

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 March 2025

DOCKET NUMBER: AR20240006638

APPLICANT REQUESTS:

- A narrative reason change from Disability, Existed Prior to Service, Physical Evaluation Board (PEB)
- Personal appearance 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)
- Department of Veterans Affairs letter, 3 April 2023, reflecting the applicant has a combined service-connected rating of 80 percent (%) and verified honorable periods of service from 28 June 1999 to 30 May 2003 and 31 May 2003 to 13 May 2004

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 the narrative reason is not accurate because he did not have a preexisting condition prior to service. All his medical conditions he currently has were due to his military service. He is 80 percent service-connected for those in-service injuries. He delayed making the request for a narrative reason change because he was not aware he could make such a request until recently. He contacted his local Veterans Service Agency.
3. A review of his service records show:
 - a. He was appointed as a U.S. Army Reserve officer on 31 May 2003.

b. The complete facts and circumstances related to the applicant's discharge are not available for review; however, his DD Form 214 shows:

- He served as a United States Military Academy as a cadet at West Point, New York, from 28 June 1999 to 31 May 2003
- He was honorably discharged on 13 May 2004
- He completed 4 years, 10 months, and 16 days net active service this period
- Separation Authority: Army Regulation 635-40 (Physical Evaluation for Retention, or Separation), paragraph 4-24b(4)
- Separation Code: JFM
- Narrative Reason for Separation: Disability, Existed Prior to Service, Physical Evaluation Board (PEB)

4. 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, his previous ABCMR denial, 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/or 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 in essence a referral to the Disability Evaluation System (DES). He states:

"I did not have a pre-existing condition prior to service. All of the medical conditions that I currently have are due to my military service. I am at the present time 80% service connected for those in service-related injuries."

c. The Record of Proceedings outlines the circumstances of the case. His DD 214 shows he entered the regular Army on 31 May 2003 and was separated for physical disability without disability severance pay for a condition which had existed prior to service (EPTS) on 13 May 2004 under provisions provided in paragraph 4-24b(4) of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (1 September 1990): Separation for physical disability without severance pay.

d. On 5 February 2004, the Medical Evaluation Board (MEB) Proceedings show the MEB determined his chronic low back pain failed the medical retention standards of paragraph 3-39e of AR 40-501, Standards of Medical Fitness. The 17 December 2003

the MEB narrative summary states the condition started while he was a cadet at the USMA:

“Onset of Low back pain in May 2003 when lifting a box in process of moving personal gear out of West Point preparing for PCS assignment. Pain has persisted in spite of complete workup and evaluation with treatment by orthopedics and spine clinic, and physical therapy.”

e. On 10 February 2004, the applicant concurred with the MEB’s findings and recommendation and his case was forwarded to a physical evaluation board (PEB) for adjudication.

f. On 23 February 2004, the PEB found his single condition unfitting for continued service and opined it had existed prior to service (EPTS):

“There is compelling evidence to support a finding that the current condition existed prior to service (EPTS) and was not permanently aggravated by such service. Soldier was injured while he was a West Point Cadet.”

g. Paragraph 1-4a of AR 635-40 states these cadets are ineligible for DES referral:

a. Section 1217, title 10, United States Code (10 USC 1217) excludes cadets of service academies from eligibility for disability benefits under 10 USC 61. However, USMA cadets may be entitled to compensation administered by the Department of Veterans Affairs (VA).

h. Service members may be separated from their Service without compensation, i.e., severance pay or retirement, for a physical disability which was neither incurred nor permanently aggravated (made worse) during a period of qualifying Service.

i. Paragraph 4-8e(1) of AR 600-8-4, Line of Duty Policy, Procedures, and Investigations (15 April 2004) states:

“(1) The term "EPTS" {existed prior to service} is added to a medical diagnosis. It shows that there is substantial evidence that the disease or injury, or underlying condition existed before military service or it happened between periods of active service. Included in this category are chronic diseases with an incubation period that clearly precludes a determination that it started during short tours of authorized training or duty.”

j. The AR 600-8-4 glossary definition of existed prior to service:

“Any injury, disease, or illness, to include the underlying causative condition, which was sustained or contracted prior to the present period of AD or authorized training, or had its inception between prior and present periods of AD or training is considered to have existed prior to service. A medical condition may in fact be present or developing for some time prior to the point when it is either diagnosed or manifests symptoms. Consequently, the time at which a medical condition "exists" or is "incurred" is not dependent on the date of diagnosis or when the condition becomes symptomatic. (Examples of some conditions which may be pre-existing are slow-growing cancers, heart disease, diabetes, or mental conditions, which can all be present well before they manifest themselves by becoming symptomatic.)”

k. On 27 February 2004, after being counseled on the PEB’s findings and recommendation by his PEB liaison officer, he concurred with the Board and waived her right to a formal hearing.

l. JLV shows the applicant has been awarded several VA service-connected disability ratings, including Flat foot condition, Intervertebral disc syndrome, and Tinnitus. However, the DES only compensates an individual for service incurred or permanently service aggravated medical condition(s) which have been determined to disqualify him or her from further military service. 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. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

m. It is the opinion of the ARBA Medical Advisor that neither a change of his disability discharge disposition from physical disability without severance pay to permanent retirement for physical disability nor a referral of the applicant’s case to the Disability Evaluation System is warranted.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, medical review, and regulatory guidance were carefully considered. The Board concurred with the medical advisory opinion, which states in pertinent part, that while at a physical evaluation board, the board noted there was compelling evidence to support a finding that the applicant's current condition existed prior to service (EPTS) and his condition was not permanently aggravated by such service. Therefore, the ARBA Medical Advisor opined that neither a change of his disability discharge disposition from physical disability without severance pay to permanent retirement for physical disability nor a referral of the applicant's case to the Disability Evaluation System is warranted. As a result, the Board determined there was no error or injustice and denied relief.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record 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

:	:	:	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.

