
- Memorandum, U.S. Legal Services Agency, 9 June 2023
- Memorandum, Headquarters, U.S. Army Physical Disability Agency (USAPDA),
30 June 2023
- Letter, USAPDA, 24 July 2023
- Memorandum, Secretary of the Army, 9 February 2024
- Memorandum, U.S. Army Human Resources Command (AHRC), 28 March 2024
- Letter, USAPDA, 8 April 2024

- Order 0007781307.00, Department of the Army, 8 April 2024
- Memorandum, USAPDA, 18 February 2025
- Letter, Army Review Boards Agency (ARBA), 18 February 2025

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. He is being involuntarily retired on 1 June 2024 for a Non-Duty related PEB decision which is based upon an Army policy that was just made obsolete with the specific underlying policy goal of stopping the very type of retirements. The 99th Readiness Division just issued retirement orders dated for 1 June 2024. He respectfully requests the ARBA to review the totality of his case under this new policy and retain him in the USAR.

b. He is being involuntarily retired from the USAR due to a policy that is no longer in effect. Specifically, Army Directive 2024-01 (Army Fitness Determinations and Deployability) was released 9 February 2024 and directly conflicts with the underlying reasons for the 31 May 2023 PEB's determination of him as unfit for duty. He was diagnosed with Antithrombin III deficiency which is fully treatable with prescribed anticoagulant medication (20mg Xarelto daily). This medication initiated two governmental reviews: a) FBI – as an FBI Special Agent, he was found fit for duty and authorized to continue all law enforcement actions including making arrests, executing search warrants, etc. As evidence of this, he most recently executed a search of a human trafficked 15-year-old Guatemalan girl on 18 April 2024, and regularly performs duties at significantly higher risk than his current USAR assignments. b) Army – conversely, 16 November 2020 an Army physician issued a P3 profile relying on Army Regulation 40-501 (Standards of Medical Fitness), Chapter 3-25(f) identifying this prolonged anticoagulant medication as disqualifying for continued service.

c. In response to a 19 January 2021 USAPDA notification letter, he then requested a Non-Duty Related PEB in efforts for his retention. On 31 May 2023, a PEB convened where he petitioned that he was fulfilling 2 non-deploying, critically short roles for the USAR. Ultimately, with no discretion afforded to the PEB and despite clear indications during the proceeding that the PEB members were empathetic to valid arguments made, he was found unfit for duty and later provided a 15-year Retirement Letter. The guiding policy germane to the PEB's finding was Army Regulation 635-40, Chapter 5-4(e)(2) "the PEB will find Soldiers unfit who are medically disqualified for worldwide

deployment in a field or austere environment." On 9 February 2024, Army Directive 2024-01 substantially revise[d] Army Regulation 635-40 "by authorizing the PEB to determine a Soldier's fitness for duty based on multiple criteria, including the ability to deploy with a medical waiver." Critically, nearly all of the criteria within Army Directive 2024-01, if applied in his case, would support his retention and allows for "PEBs to find Soldiers fit for duty based on the Soldier's ability to perform the duties of the assigned office, grade, rank or rating." As an TPU Reservist with 1 June 2024 separation orders, he petitioned the USAPDA via a Congressional Inquiry to re-open his case under this superseding policy, yet USAPDA failed to consider the substance of this appeal and declined the matter as "administratively complete," referring him to ARBA.

d. Among the multiple criteria outlined in Army Directive 2024-01, facts supporting his retention are as follows: 1) Currently, he fulfills a critically short role as a fully certified Command and General Staff Officer Course instructor required for the Professional Military Education of field grade officers across the USAR and National Guard. This role is in locations where adequate medical care is available and does not deploy to any environments where there is high risk of traumatic injury; 2) For 11 years, he volunteered in another critically short USAR role as a certified West Point Admissions Officer. This role is also in locations where adequate medical care is available and also does not deploy to any environments where there is high risk of traumatic injury; 3) Numerous letters of support are attached to this submission citing that he excels at the duties of his office, grade, and rank; 4) Army & civilian medical doctors provided opinions in favor of retention stating that his medical condition is fully controlled through medication and current assignments; 5) His environment can be easily controlled to prevent exacerbating his medical condition without imposing any unreasonable requirements upon the Army. His medication is readily available, and he is capable of carrying several years supply no matter the location. Annual blood test to evaluate his coagulation levels can be conducted at almost any medical facility. His Cleveland Clinic and Department of Veterans Affairs (VA) hematologists no longer require specialist visits and he is now treated solely by a general practitioner; and 6) He excelled at the new Army Combat Fitness Test standards including one taken on 23 March 2024 with 80 points or better in every executed event.

