

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 March 2025

DOCKET NUMBER: AR20240008028

APPLICANT REQUESTS: correction to his service record to reflect disability, permanent retirement at 20 years of active service.

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), ending 6 January 1998

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, in pertinent part, his DD Form 214 shows he served 19 years, 1 month, and 29 days at the time of retirement. He requests it changed to reflect 20 years of creditable service in accordance with Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation), Paragraph 4-29b, as he feels he earned that time.
3. A review of the applicant's available service record reflects the following:
 - he enlisted in the Regular Army on 8 November 1978
 - DD Form 261 (Report of Investigation Line of Duty and Misconduct Status), dated 18 May 1997, shows he sustained spinal cord injury, multiple trauma from an auto accident incurred during adverse weather conditions, and while under the influence of alcohol. See full report pages 14 – 44 of supporting documents.
 - the available service record is void of the initial DA Form 199 (Physical Evaluation Board) Proceedings
 - on 6 November 1997, Orders Number 310-0923 directed placement on the temporary disability retirement list (TDRL), effective 24 November 1997

- on 25 November 1997, Orders Number 329-0900 amended Orders Number 210-0923 to show 19 years, 1 month, and 29 days of active federal service.
- His DD Form 214 shows honorable retirement with 19 years, 1 month, and 29 days of active service and narrative reason as disability, temporary
- DA Form 199, convened 15 December 1998 shows he was recommended for removal from the temporary disability retired list (TDRL) and to be placed on the permanent disability retired list (PDRL)
- on 11 January 1999, Orders Number D6-7 was issued removing him from the TDRL and placing him on the PDRL at 100 percent disability.

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 Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition and available military record, the Board determined that relief is not warranted. The applicant was placed on the Temporary Disability Retired List (TDRL) effective 24 November 1997 and subsequently transferred to the Permanent Disability Retired List (PDRL) on 11 January 1999 with a 100 percent disability rating. However, official orders and his DD Form 214 clearly document that he completed 19 years, 1 month, and 29 days of active federal service at the time of retirement.

2. The applicant sustained a spinal cord injury and multiple traumas as a result of an automobile accident while under the influence of alcohol, as documented in the DD Form 261 (Report of Investigation Line of Duty and Misconduct Status), dated 18 May 1997. The injury was determined to have occurred under misconduct conditions, which disqualifies the time associated with that incident from being credited toward retirement eligibility. In accordance with applicable regulations, misconduct-related injuries are not considered for service credit toward retirement. The Board found no evidence of error or injustice in the determination of the applicant's length of service or retirement status. Therefore, the Board denied relief.

3. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction be completed to more accurately depict the military service of the applicant.

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:

Except for the correction addressed in Administrative Note(s) below, the Board found 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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's service records show he is authorized an additional award not annotated on his DD Form 214. As a result, amend his DD Form 214 to show award of the Korea Defense Service Medal.

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 635-40 (Disability Evaluation for Retention, Retirement, or Separation), Paragraph 4-29 covers final disposition for unfit Soldiers on active duty with 18 but less than 20 years active Service. The provisions of law in 10 USC on the retention of Soldiers on active duty after they complete 18 but less than 20 years of active Service vary in addressing application to Soldiers who are determined unfit due to physical disability. In the interest of equity and uniformity across all components, these Soldiers will be dispositioned as set forth below.

a. Secretarial review. (1) A Soldier on active duty will be provided Secretarial review when the disposition of their case is one of the following: (a) Separation with entitlement to disability severance pay. (b) Separation without entitlement to disability benefits. (Normally, Soldiers are ineligible for referral to the DES for disability due to intentional misconduct, willful negligence, or incurred during a period of unauthorized absence or was incurred in an excess leave status not covered under 10 USC Chapter 61 (see para 4-3h). However, in the event the Soldier's case is accepted and completes DES evaluation, Secretarial review is required.) (2) A Soldier may waive Secretarial review by submitting a written statement to the USAPDA in which they attest their desire to waive this process and to proceed with their disability disposition.

b. Process requirements for Secretarial review. (1) The USAPDA is responsible for ensuring a service computation is performed by the appropriate transition center to confirm the Soldier meets the 18, but less than 20, year criterion. (2) The USAPDA will submit the case through the DCS, G-1 (DAPE-MPE) to the Assistant Secretary of the Army (Manpower and Reserve Affairs) for final approval or disapproval to separate the Soldier or to defer disability disposition until the Soldier obtains 20 years of active Service.

c. Retention under Secretarial review. When the Assistant Secretary of the Army (Manpower and Reserve Affairs) directs that a Soldier pending separation with or without entitlement to disability benefits be retained to 20 years of active Service, the Soldier will be managed as a COAD.

d. Retirement after retention under Secretarial review. Generally, Soldiers retained as a result of Secretarial review will be retired effective the first day of the month after the Soldier attains 20 years active Service. Any referral back to the DES for final

disability evaluation before retirement will be in accordance with the provisions of paragraph 6–9. (1) A Soldier initially entitled to disability severance pay will generally be retired for permanent disability with the disability rating percentage initially awarded. (2) A Soldier may waive disability retirement for regular retirement. (3) A Soldier whose initial disability disposition was separation without entitlement to benefits will retire for length of service.

e. Delegation of disposition authority. The CG, USAPDA is delegated final disposition authority for the dispositions listed below. (1) Permanent disability retirement. (2) Placement on and removal from the TDRL. (3) A case otherwise requiring Secretarial approval when the Soldier submits a written statement to the USAPDA in which they attest their desire to waive this right and to proceed with their disability disposition.

3. Army Regulation 635-8 (Separation Processing and Documents), currently in effect, states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty (REFRAD), retirement, or discharge. Paragraph 5-2 further indicates that a DD Form 214 will not be prepared for Soldiers being removed from the Temporary Disability Retired List, in effect, including placement on the PDRL.

//NOTHING FOLLOWS//