

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 April 2025

DOCKET NUMBER: AR20240008477

APPLICANT REQUESTS: in effect, a disability separation/discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- 4 letters from the Department of Veterans Affairs (VA), 3 January 2024

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 injured, and he currently receives a 100% permanent and total disability rating from the VA. He would like his DD Form 214 corrected to show his discharge for disability for service-connected disability and his award of a 100% Permanent and Total disability rating. These corrections will make him eligible for a VA certificate of eligibility for a home loan.
3. The applicant enlisted into the Regular Army and entered active duty 14 October 1975.
4. A Fort Jackson (FJ) Form 8 (Evaluation for Discharge for Enlistees before 180 Active Duty Days), dated 12 November 1975, shows the applicant's commander observed that the applicant did not possess the motivation or initiative to complete Basic Combat Training.
 - a. First Counseling: The commander counseled the applicant "on 5 November 1975 concerning his lack of motivation and initiative towards his training. [The applicant] was told he had to show more interest in his training as well as his military duties. So far, he has shown no improvement. [The applicant] does not possess the qualities required of a trainee to successfully complete Basic Combat Training."

b. Second Counseling: The commander again counseled the applicant, "on 12 November 1975 about his lack of motivation and poor attitude. This man has an excuse for everything, but obviously does not desire to succeed in the Army. He complains of back pains, goes on sick call, but is always returned to duty. He does not want to complete his obligations and will not try to succeed. [The applicant] certainly can do all that is required of him, but no amount of counseling brings out the motivation needed. This unit is wasting its time in trying to train [the applicant] and people like him. I recommend his immediate discharge."

5. On 19 November 1975, the applicant's received notification from his commander of his commander's intent to initiate the applicant's administrative separation under the provisions of Department of the Army message 011510Z, dated August 1973, subject Evaluation and Discharge of Enlistees before 180 Active Duty Days.

a. The reason for the proposed separation action was the applicant's "complete lack of motivation and poor attitude towards [his] training. [He went] on sick call to avoid training and [he] refuse[d] to accept [his] responsibilities as a trainee. [The applicant had] been given sufficient time to improve, but no improvement has been noted."

b. The applicant's commander further informed him of his potential benefits and the rights available to him, which included the right to submit a rebuttal.

c. The applicant acknowledged receipt of the notification, and he indicated he did not desire to meet with counsel or provide a statement on his own behalf, and he did desire a separation physical.

6. The separation authority approved the applicant's separation from the military service under the provisions of Department of the Army message 011510Z, dated August 1973, subject Evaluation and Discharge of Enlistees before 180 Active Duty Days., and he directed an honorable characterization of service.

7. A Report of Medical Examination, dated 20 November 1975 notes no physical or mental problems; the applicant was found medically qualified for separation with a physical Profile rating of PULHES 111111.

8. The applicant was honorably discharged under the provisions of Department of the Army message 011510Z, dated August 1973, with a separation code of "JNF" and a reentry code of "1." The applicant completed 1 month and 20 days of net active service during the period covered.

9. The applicant provided 4 letters from the VA, dated 3 January 2024, which show:

a. the VA issued him a verification of honorable service verification card.

- b. the applicant receives service-connected disability compensation with a combined evaluation of 70%.
- c. the VA granted him commissary and exchange privileges.
- d. he became totally and permanently disabled due to his service connected disabilities on 6 March 2017.

10. MEDICAL REVIEW:

1. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). Essentially, the applicant requests Army medical disability for injuries that have been service connected by the VA. The applicant indicated that he was injured during basic training and that this impacted his ability to perform his duties. This is a request for reconsideration of a prior application.
2. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The applicant entered active service in the Regular Army 14Oct1975. He was separated almost 2 months later on 03Dec1975 without having completed an MOS. The ROP detailed the less than favorable counselings (two in total). He was discharged under guidance at the time concerning the discharge of enlistees before 180 days of active service. The reason(s) cited included lack of motivation and poor attitude. His service was characterized as Honorable.
3. There were no service treatment records available for review. Separation proceedings appeared to begin during his 4th week of BCT. The applicant's separation physical exam (Report of Medical Examination) on 20Nov1975 was normal to include spine, neurologic, and upper and lower extremity examinations. No defects were noted. The document showed physical profile PULHES 111111. JLV search today showed the applicant was total combined service connected by the VA at 80% for the following: Degenerative Arthritis of the Spine; Lumbosacral or Cervical Strain; Paralysis of Median Nerve; Paralysis of All Radicular Nerve Groups; and Paralysis of Sciatic Nerve (right and left). The search also revealed that 18 years after discharge from service, a lumbar spine film was normal on 20Apr1993. And finally, the 06Mar2017 and 19Nov2024 Back DBQ exams and 06Mar2017 Neck DBQ exam were available for review in JLV, but the exams did not provide any evidence relevant for assessing the severity of his condition(s) at the time of discharge.
4. Referral for medical discharge processing is not 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 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, available military record and medical review, the Board concurred with the advisory official finding the applicant's separation physical exam (Report of Medical Examination) conducted on 20 November 1975 was normal to include spine, neurologic, and upper and lower extremity examinations.

