

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 April 2025

DOCKET NUMBER: AR20240009112

APPLICANT REQUESTS: in effect:

- a medical retirement instead of a discharge due to disability with severance pay
- back pay in the rank/grade of sergeant first class (SFC)/E-7 starting in August 1997

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

- DD Form 149 (Application for Correction of Military Record)
- Physical Profile
- Report of Medical Examination
- Report of Medical History
- Physical Evaluation Board (PEB) Referral Transmittal Document
- Narrative Summary (NARSUM)
- Medical Evaluation Board (MEB) Proceedings
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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 medically boarded, but he was not given an opportunity to medically retire with 15 years of service. They were interested in getting him out of the Army. He believes he should have been allowed to medically retire in the rank/pay grade of SFC/E-7, in lieu of discharge with severance pay. He believes he is entitled to all his benefits to include an identification card, pension, and every other benefit that comes with retirement.
3. The applicant enlisted in the Regular Army on 23 July 1982. His record shows service in Honduras from 23 September 1983 to 18 February 1984 and service in

Germany from 20 January 1985 to 28 March 1989 and from 30 March 1989 to 2 March 1995.

4. The applicant's MEB NARSUM, dated 14 May 1997, shows he was diagnosed with diabetes mellitus type II, requiring insulin for control, and no end organ disease. He had a Profile of P-3, U-1, L-1, H-1, E-1, S-1. The NARSUM also shows:

a. The recommendation was Referred to the PEB under the provisions of Army Regulation (AR) 40-501, paragraph 3-11, section d.

b. His limitations were: he should have no assignment to an area where definitive medical care was not available, and he should have no prolonged consumption of field rations/meals ready to eat. These are in compliance with codes E and F.

c. His P-3 profile further stipulated that he was allowed to walk and run at his own pace and distance, he was to have unlimited walking restrictions, and unlimited running restrictions for the physical fitness test, he was required to do the 2-mile run, push-ups, and sit-ups, when blood sugar levels were not too low.

5. On 26 May 1997, a PEB found the applicant's condition, diabetes mellitus requiring insulin, prevented the satisfactory performance of the duties in his grade and primary military occupational specialty [63B Light Vehicle Mechanic]. The PEB recommended a combined disability rating of 20% and separation with severance pay if otherwise qualified. On 29 May 1997, the applicant concurred and waived a formal hearing of his case.

6. In an undated, memorandum, the applicant signed a statement indicating he did not wish to continue active-duty service.

7. The applicant's DD Form 214 shows he was honorably discharged on 22 August 1997 under the provisions of AR 635-40 (Disability Evaluation for Retention, Retirement, or Separation) by reason of disability, severance pay, in the rank/grade of SFC/E-7. The DD Form 214 also shows he was credited with 15 years and 1 month of active service.

#### 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 previous ABCMR denial (22 November 2016, AR20150009779) the military electronic medical record (AHLTA), the Veterans Affairs (VA) electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and 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 a 15-year retirement. He states

“I was medically Boarded and not given the chance to retire with 15 years of service! The only thing they were interested in was to get me out of the Army.”

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The DD 214 for the period of service under consideration shows he entered the regular Army on 23 July 1982 and was discharged on 22 August 1997 with \$65,259 of disability severance pay under provisions in paragraph 4-24b(3) of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (1 September 1990).

d. The applicant was placed on a duty limit permanent profile for “Diabetes Mellitus Type II, Insulin Requiring on 14 March 1997.

e. On 14 May 1997, the MEB determined this condition failed medical retention standards. On 14 May 1997, he agreed with the board's findings and recommendation and his case was forwarded to a physical evaluation board (PEB).

f. On 26 May 1997, his informal PEB found his diabetes was the sole unfitting condition for continued service.

g. The VA Schedule for Rating Disabilities (VASRD) is the document used to rate unfitting military disabilities. Paragraph B-1a and B1b of Appendix B to AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (1 September 1990):

a. Congress established the VASRD as the standard under which percentage rating decisions are to be made for disabled military personnel. Such decisions are to be made according to Title IV of the Career Compensation Act of 1949 (Title IV is now mainly codified in chap 61 of Title 10, U.S. Code).

b. Percentage ratings in the VASRD represent the average loss in earning capacity resulting from these diseases and injuries. The ratings also represent the residual effects of these health impairments on civil occupations.

h. Using the VASRD, the PEB derived and applied the correct 20% rating and recommended the applicant be separated with disability severance pay. The 20% rating in the 1997 VASRD was for diabetes "Requiring insulin and restricted diet, or; oral hypoglycemic agent and restricted diet."

i. On 29 May 1997, after being counseled on the Board's findings and recommendation by his PEB liaison officer, he concurred with the PEB and waived his right to a formal hearing

j. The 15-year retirement the applicant mentions is for Reserve Component Soldiers under 10 U.S. Code § 12731b, Special rule for members with physical disabilities not incurred in line of duty (15-year notice of eligibility). Passed on 5 October 1999, this statute authorizes the Secretary concerned to treat a member of the Selected Reserve who no longer meets the qualifications for membership in the Selected Reserve solely because the member is unfit due to physical disability not incurred in the line of duty as having met the service requirements for years of service computed under 10 U.S. Code § 12732. The Secretary can then provide the member with a notification that the member has completed at least 15, and less than 20 of service. This "15-year Notice of Eligibility" authorizes a non-regular retirement.

k. It is the opinion of the Agency Medical Advisor that neither a change in his military disability rating nor the granting of a 15-year retirement is 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 that neither a change in his military disability rating nor granting of a 15-year retirement is warranted. The Board further determined, back pay from August 1997 in the rank/grade of SFC/E-7 is unwarranted.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:                :                :                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.

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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, 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 is responsible for administering the Army Disability Evaluation System (DES) and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with Department of Defense (DOD) Directive 1332.18 and AR 635-40.

2. AR 635-40 establishes the Army 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.

a. The disability evaluation assessment process involves two distinct stages: the MEB and PEB. The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his or 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 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.

b. Service members whose medical condition did not exist prior to service 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. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

c. Soldiers who sustain or aggravate physically unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and/or 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.

d. 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 his or her office, grade, rank, or rating.

e. The percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Ratings are assigned from the 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 his or her office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of his or her employment on active duty.

f. 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.

3. 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%. 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%.

4. Title 38, U.S. Code, Sections 1110 and 1131, permit the 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.

5. Title 38, Code of Federal Regulations, Part IV is the VASRD. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge. 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.

//NOTHING FOLLOWS//