

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 April 2025

DOCKET NUMBER: AR20240009584

APPLICANT REQUESTS: reconsideration of his previous requests for entitlement to Concurrent Retirement and Disability Pay (CRDP) and reimbursement of a benefit package. He also requests a personal appearance hearing before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- Applicant Statement, undated
- Affidavit, 22 July 1966
- Photograph/Narrative, undated
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge)
- Department of Veterans Affairs (VA) Rating Decision, 10 November 2011
- Board Determination/Recommendation page, AR20170008102, 28 November 2017
- Integrated Disability Evaluation System (IDES) Narrative Summary (NARSUM)
- Photograph with Story Published 23 March 2018
- Story with photograph, Public Affairs Office, 30 March 2018
- DD Form 1351-2 (Travel Voucher or Subvoucher) with Hotel Receipt, June 2018
- Letter, United States Army Physical Disability Agency (USAPDA), 6 July 2018
- Orders 187-1107, Headquarters, U.S. Army North (Fifth Army), 6 July 2018
- Applicant letter to Defense Finance and Accounting Service (DFAS), 8 December 2018
- Applicant letter, 26 March 2022
- Army Board for Correction of Military Records (ABCMR) Docket Number AR20210016866, 31 May 2022
- VA Rating Decision, 16 August 2022
- Letter, Army Review Board Agency Case Management Division, 23 November 2022
- Insurance and Health Care Coverage Estimate, undated
- Correspondence, Member of Congress (MOC), 7 October and 22 November 2024

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's cases by the ABCMR in Docket Numbers AR20090010260 on 29 December 2009, AR20100009820 on 21 September 2010, AR20170008102 on 28 November 2017, and AR20210016866 on 31 May 2022.

2. Regarding entitlement to CRDP, the applicant was previously informed his contentions, military record and regulatory guidance were all carefully considered. according to the Defense Finance and Accounting Service website, CRDP allows military retirees to receive both military retired pay and Veterans Affairs (VA) compensation. This was prohibited until the CRDP program began on January 1, 2004. CRDP is a "phase in" of benefits that gradually restores a retiree's VA disability offset. Soldier do not need to apply for CRDP. If qualified, they are enrolled automatically. The eligibility criteria is as follows: The Soldier must be eligible for retired pay to qualify for CRDP. If the Soldier was placed on a disability retirement but would be eligible for military retired pay in the absence of the disability, that Soldier may be entitled to receive CRDP. The applicant does not meet the statutory or regulatory requirements for CRDP.

3. Army Regulation 15-185 sets forth procedures for processing requests for corrections to military records, including requests for the reconsideration of previous Board decisions. This regulation allows an applicant to request reconsideration of an earlier ABCMR decision, provided new evidence exists that was not in the records or considered at the time of the ABCMR's original decision. The staff of the ABCMR reviewed your request for reconsideration for CRDP, examined the original ABCMR decision, and reviewed the evidence which you submitted in support of this and your previous applications. From that review, we determined that you did not provide new evidence or a new argument with this request. The ABCMR will not consider any further requests for reconsideration of this matter without new evidence or a new argument.

4. The applicant reiterates, in effect:

a. He has attempted to get the Army to pay him his retirement due him based on ABCMR Docket Number AR201008102. He cannot understand why DFAS continues to fight him. It is stated that he does not have 20 good years; however, the affidavit the Board considered previously shows he remained on active duty until 2018. The affidavit is the only contract between him and the Army after 7 June 1966. This is a legal contract between him and the Army and states:

(1) After being advised of the advantage of remaining in an active status in the Army beyond the scheduled date of his expiration of service for the purpose of

continuing medical care or hospitalization until complete, and subsequent separation or retirement for physical disability under Chapter 61, Title 10 U.S. Code.

(2) Wherefore in consideration of this – I do desire retention on active duty in the Army beyond my scheduled date of expiration of my tour of service.

b. This document was executed on 22 July 1966. On 23 September 1966, the Army kicked him out of the hospital. He was never out-processed, given a transfer, discharged or any other paperwork. His family was simply told to take him to the VA to complete his treatments.

c. He did not receive any correspondence from the Army until February 2018. This was after he had written and applied for his disability retirement from the ABCMR in 2008. He eventually filed a lawsuit against the Board in 2010. In February 2018, he received a call from Fort Polk, LA informing him that the Army was reinstating him into an Army hospital. When he reported, he was informed the Army had made a serious error and now they were going to correct their mistake and make him whole. He was placed back into the hospital as if it was September 1966. He was out-processed and remained at Fort Polk until 18 April 2018.

d. He is now having to revisit this again and asks the Board to refer to the below letters. All the referenced letters he quoted state in plain language that he was to receive all his retirement income with only severance deducted. In addition, because his retirement started in September 1966, he was entitled to a retiree benefit package. He is asking to be refunded what he had to spend to provide for his family.