2. The Board further noted 18 years after discharge from service the applicant was assessed by the Department of Veterans Affairs, but the exams did not provide any evidence relevant for assessing the severity of his condition(s) at the time of discharge. The Board concluded there was insufficient evidence that shows a medical/disability separation was warranted during his period of active service. As such, relief is denied.

3. The Board agreed that the VA provides post-service support and benefits for service connected medical conditions. The VA operates under different laws and regulations than the Department of Defense (DOD). In essence, the VA will compensate for all service connected disabilities. Variance in ratings does not indicate an error on the part of either entity. If the applicant has yet to file a claim with the Veterans Administration for his medical condition(s), he may consider doing so.

BOARD VOTE:

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



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. Department of the Army (DA) Message 011510Z, August 1973, then in effect provided that Soldiers may be separated when they have demonstrated that they are not qualified for retention due to failure to adapt socially or emotionally to military life; cannot meet minimum standards prescribed for successful completion of training because of lack of aptitude, ability, motivation, or self-discipline; or have demonstrated character and behavior characteristics not compatible with satisfactory continued service. They must have voluntarily enlisted and not completed more than 179 days of active service by the date of separation.

2. Title 10, U.S. 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, under the operational control of the Commander, U.S. Army Human Resources Command (HRC), is responsible for administering the PDES and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with Department of Defense Directive 1332.18 and Army Regulation 635-40.

a. Soldiers are referred to the PDES when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in a medical evaluation board, when they receive a permanent medical profile, P3 or P4, and are referred by an MOS Medical Retention Board, when

they are command-referred for a fitness-for-duty medical examination, and when they are referred by the Commander, Human Resources Command.

b. The PDES assessment process involves two distinct stages: the MEB and the 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 are either 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 retirement payments 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 their 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.

3. 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.

4. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) establishes the Physical Disability Evaluation System (PDES) 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 their office, grade, rank, or rating. It provides that an MEB 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 2-1 provides that 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 their office, rank, grade, or rating. The Army must find that a service member is physically unfit to reasonably perform their duties and assign an appropriate disability rating before they can be medically retired or separated.

b. Paragraph 2-2b(1) provides that when a member is being processed for separation for reasons other than physical disability (e.g., retirement, resignation, reduction in force, relief from active duty, administrative separation, discharge, etc.), his or her continued performance of duty (until he or she is referred to the PDES for evaluation for separation for reasons indicated above) creates a presumption that the member is fit for duty. Except for a member who was previously found unfit and retained in a limited assignment duty status in accordance with chapter 6 of this regulation, such a member should not be referred to the PDES unless his or her physical defects raise substantial doubt that he or she is fit to continue to perform the duties of his or her office, grade, rank, or rating.

c. Paragraph 2-2b(2) provides that when a member is being processed for separation for reasons other than physical disability, the presumption of fitness may be overcome if the evidence establishes that the member, in fact, was physically unable to adequately perform the duties of his or her office, grade, rank, or rating even though he or she was improperly retained in that office, grade, rank, or rating for a period of time and/or acute, grave illness or injury or other deterioration of physical condition that occurred immediately prior to or coincidentally with the member's separation for reasons other than physical disability rendered him or her unfit for further duty.

d. Paragraph 4-10 provides that MEBs are 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 qualification for retention based on criteria in Army Regulation 40-501, chapter 3. If the MEB determines the Soldier does not meet retention standards, the board will recommend referral of the Soldier to a PEB.

e. Paragraph 4-12 provides that each case is first considered by an informal PEB. Informal procedures reduce the overall time required to process a case through the disability evaluation system. An informal board must ensure that each case considered is complete and correct. All evidence in the case file must be closely examined and additional evidence obtained, if required.

f. The regulation states that after the Soldier has been processed through the PDES and a PEB has determined that the Soldier is qualified for disability retirement but for the fact that their disability is determined not to be of a permanent nature and stable can

be placed on the temporary disability retired list (TDRL). The TDRL is used in the nature of a "pending list." It provides a safeguard for the Government against permanently retiring a Soldier who can later fully recover, or nearly recover, from the disability causing him or her to be unfit. Conversely, the TDRL safeguards the Soldier from being permanently retired with a condition that may reasonably be expected to develop into a more serious permanent disability.

5. Title 10, U.S. Code, section 1201, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30 percent. Title 10 U.S. Code, section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating of less than 30 percent.

6. Title 38, U.S. Code, sections 1110 and 1131, permits the VA to award compensation for medical conditions incurred in or aggravated by active military service. The VA, however, is not empowered by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual may have a medical condition that is not considered medically unfitting for military service at the time of processing for separation, discharge, or retirement, but that same condition may be sufficient to qualify the individual for VA benefits based on an evaluation by that agency.

7. 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.

//NOTHING FOLLOWS//