

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 February 2025

DOCKET NUMBER: AR20240005763

APPLICANT REQUESTS: in effect, duty-related physical disability retirement due to hearing loss, in lieu of honorable administrative discharge from the Army National Guard (ARNG) due to non-selection by the Qualitative Retention Board (QRB).

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

- DD Form 149 (Application for Correction of Military Record)
- Case Information and Privacy Act Release Form
- email correspondence between Member of Congress' Office and the Army Office of the Chief of Legislative Liaison
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) covering the period ending 4 April 1965
- National Guard Bureau (NGB) Form 22 (Report of Separation of Record of Service) covering the period ending 15 September 1969
- Air Force Form 47 (Certificate of Eligibility and Record of Personnel Security Clearance), 14 September 1972
- NGB Form 22 covering the period ending 7 April 1984
- DD Form 4 (Enlistment/Reenlistment Document), 8 April 1984
- Standard Form 520 (Electrocardiographic Record), 8 December 1984
- Standard Form 93 (Report of Medical History), 8 December 1984
- Standard Form 88 (Report of Medical Examination), 8 December 1984
- NGB Form 22 covering the period ending 7 April 1987
- Air National Guard of Montana (MT) Honorable Discharge Certificate, 7 April 1987
- Headquarters, Air Reserve Personnel Center Reserve Order EK 2900, 16 July 1987
- Headquarters, Air Reserve Personnel Center letter, 31 July 1987
- U.S. Air Force Honorable Discharge Certificate, 13 August 1987
- DD Form 4, 14 August 1987
- DA Form 2166-7 (Noncommissioned Officer Evaluation Report (NCOER) covering the period ending October 1989
- DA Form 4836 (Oath of Extension of Enlistment or Reenlistment), 25 May 1990
- Montgomery GI Bill (MGIB) Application, 25 May 1990

- DA Form 5435-R (Statement of Understanding-Selected Reserve Educational Assistance Program), 25 May 1990
- 6229th Reserve Forces School letter of appreciation, 29 June 1990
- New GI Bill Eligibility sheet, 13 August 1990
- DA Form 428 (Application for Identification Card), 4 September 1990
- NCOER covering the period ending October 1990
- MGIB Verification Worksheet, 18 December 1990
- DD Form 2384 (Selected Reserve Educational Assistance Program (GI Bill) Notice of Basic Eligibility), 18 December 1990
- NCOER covering the period ending October 1991
- NCOER covering the period ending October 1993
- NCOER covering the period ending October 1994
- Army National Guard (ARNG) Retirement Points History Statement, 31 October 1994
- DA Form 4187 (Personnel Action), 15 November 1994
- State of Montana, Office of the Adjutant General Orders 236-007, 16 December 1994
- NGB Form 22 covering the period ending 31 December 1994
- MTARNG memorandum, 7 February 1995
- resume, undated
- DD Form 398-2 (Personnel Security Questionnaire), undated
- DD Form 368 (Discharge or Clearance from Reserve Component), undated
- Air Reserve Personnel Center (ARPC) Form 0-78 (Conditional Release/Discharge Information), undated
- Reserve Retirement General Information sheet, undated
- birth certificate
- marriage certificate
- marriage license

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. During his 29 years of service, he worked in a chopper as a crew chief gunner then in the U.S. Air Force for 15 years. He was a full-time security guard around jet engines then transferred over to the Army National Guard as an Abrams tank training instructor.

b. He feels because hearing aids or ear/hearing protection were not available for use while working around the helicopters and the engines of the Abrams tanks, that is why he lost his hearing in his left ear.

c. He never got any disability for this injury. At the time of his retirement, he had only 2 years' time of service remaining and he could not pass his Army Physical Fitness Test (APFT), so they paid him 2 years bonus of \$2,500.00 and gave him no credits for retirement, despite loss of hearing in his left ear which should have been compensated with a disability retirement.

d. Correspondence from the office of his Member of Congress further shows the applicant is looking to have his service records corrected to enable him to receive Department of Veterans Affairs (VA) home healthcare.

3. The applicant's ARNG Retirement Points History Statement shows he enlisted in the MTARNG on 16 September 1963.

4. A DD Form 214 shows the applicant was ordered to Active Duty for Training on 6 October 1964 and was honorably released from active duty on 4 April 1965, for the convenience of the Government, and transferred back to his MTARNG unit.

