

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 April 2025

DOCKET NUMBER: AR20240007131

APPLICANT REQUESTS:

a. reconsideration of his previous request for correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 22 February 1991 to show:

(1) his deployment in support of Operations Desert Shield/Desert Storm (Gulf War) and

(2) in effect, all authorized awards, decorations, and campaign ribbons; and

b. reconsideration of request for his narrative reason for separation to be shown as medical retirement instead of disability discharge with severance pay.

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

DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)

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 AC93-13431 on 25 January 1995 and AR1999017942 on 23 September 1999.

2. The applicant states his service during the Gulf War and in effect, entitled awards, is not listed on his DD Form 214. He also states his narrative reason for discharge should be a medical discharge (assumed to mean a medical retirement). These changes are needed in order to procure benefits.

3. He enlisted in the Regular Army on 30 November 1983.

4. His DA Form 2-1 (Personnel Qualification Record – Part II) shows in:

a. Item 5 (Oversea Service) that he served in Korea from on or about 19 October 1987 through on or about 14 October 1988, a period of 11 months and 26 days, and

b. Item 35 (Record of Assignments) he was assigned to Headquarters and Headquarters Company, 1st Battalion, 67th Armor Regiment, 2d Armored Division, Fort Hood, TX, from on or about 30 November 1988 to on or about 18 January 1991 (during the period of Operations Desert Shield/Desert Storm).

5. His Official Military Personnel File is void of any documentation (e.g., deployment orders, an award specific regarding the operation, etc.) showing he deployed to Southwest Asia during Operations Desert Shield/Desert Storm.

6. He was promoted to the rank/grade of sergeant/E-5 effective 1 September 1989.

7. A DA Form 199 (Physical Evaluation Board (PEB) Proceedings) shows as a result of a medical evaluation board completed at Darnall Army Community Hospital, Fort Hood, TX, a PEB convened on 4 February 1991 to consider his suitability for further service.

a. The PEB considered his medical condition of folliculitis decalvans, rated as analogous to tender, painful superficial scars. It was determined he was unable to perform combat duties within his military duties.

b. The PEB recommended that he be separated with severance pay and a disability rating of 10 percent (%).

c. He concurred with the findings, waived a formal hearing of his case, and signed the PEB proceedings on 6 February 1991; approved on 7 February 1991.

8. Headquarters, III Corps and Fort Hood Orders T-21-1, on 14 February 1991 reassigned him to the transition point and ordered his date of discharge as 22 February 1991. It shows his percentage of disability as 10%, he was authorized disability severance pay in pay grade E-5.

9. He was honorably discharged on 22 February 1991 under the provisions of Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), paragraph 4-24b(3) by reason of physical disability with severance pay. He completed 7 years, 2 months, and 23 days of net service during this period. His DD Form 214 shows in:

a. item 12f (Foreign Service), he completed 11 months and 26 days of foreign service;

b. item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized), does not contain any awards/decorations related to support of Operations Desert Shield/Desert Storm;

c. item 18 (Remarks), shows an entry that he received \$17,757.60 in disability severance pay and no entries showing he deployed in support of any named operations, during the period covered by the DD Form 214; and

d. item 26 (Separation Code) – JFL.

10. The Defense Manpower Data Center compiled the Operations Desert Shield/Desert Storm (Gulf War) database, which is the primary file that contains one record for each active-duty member who participated in theater between August 1990 and December 1997. This database does not contain the applicant's name.

11. On 25 January 1995 in Docket Number AC93-13431, the ABCMR denied his request for correction of his records to show, in effect, an increase in his disability rating to qualify him for medical retirement. Based upon the documentary evidence found within his military service records, the Board found there was insufficient evidence to demonstrate the existence of probable error or injustice in his case.

12. On 23 September 1999 in Docket Number AR1999017942, the ABCMR denied his request for correction of his records to show his foreign service in support of Operations Desert Shield/Desert Storm. The Board found there was insufficient evidence to show he ever served in support of Operations Desert Shield/Desert Storm. However, found he was eligible for the National Defense Service Medal. On 23 November 1991, he was issued a DD Form 215 (Correction to DD Form 214) adding the National Defense Service Medal.