e. Further, a fit for duty decision under the new Army Directive 2024-01 reverts the overarching guidance back to the second part of Army Regulation 40-501, Chapter 3-25(f), "If found fit for duty by a PEB, Soldiers will be restricted to assignment locations where adequate medical care is available and will not deploy to an environment where there is high risk of traumatic injury (for example, combat zone)." As the prior policy, Army Regulation 635-40, was written, there was no situation where a Soldier on anticoagulant medication could be found fit for duty. Thus, a Soldier could never enact the second part of Army Regulation 40-501, Chapter 3-25(f) as the policy was intended. Army Directive 2024-01 now correctly links those policies by granting discretion and

decision-making authority back to the PEB [ARBA in this case] and outlines retention solutions for affected Soldiers. For several years, he fought rigorously for his retention in the USAR. He has exhausted all reasonable avenues to obtain a decision for retention, including at great expense and time. As directed by USAPDA, he pursued a Continuation on Active Reserve (COAR) status, yet Non-Duty Related PEBs are not authorized COARs nor is an exception to policy available to enable those proceedings. He initiated two Congressional inquiries, yet the USADPA declined to review his case under the new Army Directive 2024-01 guidance without substantively considering the matter. The ARBA is the correct method to review the decision made by the PEB and overturn their finding based on the new policy, and the underlying goals of that policy, which is to retain Soldiers like him in critical-need positions. In the best interests of the Army, he asks ARBA to utilize current policies to allow this highly skilled officer continued service for this nation.

3. The applicant was appointed a Reserve commissioned officer in the Army of the United States on 31 May 2003. Evidence shows he served on active duty from 31 May 2003 to 31 May 2008, and he served in Kuwait/Iraq from 12 January 2005 to 4 January 2006. On 31 May 2008, he was honorably discharged for miscellaneous/general reasons and transferred to the USAR Control Group (Reinforcements) to complete his service obligation.

4. On 19 January 2021, a determination was made that he no longer met Army medical standards for retention IAW Army Regulation 40-501, Chapter 3, due to his P3/P4 condition(s) on his DA Form 3349 - Physical Profile Record.

5. On 2 June 2023, a formal PEB (FPEB) convened and found the applicant physically unfit for Anti-thrombin III deficiency requiring lifelong use of anticoagulant drugs and that his disposition be referred for case disposition under Reserve components regulations.

6. On 24 March 2024, he was informed that as a member of the Selected Reserve who has been medically disqualified from further service and has attained at least 15 years but less than 20 years of qualifying service, he is eligible to apply for retired pay and benefits upon attaining age 60.

7. Order 0007781307.00, Department of the Army, dated 8 April 2024, transferred the applicant to the Retired Reserve effective 1 June 2024.

8. The applicant provides evidence as listed above in support of his contentions to include information from the FBI noting he had no duty limitations or work restrictions, numerous letters in support of his request for retention, and Army Directive 2024-01 which revised Army Regulation 635-40 by authorizing the PEB to determine a Soldier's fitness for duty based on multiple criteria, including the ability to deploy with a medical waiver.

9. During the processing of this case, on 18 February 2025, an advisory opinion was obtained from the Legal Advisor, USAPDA. The advisory official stated, in part:

a. On 2 June 2023, the formal FPEB convened and found the applicant, who was represented by legal counsel at the formal hearing, to be unfit for the condition, Anti-thrombin III deficiency requiring lifelong use of anticoagulant drugs. With the assistance of counsel, the applicant non-concurred with the findings on 10 June 2023 and requested reconsideration and an in-person hearing. At the time of his request, the Army had not issued a Directive for in-person hearings at the FPEB Appeal level and, therefore, none was held. His case was administratively finalized and, because Non-Duty Related procedures were in effect, it was thereafter forwarded to the Reserve Component (99th Readiness Command) on 30 June 2023 for disposition.

b. In a Congressional Response, dated 24 July 2023, the USAPDA Deputy Commander noted that the authority to conduct in-person hearings at the FPEB Appeal level had not been promulgated by the Secretary of the Army. Therefore, an in-person appellate hearing, as requested, was not authorized at that time. He further explained that, in accordance with Army Regulation 635-40, his appellate staff had reviewed all available evidence in the casefile, and it was determined that the applicant's FPEB was properly adjudicated and that the governing rules were properly applied.

c. On 8 April 2024, in response to another Congressional Inquiry filed on the applicant's behalf, in which he sought essentially the same remedy that is now the subject of the instant ARBA application, the USPDA Deputy Commander replied that corrective action was outside the authority of the USPDA. USPDA's Congressional Response explained that Army Directive 2024-01 was published on 9 February 2024 and was not retroactive in nature. The Congressional Response further noted that, on 30 July 2023, the case was finalized on behalf of the Secretary of the Army and, therefore, had reached administrative finality which precluded further action at the USAPDA level. The applicant was informed that he may seek relief with the ABCMR which, unlike the PDA, had authority to change completed disability cases.

