

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 February 2025

DOCKET NUMBER: AR20240006025

APPLICANT REQUESTS: correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to reflect:

- in effect, an honorable characterization of service in lieu of uncharacterized
- his physical disability rating of 20 percent

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

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. His DD Form 214 should reflect his 20 percent disability rating and characterization of service as "under honorable conditions" [presumably intended to state "honorable"].
 - b. He is not sure why his discharge is uncharacterized. He did have a Physical Disability Board of Review (PDBR) find that his original 10 percent disability rating should have been a 20 percent rating. He is currently rated at 100 percent permanently and totally disabled from the Department of Veterans Affairs (VA).
 - c. Despite being rated as 100 percent permanently and totally disabled by the VA, his DD Form 214 is not allowing him to apply for a Defense Enrollment Eligibility Reporting System (DEERS)/Real-Time Automated Personnel Identification System (RAPIDS) identification card.
3. A DD Form 4 (Enlistment/Reenlistment Document) shows the applicant enlisted in the Regular Army on 9 July 2008.

4. The complete facts and circumstances surrounding the applicant's discharge are unknown, as his Integrated Disability Evaluation System (IDES) documents, to include his Medical Evaluation Board (MEB) Narrative Summary (NARSUM), DA Form 3947 (MEB Proceedings), DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), DA Form 199-1 (Formal PEB Proceedings), Department of Veterans Affairs (VA) Compensation and Pension (C&P) Exam, VA Proposed Rating Decision for DES purposes, and VA Rating Decision, are not in his available records for review and have not been provided by the applicant.

5. Headquarters, U.S. Army Armor Center and Fort Knox Orders 297-0166, 23 October 2008, discharged the applicant effective 28 October 2008, with a 10 percent disability rating and authorized him disability severance pay in the pay grade E-1 based on 3 months and 15 days of service.

6. The applicant's DD Form 214 shows:

a. He was discharged on 28 October 2008, under the provisions of Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), due to disability, severance pay, non-combat related, with corresponding Separation Code JFO.

b. Item 12c (Net Active Service this Period) shows he completed 3 months and 15 days of net active service this period.

c. Item 18 (Remarks) shows disability severance pay, \$7,475.40.

d. Item 24 (Character of Service) shows uncharacterized.

7. A DD Form 294 (Application for a Review by the PDBR of the Rating Awarded Accompanying a Medical Separation from the Armed Forces of the United States) shows the applicant applied to the PDBR on 4 March 2014, requesting an upgrade of his physical disability rating of 10 percent.

8. The PDBR Record of Proceedings, 14 March 2016, shows in pertinent part:

a. The applicant was an active duty E-1, in Basic Combat Training (BCT) when he was medically separated for left knee pain with a disability rating of 10 percent. The applicant contended his condition continues to worsen and negatively impacts his daily activities.

b. His service PEB shows he was given a combined disability rating of 10 percent for left knee, other impairment. His combined rating of all VA conditions is none with his left knee anterior cruciate ligament reconstruction being deemed not service-connected.

c. After review of all records, the PDBR recommended the applicant's prior PEB determination be modified, effective the date prior to his medical separation to show:

- left knee instability rating of 10 percent
- left knee painful motion rating of 10 percent
- combined rating of 20 percent

9. On 14 March 2016, he PDBR notified the Deputy Assistant Secretary of the Army (Review Boards) of their recommendation that the applicant's records be modified to reflect a combined disability rating of 20 percent in lieu of 10 percent, without recharacterization of his service.

10. On 13 July 2016, the Deputy Assistant Secretary of the Army (Review Boards) accepted the PDBR's recommendation to modify the applicant's disability rating to 20 percent without recharacterization of his separation and notified the applicant of this approval via letter, advising him that he would receive a records correction within 120 days.

11. U.S. Army Installation management Command Orders 224-0167, 11 August 2016, amended the applicant's the prior Headquarters, U.S. Army Armor Center and Fort Knox Orders 297-0166, 23 October 2008, wherein he was initially discharged, to reflect his disability percentage as 20 percent in lieu of 10 percent.

12. A U.S. Army Physical Disability Agency (USAPDA) letter, 18 August 2016, advised the applicant that as a result of the approval of his PDBR application, his original separation order was amended, modifying his disability rating to 20 percent, without recharacterization to his separation. He was further advised his severance pay was not affected by this change, because severance pay is not based on the disability rating.

13. As a result of the finality of the PDBR's decision, the scope of the current Board's review is limited to those conditions which were not considered by the PDBR and not determined by the PEB to be unfitting for continued military service.

14. Title 38, USC, 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.

15. 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 asking why his DD 214 does not reflect the 20% rating previously awarded by the Physical Disability Board of Review (PDBR).

