ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 14 March 2025

DOCKET NUMBER: AR20240008887

APPLICANT REQUESTS: correction of his record to show he received a physical disability discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Note, from the General Medicine Clinic
- DD Form 214 (Report of Separation from Active Duty)
- Progress Notes, Stanford Health Care
- Medical Opinion-Disability Benefits Questionnaire
- Department of Veterans Affairs (VA) Educational Benefits
- VA Rating Decision

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 notes his application is related to Other Mental Health and states he served on active duty for 4 months and 8 days; he was issued a DD Form 256A (Honorable Discharge Certificate). He also had 22 days of lost time. During his period of active duty training, he hurt his left shoulder and could not pass the monkey bars, but he passed the tests for all other training. He is ineligible for veterans benefits to include educational and home loans, because he is 11 days short of qualifying service. He has a 50 percent (%) disability rating due to a left shoulder injury. However, he has received little treatment for this injury. He also suffered lots of mental depression during that timeframe.

3. The applicant enlisted in the Regular Army on 21 August 1975. He did not successfully complete basic training and he was not awarded a military occupational specialty. He left his unit at Fort Ord, CA, in an absent without leave (AWOL) status from 6 to 27 January 1976.

4. The full facts and circumstances surrounding the applicant's discharge process are not available. However, on 4 February 1976, the applicant's commander initiated separation action against him under the provisions of Army Regulation 635-200, paragraph 5-39, Trainee Discharge Program with an Honorable Discharge Certificate.

5. On 5 February 1976, the appropriate authority approved the recommendation and directed the applicant's separation with an Honorable Discharge Certificate.

6. On 10 February 1976, the applicant was honorably discharged under the provisions of Army Regulation 635-200, paragraph 5-39. He had completed 4 months and 28 days of active service and he had 22 days of lost time.

7. The applicant submitted a VA rating decision showing he has a combined evaluation of 50 percent. The applicant's submissions were provided to the Board in their entirety.

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). The applicant requests honorable disability discharge for left shoulder injury. He indicated that Other Mental Health condition was related to his request.

2. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The available separation paperwork was incomplete. The applicant enlisted in the Regular Army on 21Aug1975. He was discharged almost 5 months later on 10Feb1976. He was AWOL from 06 to 27 January 1976 during basic training and did not complete training. Separation action was initiated against him under the provisions of Army Regulation 635-200, paragraph 5-39, Trainee Discharge Program. He received an honorable discharge certificate.

3. Left Shoulder condition(s)

a. 10Feb1976 Statement of Medical Condition. The applicant indicated that his medical condition had changed: His shoulder would come out of place. There were no other in-service records or references to the left shoulder condition(s).

b. 21Oct2015 Shoulder and Arm Conditions DBQ VAMC. The applicant reported that he injured his shoulder during basic training. The previous C&P exam notes reportedly indicated a 2007 MRI report revealed focal tears of the infraspinatus, supraspinatus, and subscapularis muscles. There was reportedly some arthritis of the glenohumeral joint and clear-cut labral tear involving that area. This study report was

not available for direct review. Diagnoses: Left Shoulder Impingement Syndrome; Rotator Cuff Tear; and Degenerative Arthritis.

c. 07May2013 Internal Medicine History & Physical Note VAMC. The applicant provided the history that he had been receiving care at Stanford Hospital Clinic for 6-7 years and he had also been followed by orthopedics there. Of note, the provider reported they had reviewed a 1975 (in service) consult request for left rotator cuff injury. The provider's impression: Chronic Left Shoulder Pain on chronic Vicodin (narcotic) and etodolac (anti-inflammatory).

d. 27May2021 Stanford Medicine Outpatient Center. The specialist assessed the applicant's condition as End-stage Left Shoulder Osteoarthritis. The applicant had failed nonoperative management and was considering surgery. The radiograph showed severe degenerative changes of the ascending humeral joint and interval progression of the degenerative changes at the acromioclavicular joint. (The study was compared with the 08Feb2018 film).

