

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 March 2025

DOCKET NUMBER: AR20240007470

APPLICANT REQUESTS: a medical discharge or retirement from the Texas Army National Guard (TXARNG).

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

- DD Form 149
- Service Records (11 pages)
- Medical Records (144 pages)

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 he was discharged due to expiration term of service (ETS) just days prior to a Medical Board review for a medical discharge or medical retirement.
3. The applicant enlisted in the Army National Guard of the United States on 30 May 2000. He was ordered to active duty for the completion of his initial entry training. He was honorably released from active duty on 13 November 2000 and returned to the control of the TXARNG.
4. His service record contains an approved Line of Duty (LOD) for a right ankle injury he sustained while performing State Active Duty at Lake Charles, LA, on 1 September 2005.
5. The applicant was ordered to active duty in support of Operation Iraq Freedom on 17 March 2006. He underwent a fitness for duty medical evaluation on 13 July 2006. The evaluating provider determined the applicant was not fit for duty, due to right ankle arthritis and a left knee condition; he was recommended as a medical hold.

6. The applicant was honorably released from active duty upon completion of his required active service and returned to the control of the TXARNG on 16 August 2007. He completed 1 year, 4 months, and 22 days of net active service.

7. On 24 August 2008, the applicant was notified that he was identified to have a medical condition that disqualified him for retention in the TXARNG and that he must be processed for separation. He had the option to elect to go before a Medical Evaluation Board or Physical Evaluation, as appropriate. Failure to respond to the notification within 60 days would result in his involuntary separation or retirement. The applicant's service record does not contain documentation pertaining to his election.

8. A Chronological Record of Medical Care, dated 2 June 2015, shows the applicant was experiencing continued right ankle concerns. He had a letter stating he required a medical board and was instructed he had 30 days to follow up with his State medical point of contact. He was also advised to submit a fit for duty examination to his unit.

9. The applicant was honorably discharged from the Army National Guard and as a Reserve of the Army, effective 29 June 2015, under the provisions of National Guard Regulation (NGR) 600-200 (Enlisted Personnel Management), paragraph 6-35a, by reason of ETS. He completed 15 years and 1 month of net service this period.

10. The applicant provides 144 pages of medical documentation which will be reviewed and summarized in the "MEDICAL REVIEW" portion of this Record of Proceedings.

11. 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/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:

"Was discharged/ETS days prior to a Medical Board review for Medical Discharge or Medical Retirement.

Medical record signed on 06/02/2015, days prior to my ETS date of 06/29/2015. Was not given an opportunity to follow through with the Medical Board review to determine Medical Retirement or Medical Discharge. LODs are on file/record for my right ankle injury. I have attached all supporting documentation for this request.”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. His National Guard Report of Separation and Record of Service (NGB Form 22) for the period of Service under consideration shows he enlisted in the Army National Guard on 30 May 2000 and received an honorable discharge from the Texas Army National Guard (TXARNG) on 29 June 2015 under the separation authority provided by paragraph 6-35a of NGR 635-200, Enlisted Personnel Management (31 July 2009): ETS (expiration – term of service). It shows a total service for retired pay of 12 years 00 months 00 days.

d. AHLTA shows that in March 2006, the applicant was supplied with an ankle brace. Radiographs of the right ankle obtained 10 July 2006 revealed degenerative changes of the right ankle. A bone scan in July 2006 revealed osteoarthritis of the right ankle.

e. A 13 July 2006 (post discharge) Fit for Duty examination found him currently unfit for his right ankle arthritis and that he would not be expected to return to duty for more than 120 days.

f. From a 7 February 2007 orthopedic note in JLV.

35 y/o male with chronic right ankle pain since 2005. Initially injured it when He suffered inversion sprain while working in Hurricane Katrina.

g. He has an approved line of duty for this injury in the record.

h. In a 24 August 2008 memorandum, the TXARNG informed the applicant he had a duty limiting condition and needed to be processed for separation. It stated “This condition may or may not have been a duty related/duty incurred injury.” There is no further documentation related to this memorandum

i. A 6 February 2015 note from the ARNG states the applicant had a LOD (line of duty) of his ankle and that he would like to go through a medical board and receive a permanent duty limiting profile.

j. He has no records in MEDCHART

k. The applicant remained in the ARNG for seven years after receiving the memorandum from the TXARNG. Thus, it is unlikely that whatever the condition was that it prevented him from serving.

l. There is insufficient probative evidence the applicant's degenerate ankle condition was related to his service from 2006-2007 and it is much more likely this condition had existed prior to service and progressed/worsened as time went by, i.e., natural progression.

m. Review of his records in JLV shows he has been awarded numerous VA service-connected disability ratings, including a 10% rating for limited motion of right ankle in January 2021.

n. Paragraph 3-1 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (20 March 2012) 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 their office, grade, rank, or rating."

o. There is insufficient probative evidence the applicant's ankle condition permanently failed the medical retention standards of chapter 3, AR 40-501 prior to his voluntary discharge; or that prevented him from reenlisting. Thus, there was no cause for referral to the Disability Evaluation System.

p. The DES compensates disabilities when they cause or contribute to career termination, compensating an individual only for service incurred 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.

q. It is the opinion of the ARBA medical advisor that a referral of his case to the DES is not warranted.

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 insufficient evidence the applicant's ankle condition permanently failed the medical retention standards of chapter 3, AR 40-501 prior to his voluntary discharge; or that prevented him from reenlisting. Thus, there was no cause for referral to the Disability Evaluation System. Based on this, the Board determined a referral of his case to the Disability Evaluation System (DES) is not warranted and denied relief.

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.

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 (USC), 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 Army Board for Correction of Military Records (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, USC, Section 1556 provides the Secretary of the Army shall ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.

3. Title 10, USC, Section 1203 provides for the physical disability separation of a member who has less than 20 years of service and a disability rating at less than 30 percent (%).

4. Title 38, USC, Sections 1110 and 1131, permit the Department of Veterans Affairs (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.

5. Army Regulation 40-501 (Standards of Medical Fitness) governs medical fitness standards for enlistment, induction, appointment (including officer procurement programs), retention, and separation (including retirement). Once a determination of physical unfitness is made, the physical evaluation board (PEB) rates all disabilities using the Veterans Affairs Schedule for Rating Disabilities (VASRD).

a. Chapter 2 provides physical standards for enlistment, appointment, and induction with the purpose to ensure members medically qualified are medically capable of completing required to training, adapt to a military environment without geographical limitations, perform duties without aggravation of existing physical defects or medical conditions.

b. The standards in Chapter 2 are applicable to individuals who enlist in the Regular Army - for medical conditions or physical defects pre-dating original enlistment, standards are applicable for enlistee's first 6 months of active duty. It states that enlisted Soldiers identified within the first 6 months of active duty with a condition that existed prior to service that does not meet the physical standards may be separated following an evaluation by an Entrance Physical Standards Board, under the provisions of Army Regulation 635-200, Chapter 5.

6. Army Regulation 635-40 (Physical 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 office, grade, rank, or rating. It states, in part, only the unfitting conditions or defects and those that contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability. The mere presence of impairment does not, in and of itself, justify a finding of unfitness because of physical disability.

7. National Guard Regulation 600-200 prescribes the criteria, policies, processes, procedures, and responsibilities to classify; assign; utilize; transfer within and between states; and separation of personnel in the ARNG and Army National Guard of the United States (ARNGUS) enlisted Soldiers.

//NOTHING FOLLOWS//