11/30/2025

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. Section 1556 of Title 10, United States 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.

3. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. 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

4. Army Regulation 40-501 (Standards of Medical Fitness), governs medical fitness standards for enlistment, induction, appointment, retention, and separation. It states medical evaluation of certain enlisted military occupational specialties and officer duty assignments in terms of medical conditions and physical defects are causes for rejection or medical unfitness for these specialized duties. If the profile is permanent the profiling officer must assess if the Soldier meets retention standards. Those Soldiers on active duty who do not meet retention standards must be referred to a medical evaluation board.

5. Title 10, United States 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 (PDES) and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 and AR 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 an MEB; when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an 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 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.

6. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) 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. Once a determination of physical unfitness is made, all disabilities are rated using the Department of Veterans Affairs Schedule for Rating Disabilities (VASRD).

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.

c. Paragraph 4-24b(4) (Final Disposition by U.S. Army Physical Disability Agency), in effect at the time, provides for separation for physical disability without severance pay (10 USC 630, 1162(a), 1165, or 1169 (cited in the current AR 635-40, paragraph 4-27c(4)(a))).

d. Paragraph 4-27 (Final Disposition by U.S. Army Physical Disability Agency), states:

(1) Permanent disability retirement: This disposition is directed under 10 USC 1201 or 10 USC 1204, as applicable, when the Soldier is determined unfit for continued service and has a compensable disability in accordance with the standards of this regulation, and:

- the disability(ies) is permanent and stable, or the disability rating will not improve to less than 80 percent.
- the Soldier has at least 20 years of service as computed under 10 USC 1208.
- the Soldier has a combined disability rating of at least 30 percent.

(2) Placement on the temporary disability retired list: This disposition is directed under 10 USC 1202 or 10 USC 1205, as applicable, when the years of service or

percentage requirements for permanent disability retirement are met but the disabilities are not determined to be permanent and stable.

(3) Separation with disability severance pay: This disposition is directed under 10 USC 1203 or 10 USC 1206, as applicable, when the Soldier is unfit due to a compensable physical disability determined under the standards of this regulation, and:

- the Soldier has less than 20 years of service computed under 10 USC 1208.
- the Soldier's combined disability rating is less than 30 percent, to include a rating of zero percent.

(4) Separation for disability without entitlement to disability severance pay. This disposition applies under other than 10 USC 61 (10 USC 630, 1165, 1169, and 12681), when the Soldier is determined unfit for disability determined to be pre-existing and not permanently aggravated by service, or the Soldier is unfit for a disability incurred in an excess leave status other than for an emergency reason as determined by the SECARMY.

(5) Revert to retired status with disability benefits. This disposition applies when a retiree for regular or non-regular service is determined unfit for a disability rated at least 30 percent. (Revert to retired status without disability benefits applies if the rating is less than 30 percent.)

c. Paragraph 4-33 (Temporary Disability Retired List (TDRL)), states:

(1) Under the provision of 10 USC 1202 and 10 USC 1205, Soldiers will be placed on the TDRL when they would be qualified for permanent disability retirement and the preponderance of evidence indicates one or more conditions will change within the next five years so as to result in a change in rating or a finding of fit. In accordance with 10 USC 1210, the Army DES will reevaluate each Soldier placed on the TDRL at least once every 18 months. The Secretary of the Army will make a final determination of the case of each Soldier whose name is on the TDRL upon the expiration of five years after the date when the Soldier's name was placed on that list. If, at the time of that determination, the physical disability for which the Soldier was placed on the TDRL still exists, it will be considered to be permanent and stable.

(2) Soldiers on the TDRL who disagree with the findings of the IPEB, other than a finding of retention on the TDRL, are entitled to a formal hearing without regard to whether the IPEB determined the Soldier fit or unfit. Soldiers on the TDRL are entitled to legal representation the same as for PEB adjudication before their placement of the TDRL.

7. Title 10, U.S. Code, Section 630 (Discharge of Commissioned Officers) states discharge of commissioned officers with less than six years of active commissioned service or found not qualified for promotion for first lieutenant (junior grade). The Secretary of the military department concerned is responsible for the discharge, under regulations prescribed by the Secretary of Defense.

8. Title 38 U.S. Code, Section 1110 (General - Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

9. Title 38 U.S. Code, Section 1131 (Peacetime Disability Compensation - Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

10. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, provided the narrative reason specified under Army Regulation 635-40, paragraph 4-24b(4) is "Disability, Existed Prior to Service, Physical Evaluation Board (PEB)," and the separation code is "JFM." Army Regulation 635-8 (Separation Processing and Documents) governs the preparation of the DD Form 214 and dictates the entry of the narrative reason for separation, entered in block 28, and separation code, entered in block 26 of the form, will be as listed in AR 635-5-1 (Separation Program Designator (SPD) Codes). The regulation stipulates no deviation is authorized.

11. Title 38, USC, Sections 1110 and 1131, permits 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.

a. 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.

b. The VA does not have authority or responsibility for determining physical fitness for military service. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge, to compensate the individual for loss of civilian employability. 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.

12. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//