5. The applicant's first NGB Form 22 shows he was honorably discharged from the MTARNG on 15 September 1969, due to expiration term of service (ETS). He was credited with 6 years of service and his Military Occupational Specialty (MOS) is listed as 67N (Crew Chief).

6. The applicant's second NGB Form 22 shows he enlisted in the Montana Air National Guard (MTANG) on 8 April 1972, and was honorably discharged on 7 April 1984, due to ETS. He was credited with 12 years of net service this period and his MOS is listed as 81170 (Security Supervisory).

7. A DD Form 4 shows the applicant reenlisted in the MTANG on 8 April 1984.

8. A Standard Form 520 shows the applicant's Electrocardiographic (ECG) Record from 8 December 1984. It shows:

- Rhythm: Sinus slow
- Axis deviation: Normal
- P Waves: Within Normal Limits (WNL)
- ORS Complexes: WNL
- RS-T Segment: Isoelectric
- T Waves: WNL

- Unipolar Extremity Leads: WNL
- Precordial Leads: WNL
- Normal ECG

9. A Standard Form 93 shows the applicant provided his medical history for the purpose of periodic examination on 8 December 1984. The physician's summary shows:

- mumps, measles, and chickenpox in early childhood
- appendectomy 1959
- slipped and fell on ice December 1983; complains of lower back and right shoulder pain; treated by chiropractor
- slipped and fell on steps December 1982; complains of lower back pain; treated by chiropractor

10. The acronym "PULHES" 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.

11. A Standard Form 88 shows:

- a. The applicant underwent a periodic medical examination on 8 December 1984.
- b. The Summary of Defects and Diagnoses shows high frequency hearing loss (HFHL) right greater than left.
- c. He was found qualified for general service and world-wide duty with a PULHES of 111111.

12. A Headquarters Air Reserve Personnel Center memorandum, 23 June 1986, notified the applicant of his eligibility for retired pay at age 60, based on completion of the required 20 or more years of qualifying service.

13. The applicant's third NGB Form 22 shows he was honorably discharged from the MTANG on 7 April 1987, due to ETS. He was credited with 3 years of net service this period, 18 years prior Reserve Component service, and 21 years total service for pay.

14. Headquarters Air Reserve Personnel Center Reserve Order EK 2900, 16 July 1987, transferred the applicant to the Retired Reserve effective 9 July 1987.

15. A second DD Form 4 shows the applicant enlisted in the MTARNG on 14 August 1987.

16. The applicant's NCOER covering the period from September 1988 through October 1989 shows:

- he was rated in his principal duty title of M1 Abrams Tank Commander, MOS 19K
- his duties included leading the M1 Abrams Tank Crew in training and combat missions and serving as the primary training for the tank crew
- he was rated "Success" in all of Part IV (Rater) (Values/NCO Responsibilities) aside from "Competence", where he was rated "Needs Improvement" with the comment "Needs more hands on training in MOS to become as proficient as he should be"
- he passed his APFT in October 1988

17. A DA Form 4836 shows on 25 May 1990, the applicant extended his service in the MTARNG by a period of 3 years, giving him a new ETS date of 13 August 1996.

18. The applicant's NCOER covering the period from November 1989 through October 1990 shows:

- he was rated in his principal duty title of M1 Tank Commander, MOS 19K
- his duties included leading the M1 Abrams Tank Crew in training and combat missions and serving as the primary training for the tank crew
- he was rated "Success" in all of Part IV aside from "Physical Fitness and Military Bearing", where he was rated "Needs Improvement" with the comment "Needs over 40 screening; meets body fat standards"
- APFT is blank

19. The applicant's NCOER covering the period from November 1990 through October 1991 shows:

- he was rated in his principal duty title of M1 Abrams Tank System Mechanic, MOS 63E
- his duties included performing and supervising unit maintenance and recovery operations on M1 Tanks.
- he was rated "Success" in all of Part IV

- APFT shows profile with the comment he will take the APFT when released from profile

20. A medical record, authored by Dr. J____ H____, 9 September 1993, shows:

a. The applicant was seen as a follow-up for low backpain related to degenerative lumbar disc and strain. He completed the ARNG APFT, but dud not pass the run/job session in the allotted time of 19 minutes and 30 seconds. He stated this increased his back pain significantly.

b. The assessment shows persistent low back pain; continues to do well in terms of functional restoration. Most of his low back pain is soft tissue in nature.

c. Some restrictions were recommended with respected to testing for the ARNG in that walking would be preferrable to running. It is fine for him to take an occasional Darvocet-N 100 in the evening for comfort.

