

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 April 2025

DOCKET NUMBER: AR20240011064

APPLICANT REQUESTS: in effect, correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to reflect disability with severance pay or a medical retirement.

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

- DD Form 149 (Application for Correction of Military Record)
- 24 pages of Personal Health Information
- Official Military Personnel File (OMPF)
- Department of Veterans Affairs (VA) Decision Letter, 4 September 2020

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 effect:

a. Under Section 1201, Chapter 61, U.S. Code (USC) Title 10, he should be eligible for retirement with severance pay for a disability. At the time of his separation, he was on a physical profile that rendered him unfit to perform the duties of his office, grade, rank, or rating because of physical disabilities incurred while he was entitled to basic pay. His type of separation and separation authority/code are unjust because all his disabilities were based upon accepted medical principles, were not due to intentional misconduct or willful neglect, nor were they incurred during a period of unauthorized absence. Furthermore, his disabilities are at least 30 percent under the standard schedule of rating disabilities in use by the VA at the time of the determination and all were not noted at the time of his entrance on active duty, and all are the proximate result of performing active duty.

b. This injustice has greatly affected his life and has left a negative impact on his future. The opportunity for him to have completely fulfilled his time in service was taken

from him. The opportunity of attending college and earning an undergraduate degree ceased to exist due to inability to financially afford split-tuition costs as the result of his partial entitlement of the educational benefits granted by the VA. Furthermore, his current military separation records have resulted in injustice because he is now unable to successfully maintain employment that demands physical labor. He had hoped to continue his career in the private security industry, however, due to his physical disabilities that he incurred while he was entitled to basic pay; he can no longer retain a career in physical security operations.

c. Additionally, under Chapter 3 of Army Regulation 40-501 (Standards of Medical Fitness), his medical record from the Army shows evidence of disqualifying deformities or conditions incurred from active duty deeming him unfit for military service. Furthermore, under Section II of Army Regulation 40-501, he was deemed nondeployable due to a physical profile categorized within Medical Readiness Class 2. Therefore, his type of separation along with the respective separation authority, separation code, and narrative of separation needs correction by reflecting disability with severance pay.

3. The applicant enlisted in the Regular Army on 30 December 2013. He served in military occupational specialty 19D (Cavalry Scout).

4. The complete facts and circumstances surrounding the applicant's discharge are not available for review; however, evidence shows the applicant was discharged on 20 October 2015, under Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 13-2e, with an honorable discharge. The DD Form 214 (Certificate of Release or Discharge from Active Duty) he was issued confirms he was separated for physical standards. He completed 1 year, 9 months, and 21 days of active military service with no time lost.

5. The applicant provides a 24 pages of personal health information, all documents located in his Official Military Personnel File, and a letter from the VA dated 4 September 2020, which granted him service connection of 70% for:

- Lumbar strain
- Bilateral tinnitus
- Left knee patellofemoral pain syndrome
- Right knee patellofemoral pain syndrome
- Left hip with trochanteris pain syndrome
- Left hip trochanteris pain syndrome with limitation of flexion
- Right hip trochanteris pain syndrome with limitation of extension
- Right hip impairment with trochanteris pain syndrome
- Right hip trochanteris pain syndrome with limitation of flexion

6. Title 10, USC, 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 Physical Disability Evaluation System (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 (Physical Evaluation for Retention, Retirement, or Separation).

7. 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 military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, the Army Aeromedical Resource Office (AERO), 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 in essence requesting a referral to the Disability Evaluation System (DES).

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 shows he entered the regular Army on 30 December 2013 and honorably discharged on 20 October 2015 under the provisions of paragraph 13-2e of AR 635-200, Active Duty Enlisted Administrative Separations (19 December 2016) for having failed two consecutive Army physical fitness test.

d. Paragraph 13-2e of AR 635-200:

"Initiation of separation proceedings is required for Soldiers without medical limitations who have two consecutive failures of the Army physical fitness test per AR 350-1 or who are eliminated for cause from Noncommissioned Officer Education System courses, unless the responsible commander chooses to impose a bar to re-enlistment per AR 601-280 (RA Soldiers) or AR 140-111 (USAR AGR Soldiers)."

e. AHLTA shows the applicant was seen for bilateral hip and low back pain during his final year of service.

Radiographs and MRI's of his hips revealed slight loss of normal morphology at the femoral head/neck junction which could be a cause of his pain. This was treated conservatively, to include physical therapy and temporary physical profiles. In December 2014, he continued to have the hip pain and also stated he had intermittent low back pain for which he was treated conservatively as well.

f. From his follow-up with physical therapy on 27 March 2015: "Pain is not as frequent. It comes and goes. When it comes it is throbbing 5/10. Pain comes on randomly. Pain in left lateral hip and back only. None in left knee or thigh."

g. From his follow-up with physical therapy on 22 June 2015: "No pain until dead lift (315 lb.) last week. Pain 3/10 at greater troch on left and with left lower extremity feeling heavier than right when he steps on it. Sharp pain to hamstring on occasion."

h. He was discharged from physical therapy on 23 July 2015 without limitations. There is no evidence the applicant was ever placed on a duty limiting permanent physical profile

i. The applicant underwent his separation physical on 25 August 2015. The applicant mentioned his left hip was injured in basic training. The provider documented a normal examination and cleared the applicant for separation.

j. Neither the applicant's separation packet nor documentation addressing his separation was submitted with the application or uploaded into iPERMS.

k. There is insufficient probative medical documentation that the applicant's low back or hip pain failed the medical retention standards of chapter 3, AR 40-501, Standards of Medical Fitness (4 August 2011) and would therefore not have been a cause for referral to the Disability Evaluation System. Paragraph 3-39h notes non-radicular low back pain fails retention standards when it fails to respond to adequate conservative treatment and necessitates significant limitation of physical activity. Paragraph 3-1 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (20 March 2012) states:

"The mere presence of an 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 Soldier reasonably may be expected to perform because of their office, grade, rank, or rating."

l. JLV shows he has been awarded multiple VA service-connected disability ratings, including 40% for lumbosacral strain in May 2020. However, the DES only compensates an individual for permanent service incurred medical condition(s) which have been determined to disqualify him or her from further military service and consequently prematurely ends their career. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

m. Given the current documentation, it is the opinion of the Agency Medical Advisor that neither an upgrade of his discharge nor a referral of his case to the DES is warranted

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation and the findings outlined in the medical review, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's narrative reason for separation.

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:

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.

//SIGNED//

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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 sets forth the basic authority for the separation of enlisted personnel. Chapter 13 contains the policy and outlines the procedures for separating individuals for unsatisfactory performance, and provides, in pertinent part, that commanders will separate a member under this chapter when, in the commander's judgment, the member will not develop sufficiently to participate satisfactorily in further training and/or become a satisfactory Soldier. Paragraph 13-2e states initiation of separation proceedings is required for Soldiers without medical limitations who have two consecutive failures of the Army Physical Fitness Test per Army Regulation 350-1 (Army Training and Leader Development).
3. Title 10, USC, 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, 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, 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, HRC.

b. The PDES assessment process involves two distinct stages: the Medical Evaluation Board (MEB) and the Physical Evaluation Board (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.

4. Army Regulation 40-501 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.

5. Army Regulation 635-40 establishes the 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.

6. 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.

7. 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.

8. 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//