13. 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 again requesting reconsideration of their prior denial of his request for an increase in his military disability rating with a

subsequent change in his disability discharge disposition from separated with severance pay to permanent retirement for physical disability.

c. The Record of Proceedings details the applicant's military service and the circumstances of the case.

d. This request was previously denied by the ABCMR on 25 January 1995 (AC93-13431). 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. No new evidence was submitted with the application. The applicant did not identify the condition(s) which should be determined unfitting and lead to an increase in his military disability rating to allow for a retirement.

f. The applicant's period of service predates AHLTA.

g. JLV shows he has been awarded multiple VA service-connected disability ratings, including hypertensive heart disease in 1991 and major depressive disorder in 2018. However, the DES compensates an individual only for service incurred 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; or which did not cause or contribute to the termination of their military career. Again, these roles and authority are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

h. It is the opinion of the ARBA Medical Advisor that neither an increase in his military disability rating nor a referral of his case to the DES is warranted.

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, the Board made the following findings and recommendations related to the requested relief:

- Foreign Service for Desert Shield/Storm: DENY, based upon the lack of documentation showing the applicant deployed in during a qualifying period of service.
- Awards/Decorations: DENY, based upon the lack of evidence showing the applicant received awards not previously noted on her DD Form 214.
- Medical Retirement: DENY, based upon the findings and recommendations outlined in the above medical review.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	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.

//SIGNED//

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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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that 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. It is not an investigative body.
2. Title 10, U.S. Code, section 1201 (10 USC 1201), provides for the physical disability retirement of a member who has at least 20 years of service or a disability rated at least 30 percent.
3. Title 10, U.S. Code, section 1203 (10 USC 1203), provides for the physical disability separation with severance pay of a member who has less than 20 years of service and a disability rated less than 30 percent.
4. 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.
5. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) establishes the Army Physical 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 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. 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.

a. Paragraph 3-1 contains guidance on the standards of unfitness because of physical disability. It states the 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 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.

b. Paragraph 3-5 contains guidance on rating disabilities. It states 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. Any nonratable defects or conditions will be listed on the PEB proceedings, but will be annotated as non-ratable.

6. Army Regulation 600-8-22 (Military Awards) prescribes Army policy, criteria, and administrative instructions concerning individual and unit military awards.

a. The Southwest Asian Service Medal is awarded to members of the Armed Forces of the United States serving in Southwest Asia and contiguous waters or airspace there over, on or after 2 August 1990 to 30 November 1995. To be eligible, a service member must meet one or more of the following criteria:

- be attached to or regularly serving for one or more days with an organization participating in ground or shore (military) operations
- be attached to or regularly serving for one or more days aboard a naval vessel directly supporting military operations
- be actually participating as a crew member in one or more aerial flights directly supporting military operations in the designated areas
- be serving on temporary duty for 30 consecutive days or 60 nonconsecutive days; these time limitations may be waived for people participating in actual combat operations

b. The Kuwait Liberation Medal (Kingdom of Saudi Arabia), awarded by the Kingdom of Saudi Arabia (KLM-SA) was approved on 3 January 1992 and is awarded to members of the Armed Forces of the United States who participated in the Persian Gulf

War between 17 January 1991 and 28 February 1991.

c. The Kuwait Liberation Medal (Government of Kuwait) awarded by the Government of Kuwait (KLM-K) was approved on 9 November 1995 and is awarded to members of the Armed Forces of the United States who participated in the Persian Gulf War between 2 August 1990 and 31 August 1993.

7. Army Regulation 635-5 (Separation Documents) prescribed the separation documents that must be prepared for Soldiers upon retirement, discharge, or release from active duty service or control of the Active Army. It established the standardized policy for preparing and distributing the DD Form 214 (Certificate of Release or Discharge from Active Duty). The general instructions state all available records would be used as a basis for preparation of the DD Form 214.

a. For item 12f enter the total amount of foreign service completed during the period covered by the DD Form 214. Obtain the foreign service listed in the DA Form 2-1 (Personnel Qualification Record - Part II) for enlisted Soldiers to compute this entry. If necessary, verify the foreign service in the Military Personnel Records Jacket (MPRJ).

b. For item 13 list awards and decorations for all periods of service in the priority sequence. Each entry will be verified by the soldier's records. Do not use abbreviations.

c. For item 18 states 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 that are too long for their blocks. Among the mandatory entries are periods of continuous honorable service (specify dates), immediate reenlistments this period (specify dates), and in more current iterations of this regulation (but not the one in effect at the time), if deployed on active duty to a foreign country to list "Service in (Name of Country Deployed) from YYYYMMDD - YYYYMMDD)."

d. For item 26 states obtain correct entry from Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), which provides the corresponding separation program designator code for the regulatory authority and reason for separation.

8. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD code to be entered on the DD Form 214. It identifies the SPD code of "JFL" as the appropriate code to assign to enlisted Soldiers administratively discharged under the provisions of Army Regulation 635-40, paragraph 4-24b(3), based on disability, severance pay.

//NOTHING FOLLOWS//