

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 February 2025

DOCKET NUMBER: AR20240007656

APPLICANT REQUESTS: correction of his records to show he was discharged from the Army National Guard (ARNG) due to physical disability instead of unsatisfactory participation.

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)
- National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service)
- Northport Medical Center Operative Report
- 10 pages of medical records

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 hernia surgeries prevented him from performing his absolute best, mentally and physically. Before he was informed he had a hernia, he did his best to be the best Soldier he could be. Simply, he could not perform to the best of his abilities after the hernia repairs. An additional surgery was needed to repair the umbilical hernia. He feels the correction is needed because he could not prevent the hernias, or the surgeries required.
3. The applicant enlisted in the ARNG on 20 November 2009. His DD Form 214 shows he attended initial active duty for training from 9 March to 24 June 2010.
4. On 30 August 2010, the applicant executed a DA Form 597 (Army Senior Reserve Officers' Training Corps (ROTC) Nonscholarship Cadet Contract).

5. A Northport Medical Center Operative Report, provided by the applicant, shows he was diagnosed with left inguinal hernia and underwent a repair of his incarcerated recurrent incisional hernia with Ventralex mesh on 9 November 2011.
6. The applicant's complete separation proceedings are not available. His available records contain orders issued on 11 April 2013 directing his discharge from the ARNG and his reassignment to the U.S. Army Reserve (USAR) Control Group (Annual Training) effective 4 February 2013 by reason of continuous and willful absence AWOL (absent without leave).
7. The applicant's NGB Form 22 shows he was discharged from the ARNG and transferred to the USAR Control Group (Annual Training) effective 4 February 2013 by reason of unsatisfactory participation.
8. The applicant was honorably discharged from the USAR effective 21 November 2017.

8. 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 in essence requesting a referral to the Disability Evaluation System (DES). He states:

"The hernia surgeries in my opinion prevented me from performing my absolute best mentally, physically, and emotionally. Before being informed that I had a hernia, I did by best to be the best Soldier I could be. I could simply not perform to the best of my ability after the hernia repairs."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The 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 20 November 2009 and was honorably discharged from the Alabama Army National Guard (ALARNG) on 4 February 2013 under the separation authority provided by paragraph 6-35j of NGR 635-200, Enlisted Personnel

Management (31 July 2009): Unsatisfactory Participation. It shows he has 2 years, 00 months, and 00 days of total service for retired pay.

d. A civilian operative report shows the applicant underwent repair of left inguinal and umbilical hernias on 5 October 2011. A second operative report shows that after his discharge, he underwent excision of the previously placed mesh and repair of a recurrent ventral hernia on 30 May 2019.

e. Neither the applicant's separation pack nor documentation addressing his involuntary separation for unsatisfactory participation was submitted with the application or uploaded into iPERMS.

f. JLV shows he has no service-connected disabilities and no diagnosed mental health conditions.

g. There is no probative evidence the applicant's repaired hernias in 2011 were either related to his service or a cause for referral to the DES prior to his discharge for unsatisfactory participation in 2013; or that any condition prevented the applicant from attending drill and/or maintaining contact with his leadership.

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

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board found that relief was/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 narrative reason for separation for the applicant's separation.

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.

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. Army Regulation 40-501 (Standards of Medical Fitness) provides information on medical fitness standards for induction, enlistment, appointment, retention, and related policies and procedures. Chapter 3 gives the various medical conditions and physical defects which may render a Soldier unfit for further military service and which fall below the standards required for the individuals. These medical conditions and physical defects, individually or in combination, are those that:

- a. Significantly limit or interfere with the Soldier's performance of their duties.
 - b. May compromise or aggravate the Soldier's health or well-being if they were to remain in the military Service. This may involve dependence on certain medications, appliances, severe dietary restrictions, or frequent special treatments, or a requirement for frequent clinical monitoring.
 - c. May compromise the health or well-being of other Soldiers.
 - d. May prejudice the best interests of the Government if the individual were to remain in the military Service.
3. Army Regulation 40-501, in effect at the time, states in paragraph 3-5 (Abdominal and gastrointestinal defects and diseases) causes for referral to a Medical Evaluation Board includes hernia, including inguinal, and other abdominal, except for small asymptomatic umbilical, with severe symptoms not relieved by dietary or medical therapy, or recurrent bleeding in spite of prescribed treatment or other hernias if symptomatic and if operative repair is contraindicated for medical reasons or when not amenable to surgical repair.
4. 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. The regulation in effect at the time of the applicant's discharge from the Army National Guard states:
- 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. 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 member reasonably may be expected to perform because of his or her office, rank, grade, or rating. The Army must find that a service member is physically unfit to reasonably perform his or her duties and assign an appropriate disability rating before he or she can be medically retired or separated.

c. When a member is being processed for separation for reasons other than physical disability (e.g., retirement, resignation, relief from active duty, administrative separation, completion of required active service, 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.

5. 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 2-9 states 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 evidence.

6. 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//