- DA letter dated 6 July 2018, paragraph (b)
- ABCMR letter dated 28 November 2017, paragraphs (a) (b); and
- DA letter dated 23 November 2022

e. The Army wronged him from the very beginning. He believed when they brought him back to Fort Polk that they were being sincere in righting their wrong. It turns out that they just wanted to correct their mistake on paper. They performed a slight of hand yet again by saying he was entitled to retirement income and then used regulations to take it away. He contends the rules cannot be applied to him because what happened to him happened while he was still legally in the Army. He is still hoping the Army will do right by him and pay him what he earned through sacrifice during the Vietnam War.

f. When he thinks back to all the pain he has suffered, the different surgeries and dental procedures he has gone through all because the Army did not keep him in the hospital to perform the necessary treatment. Although the VA tried to correct some of his injuries, for some of the injuries it was already too late. He is sad and angry that the Army used and discarded him. He refused to sit back and let this continue. He sincerely

hopes the Board will research his case further and really read and review what was done to him. The Army cannot apply the standard rules and regulations to his case. He will never let this go. He will never stop fighting to be made whole by the Army. If he must, he will file another lawsuit. If this is happening to him, who knows who else it could be happening to presently.

5. A review of the applicant's official records shows the following:

a. On 8 June 1963, the applicant enlisted in the Regular Army.

b. DA Form 20 (Enlisted Qualification Record) shows the applicant served in the Republic of Vietnam from 5 April 1965 to 14 January 1966. Item 40 (Wounds) shows a gunshot wound to the jaw.

c. His medical records show he received a gunshot wound to his lower face, while in Vietnam for which he received the Purple Heart.

d. On 7 January 1966, Evacuation Orders Number 5, issued by the U.S. Army Medical Center, Ryukyu Islands, amended Evacuation Orders Number 3, to show the applicant was medically evacuated to Brooke General Hospital, Fort Sam, Houston TX.

e. On 22 July 1966, the applicant signed an affidavit to remain on active duty beyond his expiration term of service for the purpose of continuing medical care or hospitalization and, if eligible, subsequent separation or retirement for physical disability under the provisions of Title 10, United States Code (USC), chapter 61.

f. On 8 September 1966, an MEB convened and recommended the applicant be returned to duty with no assignment which required use of a field telephone, or which required clear sounding speech for the below conditions. The applicant agreed with the findings of the MEB. The NARSUM from the MEB is available for the Board's review.

- wound to his lower face
- fracture to the body of his mandible
- avulsion, alveolar process of mandible
- amputation, traumatic to the distal 1/3 of his tongue
- scar of mandibular region
- scar of neck
- periodontoclasia

g. On 22 September 1966, the applicant was honorably released from active duty by reason of expiration term of service and transferred to the U.S. Army Reserve (USAR)

Control Group (Reinforcement). He completed 3 years, 3 months, and 15 days of net active service.

h. On 29 December 2009, in Docket Number 20090010260, the ABCMR denied the applicant's request to change his DD Form 214 to reflect he was medically retired citing in pertinent part, the applicant failed to provide evidence that shows his medical condition(s) warranted consideration by a PEB.

i. On 21 September 2010, in Docket Number AR20100009820, the ABCMR denied the applicant's reconsideration to change his DD Form 214 to reflect he was medically retired citing in pertinent part, the applicant failed to show he was not afforded proper disability processing of the evaluation rendered by the MEB was incorrect.

j. On 28 November 2017, in Docket Number AR20170008102, the ABCMR directed the Office of The Surgeon General to review the available records to determine if the applicant's Physical Disability Evaluation System (PDES) processing considered all possible diagnoses he may have had. If it was determined he should have continued processing through the PDES prior to his discharge, these proceedings would serve as the authority to affirm him that process. Should a determination be made that the applicant should have been discharged or retired due to disability, these proceedings would serve as the authority to void his administrative separation and issue the appropriate separation retroactive to the appropriate date, with entitlement to all pay and allowances that may be due as a result.

k. On 21 June 2018, as a result of the decision rendered in ABCMR Docket Number AR20170008102, a PEB convened and found the applicant physically unfit and recommended a rating of 90 percent and his disposition be permanent disability retirement.

l. On 6 July 2018, a memorandum for the Commander, U.S. Army Human Recourses Command, was issued from the Department of the Air Force requesting the following changes be made to the applicant's DD Form 214 and a DD Form 215 be issued:

- item 11a (Type of Transfer or Discharge) from transferred to the USAR to Retirement
- item 11c (Reason and Authority) from Expiration Term of Service to disability, permanent
- item 17 (District or Area Command to Which Reservist Transferred) from USAR Control Group (Reinforcement) to USAR Control Group (Retired)

m. On 6 July 2018, Orders Number 187-1107, issued by Joint Base San Antonio, released the applicant from duty because of physical disability. The effective date of

retirement was 22 September 1966 and the effective date the applicant was placed on the retirement list was 23 September 1966. Retirement type was permanent disability. The authorizing statute was Title 10, USC, section 1201.

n. On 30 June 2020, in ABCMR Docket Number AR20190001737, the Board denied the applicant's request for retired pay retroactive to 22 September 1966 citing in pertinent part, evidence of record shows the applicant was placed on the permanent disability retired list without having served over 20 years of active duty service. In accordance with public law, the applicant may not receive concurrent disability payments. The Board determined there is insufficient evidence to grant relief.

6. The applicant provided the numerous documents listed above. Of note is what appears to be an undated 1-page document estimating the amount of money the applicant paid for insurance and health care coverage for him and his family from 1972 to 2018.

7. The applicant further provides correspondence to and from a MOC's office pertaining to CRDP and pay/refund costs of benefits he should have received, dated October and November 2024.

8. Army Regulation 15-185 (ABCMR) states an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was 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. The Board determined there is insufficient evidence of an error or injustice to amend the previous Boards' decision; however, recommended the applicant seek guidance from U.S. Army Human Resources Command on eligibility requirements for Combat Related Special Compensation (CRSC).

2. The Board further determined the evidence presented is sufficient to warrant a correction of the record not otherwise requested. The Board noted that the applicant served for over two years and received an honorable discharge. As his record is void of derogatory information, the Board agreed that he met the criteria for award of the Army Good Conduct Medal (1st Award).

- 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.
  
- 4. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	GRANT FULL RELIEF
■	■	■	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. In addition to the administrative notes annotated by the Analyst of Record (below the signature), the Board found the evidence presented is sufficient to warrant a partial relief. The Board determined the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20190001737 on 30 June 2020.
  
2. However, the Board determined that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214 awarding him the Army Good Conduct Medal (1st Award) for exemplary service from 8 June 1963 to 22 September 1966, and adding the medal to his DD Form 214 for the period ending 22 September 1966,
  
3. The evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to entitlement to Concurrent Retirement and Disability Pay (CRDP) and reimbursement of a benefit package.

X 

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 (Personnel Separations - Active Duty Enlisted Administrative Separations), currently in effect, prescribes policies and procedures for enlisted administrative separations. Chapter 12 (Retirement for Length of Service) outlines the requirements to be retired based on length of service.

a. As stated in Title 10, U.S. Code, sections 3914 and 3917, Soldiers must be on active duty when they retire.

b. A Soldier in the Regular Army who has completed 20, but less than 30 years of active Federal service in the U.S. Armed Forces may, at the discretion of the Secretary of the Army, be retired at his or her request. The Soldier must have completed all required service obligations at the time of retirement.

3. CRDP allows military retirees to receive both military retired pay and VA compensation. Military retired pay is otherwise offset by the amount of VA compensation paid.

a. This program became effective with a change in law on 1 January 2004, and, if qualified, military retirees are automatically enrolled.

b. To be eligible, the military retiree must meet the following requirements:

- a Regular Army length of service retiree with a VA disability rating of 50 percent or more; or
- a U.S. Army Reserve retiree with 20 qualifying years of service, a VA disability rating of 50 percent or more, and who has reached retirement age (in most cases, this is age 60); or
- retired under the Temporary Early Retirement Act, and has a VA disability rating of 50 percent or more; or
- a disability retiree who earned the entitlement to retired pay under any provision of law other than solely by disability, and who has a VA disability rating of 50 percent or more

4. Army Regulation 15-185 (ABCMR) prescribes policies and procedures for the ABCMR. It states, the ABCMR considers individual applications that are properly brought before it.

a. Paragraph 2-9 states, in pertinent part, that the ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

b. Paragraph 3-1 states the Army, by law, may pay claims for amounts due to applicants because of the correction of military records.

5. Army Regulation 15-185 prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR

may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires. The ABCMR considers individual applications that are properly brought before it. The ABCMR will decide cases on the evidence of record. It is not an investigative body. 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 the evidence.

//NOTHING FOLLOWS//