

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 December 2024

DOCKET NUMBER: AR20240005914

APPLICANT REQUESTS:

- reconsideration of his previous request or medical retirement
- personal appearance before the Board

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

- two DD Forms 149 (Application for Correction of Military Record), (submitted with previous case)
- personal statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period 11 August 1987 to 10 November 1993
- 17 pages of military medical records
- five third-party statements
- Department of Veterans Affairs (VA) Rating Decision, dated 20 August 1994
- Congressional correspondence (from previous case)

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) in Docket Number AC94-12380A on 1 July 1998.

2. In two DD Forms 149, which he also submitted with his prior applications(s), the applicant states that at the time of his separation, he met the criteria for placement on the Permanent Disability Retired List. He had less than 20 years of active duty, he was medically unfit to continue his military service due to disabilities incurred in line of duty, and the disabilities at the time of separation were rated greater than 20%. He sustained a broken neck and tailbone on two separate parachute jumps in 1986 and 1992.

3. In a separate statement, the applicant's states he is requesting that a review be made of his request for medical retirement submitted on 11 November 1994 and again on 21 October 1997. He was discharged from the U.S. Army on 11 November 1993. He

received a VA disability rating of 60% on 20 August 1994. He believes he met the medical disability criteria for medical retirement at the time of discharge.

4. The applicant enlisted in the Regular Army on 3 December 1982.

5. In the applicant's previous ABCMR Record of Proceedings, the following was noted:

a. On 25 March 1986, he went on sick call complaining of pain in his neck. He reported he was injured in a parachute jump the night before.

b. On 7 April 1986, he went on sick call complaining of lower back pain of a day duration. He reported the pain started when he was performing physical training. He was diagnosed as having a strain and given two days bed rest.

c. On 23 April 1986, he was taken to the emergency room by ambulance stating that his neck popped when he threw a heavy bag on a truck. He stated at that time that he had been diagnosed as having a compression fracture of his back due to his parachute injury three weeks ago (there is no record of that diagnosis) At that time X- rays were taken which found no abnormalities.

d. On 13 May 1986, he again complained of neck pain of a three-day duration. Again a fracture was ruled out.

e. On 7 October 1986, he underwent a separation physical examination which found him physically fit with no profile limitations.

f. On 3 December 1986, he was honorably released from active duty at the expiration of his term of service. After a break in service, he reenlisted on 11 August 1987.

g. During this period of service, he was treated for a couple of minor injuries and illnesses, which only required less than a week of profile limitations or bed rest.

h. On 13 July 1992, he fell and injured his tailbone and complained of pain. No visual deformity was noted and X-rays that were taken of the area in question revealed no deformities.

i. On 10 July 1993, he was notified that a Department of the Army bar to reenlistment was imposed against him and that he would be discharged.

6. The applicant's DD Form 214 shows he was honorably discharged on 10 November 1993 under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 16-8 (Reduction in Authorized Strength). The

DD Form 214 also shows he served in Southwest Asia in support of Operations Desert Shield and Desert Storm from 9 October 1990 to 2 April 1991.

7. The applicant's Noncommissioned Officer Evaluation Report (NCOER) covering the period July-October 1993, his last NCOER on record, shows in Part IVc (Physical Fitness & Military Bearing) his rater indicated he was physically fit and had endurance and stamina to go the distance.

8. The applicant provided:

a. Five third-party statements attesting to his injuries incurred during parachute jumps.

b. A VA Rating Decision, dated 20 August 1994, showing he was granted service-connected disability compensation for various conditions that include residuals, fractures of the thoracic spine, neck, and tailbone.

9. 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.

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 (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) and a subsequent medical retirement. From the DD 149 associated with that case (AC94-12380A):

At the time of separation, I met the criteria for PDRL [permanent disability retirement list]; i.e., less than twenty years of active duty; medically unfit to continue military

service due to in line of duty disabilities; line of duty disabilities at the time of separation were greater than 20%.”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. His DD 214 shows for the period of Service under consideration shows he entered the regular Army on 11 August 1987 and was honorably discharged on 10 November 1993 under provisions provided in paragraph 16-8 of AR 635-200, Active Duty Enlisted Administrative Separations (7 September 1990): Early separation due to reduction in force, strength limitations, or budgetary constraints.

d. This request was previously denied by the ABCMR on 1 July 1998 (AC94-12380A). Rather than repeat their findings here, the board is referred to the record of proceedings for that case. This review will concentrate on the new evidence submitted by the applicant.