d. Army Regulation 15-185, paragraph 2-9, states that, with respect to the allegations of errors related to military records, there is a presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. Based on the facts presented, the applicant has failed to overcome the presumption of administrative regularity or otherwise demonstrate error or injustice by, or within the current jurisdiction of, the USAPDA. The applicant's case was properly considered by the FPEB under the law that was in existence at the time of his hearing in June 2023 (i.e., Army Regulation 635-40, dated 19 January 2017). As noted above, based on a plain reading of Army Directive 2024-01, which was published 9 February 2024, it is not retroactive in nature. Moreover, Army Directive 2024-01 does not mandate a finding that the applicant is fit under the facts presented. Rather, it

merely established 5 factors to be considered when determining a Soldier's ability to be found fit in consideration of being deployable. Notably, no single factor is dispositive. As stated in its 8 April 2024 Congressional Response, the USAPDA has no legal authority to take action on a closed case in order to retroactively apply an Army Directive that, on its face, does not permit retroactive application. This is especially true where the Army Directive does not, in and of itself, direct a different outcome in the case. For the reasons stated above, the request is legally insufficient.

10. On 18 February 2025, a copy of the advisory opinion was forwarded to the applicant for information and to allow him the opportunity to submit comments or a rebuttal. To date, he has not responded.

11. Army Regulation 15-185 (ABCMR) states an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. One potential outcome was to deny relief based on the advisory opinion noting the Army Directive 2024-01, published on 9 February 2024 which showed it was not retroactive in nature and legally insufficient. However, upon review of the applicant's petition, available military records and Headquarters U.S. Army Physical Disability Agency (USAPDA) legal advisory opinion, the Board majority considered the advising official finding the applicant's request legally insufficient as it relates to the USPDA's authority for corrective actions.

2. The Board noted a Formal Physical Evaluation Board (FPEB) convened and, with the applicant represented by legal counsel, determined that he was unfit for continued military service due to Anti-thrombin III deficiency, a condition requiring lifelong anticoagulant therapy. The applicant, with the assistance of counsel, formally non-concurred with the FPEB's findings on 10 June 2023 and requested reconsideration, including an in-person appellate hearing. However, at the time of the request, no directive authorizing in-person hearings at the FPEB Appeal level had been issued by the Army. Consequently, no such hearing was held. The case was administratively finalized under Non-Duty Related (NDR) procedures and forwarded to the Reserve Component (99th Readiness Division) for further disposition on 30 June 2023.

3. The Board recognized the applicant bears the burden of demonstrating an error or injustice by a preponderance of the evidence. Based on review of the available facts, the applicant has not overcome the presumption of administrative regularity, nor has he provided sufficient evidence to establish error or injustice within the jurisdiction of the U.S. Army Physical Disability Agency (USAPDA). However, notwithstanding the legal opine finding the applicant's contentions legally insufficient, the Board majority voted to grant relief on the basis that the applicant is currently meeting the needs of the USAR, and he should be retained. As such, the Board granted relief.

4.. The applicant's request for a personal appearance hearing was carefully considered. However, in this case, the evidence of record and independent evidence provided by the applicant 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.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by:

- a. Amending his DA Form 199-1 (Formal Physical Evaluation Board (PEB) Proceedings), dated 2 June 2023 to show the PEB found the applicant's condition of Antithrombin III deficiency requiring lifelong use of anticoagulant drugs was fitting and he is able to deploy with a medical waiver.
- b. Revoking Order 0007781307.00, Department of the Army, dated 8 April 2024 and retaining him in the U.S. Army Reserve (USAR).

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. Non-Duty Related Notification of Medical Disqualification from the USARC, AR-MMC
As a point of reference for the Board, a standard Non-Duty Related Notification of Medical Disqualification from the USARC, AR-MMC to service members normally advises them they have one of four available options to elect on the Election of Options form:
 - a. In order to elect Option A: Army Reserve Military Retirement, you must have twenty (20) or more credible years of service. This is NOT a Medical Retirement and

any benefits eligible to you will be received at age 60 - minus qualified Active Duty years after 2008. Reference the Reduced Retirement Age HRC Memo enclosure.

b. In order to qualify for Option B: Early Army Reserve Military Retirement, you must have fifteen (15), but less than twenty (20), credible years of service. This is NOT a Medical Retirement and any benefits eligible to you will be received at age 60 minus qualified Active Duty years after year 2008. Reference the Reduced Retirement Age HRC Memo enclosure.

c. Final discharge under election Option C: Honorable Discharge, is available in the event you have less than fifteen (15) credible years of service.

d. Finally, election Option D: PDES, is also commonly referred to as the Non-Duty Physical Evaluation Board (NDPEB). This is NOT a Medical Evaluation Board (MEB). The main purpose of this election is for a board to make a final determination of your medical fitness for retention and/or separation. The NDPEB does not make any determination of benefits of any kind.

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. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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. The ABCMR considers individual applications that are properly brought before it. The ABCMR will decide cases on the evidence of record. It is not an investigative body. 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//