"My DD 214 should reflect 20% disabling and under honorable conditions. I'm not sure why the discharge is uncharacterized. I did have a board review that found the original 10% disability should have been rated at 20%."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 shows he entered the regular Army on 9 July 2008 and was separated with \$7,475.40 of disability severance with an uncharacterized discharge on 28 October 2008. His discharge orders show his rating was 10%.

d. The applicant applied to the PDBR requesting an increase in the rating for his left knee disability. The PDBR's findings dated 14 March 2016 show they recommended his rating be increased from 10% to 20%.

e. Their recommendation was approved by the Deputy Assistant Secretary of the Army Review Boards on 13 July 2016. DoD PDBR decisions are final and the issues considered by the PDBR cannot afterwards be considered by the Army Board for Correction of Military Records.

f. Orders published on 11 August 2016 shows the change in his rating from 10% to 20%. Disability ratings are noted on a Soldier's orders and not on their DD 214's.

g. An uncharacterized discharge is given to individuals who separate prior to completing 180 days of military service, or when the discharge action was initiated prior to 180 days of service. This type of discharge does not attempt to characterize service as good or bad. Through no fault of his own, he simply had a medical condition which was, unfortunately, not within retention standards.

h. It is the opinion of the Agency Medical Advisor that neither a discharge upgrade, an increase in his military disability ratings, nor a referral of his case to the DES is warranted.

BOARD DISCUSSION:

1. After reviewing the application and all supporting documents, 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. The governing regulation provides that a separation will be described as an entry-level separation, with service uncharacterized, if the separation action is initiated while a Soldier is in entry-level status. The applicant did not complete training and was released from active duty due to disability, severance pay, non-combat related. The Board determined his DD Form 214 properly shows the appropriate characterization of service as uncharacterized.
2. An uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It merely means the Soldier has not been in the Army long enough for his or her character of service to be rated as honorable or otherwise. As a result, there is no basis for granting the applicant's request.
3. The Board determined an increase to the applicant's physical disability rating to 20% was not warranted. The Board noted the applicant's rating was increased; however, the rating is not administratively included on the DD Form 214, therefore, there is no error in the applicant's DD Form 214.

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

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 (DES) 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 (Physical Evaluation for Retention, Retirement, or Separation).

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. The percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Ratings are assigned from the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD). The fact that a Soldier has a condition listed in the VASRD does not equate to a 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. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. 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.

b. Service of enlisted Soldiers discharged by reason of physical disability normally will be characterized as honorable, or described as uncharacterized for those in entry-level status. However, characterization of general, under honorable conditions is authorized for Soldiers beyond entry-level status whose service is satisfactory, but not sufficiently meritorious to warrant honorable characterization.

4. 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.

5. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 3 states a separation will be described as entry level with uncharacterized service if the Soldier is in an entry-level status at the time separation action is initiated.

b. Section II (Terms) of the Glossary defines entry-level status for Regular Army Soldiers as the first 180 days of continuous active duty or the first 180 days of continuous active duty following a break of more than 92 days of active military service. For ARNG and USAR Soldiers, entry-level status begins upon enlistment in the ARNG or USAR. For Soldiers ordered to initial active duty training (IADT) for one continuous period, it terminates 180 days after beginning training. For Soldiers ordered to IADT for the split or alternate training option, it terminates 90 days after beginning Phase II of Advanced Individual Training.

6. Army Regulation 635-5 (Separation Documents) in effect at the time, prescribes policies and procedures regarding separation documents, to include the DD Form 214 (Certificate of Release or Discharge from Active Duty). The specific directions for completing the itemized portions of the DD Form 214 show:

a. There is not a stand-alone block on the DD Form 214 dedicated to annotating the assigned physical disability percentage at the time of discharge or retirement.

b. Item 18 (Remarks) shows to use this block for Headquarters Department of the Army mandatory requirements when a separate block is not available and as a continuation for entries in blocks 11, 13, and 14. One of the mandatory entries includes one made for a Soldier receiving separation, readjustment, or non-disability severance pay (as indicated by the Finance Office), to enter the type of pay and amount.

c. There are no provisions in this regulation for the annotation on the DD Form 214 of the physical disability percentage at the time of discharge or retirement.

7. Department of Defense Instruction (DODI) 6040.44 (Physical Disability Board of Review (PDBR)) designates the Secretary of the Air Force as the lead agent for the establishment, operation and management of the PDBR for the DOD.

a. The PDBR reassesses the accuracy and fairness of the combined disability ratings assigned former service members who were separated, with a combined disability rating of 20 percent or less during the period beginning on 11 September 2001 and ending on 31 December 2009, due to unfitness for continued military service, resulting from a physical disability.

b. The PDBR may, at the request of an eligible member, review conditions identified but not determined to be unfitting by the PEB of the Military Department concerned.

c. As a result of a request for PDBR review, the covered individual may not seek relief from the Board for Correction of Military Records operated by the Secretary of the Military Department concerned.

8. Title 38, U.S. Code, sections 1110 and 1131, permits the VA to award compensation for medical conditions incurred in or aggravated by active military service. The VA, however, is not empowered by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual may have a medical condition that is not considered medically unfitting for military service at the time of processing for separation, discharge, or retirement, but that same condition may be sufficient to qualify the individual for VA benefits based on an evaluation by that agency.

/NOTHING FOLLOWS//