e. Medical encounters show the applicant was conservatively treated in March thru May of 1986 for a cervical strain first seen the day after an injury on a night jump the day before. The results of the cervical spine radiographs were not available for review but are assumed to have been normal given the diagnosis of cervical strain.

f. He was treated conservatively for atraumatic back pain in 198X (illegible).

g. The applicant was evaluated for a 3-month history of buttock pain in October 1992 which was treated conservatively. He underwent a bone scan in November 1992 to evaluate for a possible pelvic injury and it was reported as normal: “Normal pelvis with no evidence of sacroiliac joint abnormalities and no evidence of a coccyx fracture.”

h. An NCO Evaluation Report with a thru date of July 1993 notes the applicant passed his Army Physical Fitness Test in February 1993 with his rater commenting “physically fit” and “has endurance and stamina to go the distance.”

i. After a 6 June 1994 civilian orthopedic evaluation for a cervical and left wrist injuries, the surgeon diagnosed him with “Residuals., severe cervical strain and back bruise

j. (1985 or 19'86);” “Residuals, previous tail bone fracture (1992);” and “No objective pathological findings noted in the left wrist:

“On March 25, 1985, or 1986, at Ft Bragg, North-Carolina, while parachuting and jumping out off an airplane he hit his head and feet. After landing, he felt a sharp neck pain underneath the right shoulder blade. He went to the next first aid station and received a collar. Then hospitalization in an Army Hospital for 1 day. X-ray films

were performed. Diagnosed were a separation between C1 and C2 and a severe back bruise. He kept wearing the collar for 2 ½ months.

Present complaints:

1-2 x per month stiff and painful neck. Locking of the cervical spine. Recurrent neck and lower back pain. No pain radiation to distal (arms).

1990, while playing soft ball he injured his left wrist (Garlstedt/Germany) Cast for about 5 weeks. No complaints left. Never x-ray control.

Jumping out of a airplane on July 14th, 1992, at Ft. Bragg, North-Carolina, he injured his tail bone. A fracture had been confirmed by X-rays. Deep sacral pain since. Sitting for a longer time only in a soft chair possible, maximum sitting 1 hour in a hard chair. Lifting items of more than 25 LBS was impossible.

Sit-ups and sport activities were not possible anymore.

k. The provider documented tenderness to palpation with spasm and marked decreased range of motion of the cervical spine. Radiographs were unremarkable. There was tenderness to palpation over the right sacroiliac joint with a normal neurological examination. Radiographs were unremarkable except for some periosteal callus in the transition zone of the sacrum and coccyx suggestive of a previous fracture. Examination of the wrist was normal except for "Range of motion only slightly reduced in all planes and not painful. Radiographs were normal.

l. There remains no probative evidence the applicant had any additional duty incurred medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge.

m. JLV shows he was awarded multiple VA service-connected disability ratings effective the day after his discharge from the Army, including ratings for lumbosacral and cervical strain. However, 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; 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.

n. The DES compensates disabilities when they cause or contribute to career termination. A 10 July 1993 memorandum to the Solider from the U.S. Army Enlisted Records and Evaluation Center shows the applicant was barred from reenlisting based on the results of the CY93 Master Sergeant Selection/Sergeant Qualitative Management Program (QMP) Board and not due to a duty limiting medical condition.

o. 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.”

p. It is the opinion of the ARBA Medical Advisor that a referral of his case to the DES 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 available documentation and the findings and recommendation outlined in the medical review, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's narrative reason for separation.

BOARD VOTE:


<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
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:	:	:	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.

3/31/2025


_____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 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel. Paragraph 16-8, of the regulation in effect at the time, states enlisted personnel may be discharged or released from active duty prior to the expiration of their terms of service or periods for which ordered to active duty when budgetary or authorization limitation requires a reduction in enlisted strength, the Secretary of the Army, or his/her designee, will authorize such reduction.
2. 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.
3. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation) establishes the Army Disability Evaluation System (DES) 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. A 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 presents 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 member is being processed for separation for reasons other than physical disability (e.g., retirement, resignation, reduction in force, relief from active duty, administrative separation, etc.), his or her continued performance of duty, until he or she is referred to the DES for evaluation for separation for reasons indicated above, creates a presumption that the member is fit for duty.

4. 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.

5. 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.

6. Army Regulation 15-185 (ABCMR) provides Department of the Army policy, criteria, and administrative instructions regarding an applicant's request for the correction of a military record. Paragraph 2-11 states 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.

7. 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 ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//