21. The applicant's NCOER covering the period from November 1992 through October 1993 shows:

- he was rated in his principal duty title of Tank Commander, MOS 19K
- his duties included planning movement routes, directing deployment of personnel and tank in combat operations and training exercises, and supervising crew operator maintenance
- he was rated "Success" in all of Part IV aside from "Physical Fitness and Military Bearing" where he was rated "Needs Improvement" with the comment, "Unable to do APFT due to back problems, is going to medical retirement board in December 1993

22. A medical board result sheet shows:

a. A Medical Evaluation Board (MEB) convened on 4 December 1993, where the applicant was given a permanent physical profile with a PULHES of 213121.

b. His assignment restrictions or geographical or climatic area limitation codes were:

- C: No crawling, stooping, running, jumping, marching, or standing for long periods
- G: No assignment requiring handling of heavy materials including weapons. No overhead work, no pull-ups or pushups

c. His alternate APFT event is listed as the walk.

d. The diagnosis and remarks show request orthopedic evaluation for back injury to include diagnosis, prognosis, future treatment plan, and specific limitations regarding APFT.

23. A DA Form 3349 (Physical Profile) shows:

a. On 4 December 1993, the applicant was given a permanent profile with a PULHES of 213121 (with the initial 2 marked out and a 1 written instead) due to back pain.

b. His assignment limitations were no running, jumping, crawling, stooping, marching, or standing for long periods and no overhead work, with codes C and G. He was additionally limited in multiple functional activities and APFT events.

c. He was to follow-up in 1 year. The action by approving unit commander (which is unsigned) shows this permanent change in profile did not required a change to his MOS or duty assignment.

d. The form has the hand-written word INVALID written across the middle in red ink.

24. A State of Montana, Office of the Adjutant General memorandum, 4 December 1993 provides the applicant's Physical Profile Board results and shows:

a. Reference the enclosed DA Form 3349, dated 4 December 1993, which shows the applicant was issued a permanent profile with the following restrictions:

- no running, jumping, crawling, stooping, or marching for long periods
- no lifting over 25 pounds; no overhead work
- APFT will consist of the walk
- Follow-up in 1 year

b. The applicant would provide their office with an orthopedic evaluation to include diagnosis, prognosis, future treatment plan and specific limitations regarding the APFT, no later than 1 December 1994.

c. The commander was advised that under no circumstances was the applicant to deviate from the limitations on the enclosed DA Form 3349. The commander was instructed to determine if the applicant was able to perform in his current MOS based on the profile limitations and if unable to perform in his current MOS, the commander must initiate reclassification.

25. The applicant's NCOER covering the period from November 1993 through October 1994 shows:

- he was rated in his principal duty title of Tank Commander, MOS 19K
- his duties included planning movement routes, directing deployment of personnel and tank in combat operations and training exercises, and supervising crew operator maintenance
- he was rated "Success" in all of Part IV aside from "Physical Fitness and Military Bearing" where he was rated "Needs Improvement" with comments including "Permanent profile prohibits testing" and "Soldier is not a mobilization asset."

26. A DA Form 4187 shows on 15 November 1994, the applicant requested a transfer to the Retired Reserve with special separation pay effective 10 December 1994, and certified he had at least 10 years of qualifying service.

27. State of Montana, Office of the Adjutant General Orders 236-007, 16 December 1994, honorably discharged the applicant from the ARNG under the provisions of National Guard Regulation 600-200 (Enlisted Personnel Management), paragraph 8-27a and assigned him to the Retired Reserve effective 31 December 1994, with Assign/Loss Reason code XA (Special Separation Pay (Initial + 4 payments) (Involuntary separation) (At least 20 qualifying years of service).

28. A Corrected Copy of State of Montana, Office of the Adjutant General Orders 236-007, 16 December 1994, amended the applicant's Assign/Loss Reason to code XJ (Special Separation Pay (Initial Only) (Involuntary separation) (At least 20 qualifying years of service)

29. The applicant's final NGB Form 22 shows he was honorably discharged from the ARNG and transferred to the U.S. Army Reserve (USAR) Control Group (Retired Reserve) effective 31 December 1994, under the provisions of National Guard Regulation 600-200, paragraph 8-27a, due to non-selection for retention by QRB. He was credited with 7 years, 4 months, and 18 days of net service this period; 21 years of prior Reserve Component service; and 28 years, 4 months, and 18 days of total service for pay.