4. Behavioral health condition. There were no BH records while in service that were available for review. JLV search revealed the following:

a. 09Mar2017 Pain Clinic BH Medicine VAMC. Initial evaluation for chronic pain. He was currently prescribed opiates from his Stanford provider. He was not working due to being physically disabled. He reported he last worked 10 years ago as a "jack of all trades" (carpentry, plumbing, painting, etc.) until hand, shoulder and knee problems stopped him. He had no history of psychiatric hospitalization. For prior psychological treatment, the applicant had a history of Alcohol Use Disorder. He was placed on Paxil at Kaiser about 25 years ago, related to his alcohol problem.

b. 30Apr2024 Medical Opinion DBQ VAMC. The VA BH examiner provided a rationale linking the applicant's chronic pain due to his service-connected disabilities, to his mental health condition. The service-connected disabilities identified were Left Shoulder Degenerative Arthritis (Non-dominant); and Left Upper Extremity Muscle Atrophy. The VA BH examiner stated that the applicant met criteria for Adjustment Disorder with Mixed Anxiety and Depressed Mood secondary to or the result of, his left shoulder conditions. Therefore, secondary service connection was established for the applicant's adjustment disorder condition. No date was given for onset for the adjustment disorder condition.

5. Summary/opinion

a. The applicant is requesting a change in discharge to physical disability. His service was characterized as honorable. JLV search showed total combined service connection by the VA at 90% for the following disabilities: Adjustment Disorder with

Mixed Anxiety and Depressed Mood 70%; Shoulder Muscle Injury 30%; and Limited Motion of the Arm 30%.

b. In his application, the applicant stated that he had a lot of mental depression during his time in service. Decades after discharge from service, the applicant was granted secondary service connection for an adjustment disorder due to chronic pain at least in part due to the left shoulder conditions. There were no in service treatment records available for review. There was no available profile information. Notwithstanding the current severity of the applicant's left shoulder (end-stage degenerative disease), or the current 70% rating for the adjustment disorder; there was insufficient evidence to support that the applicant had condition(s) which failed medical retention standards of AR 40-501 chapter 3 at the time of discharge from military service. In the ARBA Medical Reviewer's opinion, a change in discharge to physical disability is not supported by the current evidence. Referral for medical discharge processing 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. The Board noted the applicant's contention that he hurt his left shoulder and could not pass the monkey bars, but he passed the tests for all other training. However, the Board reviewed and concurred with the medical advisor's review finding no in-service treatment records or profile data available for review. Despite the current severity of his conditions, the evidence does not support that he had medical issues at the time of discharge that failed retention standards. The Board concluded that the applicant's discharge does not warrant recharacterization to physical disability, and referral for medical discharge processing is not supported by the available documentation.

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.

[redacted]

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 635-200 (Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel from the Army. At the time, paragraph 5-39 governed the Trainee Discharge Program. That program provided for the separation of service members who lacked the necessary motivation, discipline, ability, or aptitude to become productive Soldiers or failed to respond to normal counseling. The regulation essentially required that the service member have been voluntarily enlisted, be in basic, advanced individual, on-the-job or service school training prior to award of a military occupational specialty and must not have completed more than 179 days of active duty on their current enlistment by the date of separation. This regulation also provided that Soldiers could be separated when they demonstrated they were not qualified for retention due to failure to adapt socially or emotionally to military life, could not meet minimum standards prescribed for successful completion of training because of lack of aptitude, ability, motivation, or self-discipline; of demonstrated character and behavior characteristics not compatible with satisfactory continued service.

3. Army Regulation 635-40 establishes the Army 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 office, grade, rank, or rating. 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.

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 military service.

b. Soldiers who sustain or aggravate physically unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

(1) The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

(2) The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

c. The percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the Physical Evaluation Board determines the Soldier is physically unfit for duty. Ratings are assigned from the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD). The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting, or ratable condition, is one which renders the Soldier unable to perform the duties of their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty. 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.

//NOTHING FOLLOWS//