30. A MTARNG memorandum, 7 February 1995, shows Selected Reserve Transition Assistance Program Payments were submitted for the applicant.

31. U.S. Army Human Resources Command (AHRC) Orders P09-589161, 12 September 2005, retired the applicant and placed him on the Army of the United States Retired List effective 20 January 2006, due to authorization for retired pay.

32. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. The 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. Due to the period of the applicant's service, there was no documentation available from the above database for review.

c. The applicant is applying to the ABCMR requesting an upgrade of his honorable discharge to a disability separation.

d. The applicant's supporting documents, Report of Medical Examination, dated 8 DEC 1984, block # 71 (Hearing test result): 10dB @ 500Hz, 5dB @ 1000Hz, 15dB @ 2000Hz, 25dB @ 3000Hz, 20dB @ 4000Hz, 55dB @ 6000Hz on his right ear and 10dB @ 500Hz, 15dB @ 1000Hz, 15dB @ 2000Hz, 45dB @ 3000Hz, 40dB @ 4000Hz, 40dB @ 6000Hz on his left ear.

e. In block 74 of on this form, there was an annotation as follows: "#22. HFHL Right greater than Left." HFHL = high frequency hearing loss.

f. Army Regulation 40-501 (15 May 1989), retention standard for hearing in Chapter 3-10, stated:

"Trained and experienced personnel will not be categorically disqualified if they are capable of effective performance of duty with a hearing aid. Ordinarily a hearing defect will not be considered sufficient reason for initiating disability separation or retirement processing. ..."

g. Based on the information provided, the applicant did not have a career terminating condition at the time of his separation. It is the opinion of the ARBA Medical Advisor that there is no medical evidence to support his upgrade request nor for a referral to the DES at this time.

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 did not have a career terminating condition at the time of his separation. Therefore, the Board concluded a referral to the Disability Evaluation System was not warranted.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XX	:XX	:XX	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
Signed by:

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. 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 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 (Disability 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; 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.

3. 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.

4. Army Regulation 40-501 provides information on medical fitness standards for induction, enlistment, appointment, retention, and related policies and procedures. Soldiers with conditions listed in chapter 3 who do not meet the required medical standards will be evaluated by an MEB and will be referred to a PEB as defined in Army Regulation 635-40 with the following caveats:

a. U.S. Army Reserve (USAR) or Army National Guard (ARNG) Soldiers not on active duty, whose medical condition was not incurred or aggravated during an active duty period, will be processed in accordance with chapter 9 and chapter 10 of this regulation.

b. Reserve Component Soldiers pending separation for In the Line of Duty injuries or illnesses will be processed in accordance with Army Regulation 40-400 (Patient Administration) and Army Regulation 635-40.

c. Normally, Reserve Component Soldiers who do not meet the fitness standards set by chapter 3 will be transferred to the Retired Reserve per Army Regulation 140–10 (USAR Assignments, Attachments, Details, and Transfers) or discharged from the Reserve Component per Army Regulation 135–175 (Separation of Officers), Army Regulation 135–178 (ARNG and Reserve Enlisted Administrative Separations), or other applicable Reserve Component regulation. They will be transferred to the Retired Reserve only if eligible and if they apply for it.

d. Reserve Component Soldiers who do not meet medical retention standards may request continuance in an active USAR status. In such cases, a medical impairment incurred in either military or civilian status will be acceptable; it need not have been incurred only in the line of duty. Reserve Component Soldiers with non-duty related medical conditions who are pending separation for not meeting the medical retention standards of chapter 3 may request referral to a PEB for a determination of fitness in accordance with paragraph 9–12.

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. National Guard Regulation 600-200 (Enlisted Personnel Management) prescribes the criteria, policies, processes, procedures and responsibilities to classify, assign utilize, transfer within and between States, provides special duty assignment pay, separate and appoint to and from Command Sergeant Major ARNG and Army National Guard of the United States enlisted Soldiers. Paragraph 8-27a provides for the involuntary discharge from the State of Soldiers not selected for retention by a Qualitative Retention Board (QRB). The Soldier may elect to be reassigned to the Control Group (Reinforcement) of the Individual Ready Reserve (IRR) or assigned to the Retired Reserve.

7. 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.

//NOTHING FOLLOWS//