

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 June 2025

DOCKET NUMBER: AR20240011310

APPLICANT REQUESTS:

- a change to the narrative reason for his separation from voluntary early retirement to a medical retirement
- a personal appearance hearing before the Board

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

DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)

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, "equity to follow upon hearing date."
3. The applicant enlisted in the Regular Army (RA) on 26 January 2000. He served in military occupational specialty 35G (Imagery Analyst). On 1 October 2008, he was honorably discharged to accept a commission or warrant in the Army. Evidence shows he served in:
 - Iraq from 8 February 2004 to 9 February 2005
 - Qatar from 15 December 2005 to 17 March 2006
 - Qatar from 17 September 2006 to 20 December 2006
 - Iraq from 29 September 2007 to 6 June 2008
4. He was commissioned in the RA, Signal Corps, on 2 October 2008. He was promoted to first lieutenant (1LT) on 2 April 2010.

5. Orders 252-0911, dated 9 September 2014, honorably discharged him from active duty on 1 February 2015.
6. On 30 January 2015, he reenlisted in the RA, in pay grade E-7, for 2 years.
7. He retired honorably in the rank/grade of sergeant first class/E-7 on 31 January 2015, under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), chapter 12, for voluntary early retirement.
8. He was honorably discharged from active duty in the rank of 1LT on 1 February 2015, by reason of non-selection for permanent promotion. His DD Form 214 shows he completed 6 years and 4 months of active duty service.
9. His DD Form 214 for the period ending 1 February 2015, was corrected by DD Form 215 (Correction to DD Form 214) by changing block 12b (Separation Date This Period) to 29 January 2015 and block 12c (Net Active Service This Period) to 6 years, 3 months, and 28 days.
10. The applicant's Official Military Personnel File does not contain, and the applicant did not provide medical evidence pertaining to a request for medical retirement.
11. MEDICAL REVIEW:
 - a. The applicant is applying to the ABCMR requesting, through counsel, to change the narrative reason for his separation from voluntary early retirement to a medical retirement. The applicant did not specify a BH reason as being related to his request on his DD Form 293. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) the applicant enlisted in the Regular Army on 26 January 2000. He was honorably discharged on 1 October 2008 to accept a commission or warrant in the Army, 2) he served in the following locations during his enlistment: Iraq (08 February 2004 to 09 February 2005; 29 September 2007 to 6 June 2008) and Qatar (15 December 2005 to 17 March 2006; 17 September 2006 to 20 December 2006), 3) he was commissioned in the Regular Army, Signal Corps, on 2 October 2008. On 1 February 2015, he was honorably discharged from active duty by reason of non-selection for permanent promotion, 4) on 30 January 2015, he reenlisted in the Regular Army, in the pay grade of E-7 for two years. He retired honorably in the rank/grade of Sergeant First Class/E-7 on 31 January 2015, under the provisions of AR 635-200, Chapter 12, for voluntary early retirement, 5) His DD Form 214 for the period ending 1 February 2015, was corrected by DD Form 215 by changing block 12b (Separation Date This Period) to 29 January 2015 and block 12c (Net Active Service This Period) to 6 years, 3 months, and 28 days.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. In-service medical records were available for review via JLV from 31 August 2005 through 21 October 2014. He presented to the medical clinic on 13 August 2013 due to headaches and was diagnosed with Insomnia. His depression screening at the time of the appointment was negative. He was prescribed Melatonin to help with sleep problems. He underwent a physical examination as part of an ETS physical, Part 2 on 04 March 2014 and it was documented that he was on permanent profile for his wrist and ankle and did not have any acute medical problems. The Report of Medical Examination dated 04 March 2014 for the purposes of separation shows item number 40, psychiatric, as 'normal' on clinical evaluation. His PULHES was documented as 122111, indicating he was not on a BH profile at the time of the examination. The associated Report of Medical History shows he endorsed the following BH-related items: habitual stammering or stuttering and frequent trouble sleeping. In the remarks section, he noted stuttering during briefings and one-on-one conversations. He also stated he had been having difficulty sleeping since August 2013. A previous Report of Medical Examination dated 30 July 2012 for the purposes of separation similarly showed psychiatric as 'normal' on clinical evaluation and his PULHES as 121111, thus indicative that he was not on a BH profile at the time of the examination. The associated Report of Medical History shows he endorsed habitual stammering or stuttering, frequent trouble sleeping, and depression or excessive worry. In the remarks section he noted stuttering or stammering during briefings or conversations and has happened a lot over the past two years. Regarding sleep, it was documented that he would wake up in the middle of the night and his wife said he jumped in his sleep. He also endorsed excessive worries over the past four months. The applicant underwent a RESPECT-Mil Primary Care screening for depression and PTSD on numerous occasions between May 2011 and May 2013, all of which were negative. His in-service medical records are void of any BH treatment history.

d. A review of JLV shows the applicant is 100% service-connected overall through the VA for various conditions, to include 30% for Chronic Adjustment Disorder.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence that the applicant failed medical retention standards IAW AR 40-501, Chapter 3-33 while in the military. Thus, a referral to the Disability Evaluation System (DES) for BH reasons is not warranted.

f. Review of the applicant's in-service medical records shows he was diagnosed with Insomnia on one occasion by a medical provider (etiology unspecified). His in-service treatment records were otherwise void of any BH diagnosis or treatment history. Since

being discharged from the military, he has been diagnosed and 30% service-connected through the VA with Chronic Adjustment Disorder. However, it is of note that VA examinations are based on different standards and parameters, they do not address whether a medical condition met or failed Army retention criteria or if was a ratable condition during the period of service. Therefore, a VA disability rating does not imply failure to meet Army retention standards at the time of service or that a different diagnosis rendered on active duty is inaccurate. A subsequent diagnosis of Chronic Adjustment Disorder through the VA is not indicative of a misdiagnosis or other injustice at the time of service. Furthermore, even an in-service diagnosis of Chronic Adjustment Disorder is not automatically unfitting per AR 40-501 and would not automatically result in medical separation processing. Per AR 40-501, Chapter 3-33, a referral to the DES is required for Chronic Adjustment Disorder when the condition results in: 1) Persistence or recurrence of symptoms sufficient to require extended or recurrent hospitalization, and/or 2) Persistence or recurrence of symptoms that interfere with duty performance and necessitate limitation of duty or duty in a protected environment. The applicant was discharged due to voluntary early retirement and his in-service medical records are void of any BH treatment history, including no history of a BH profile or recurrent hospitalizations for BH reasons. Furthermore, there is insufficient evidence that he ever required a profile for Insomnia or that his condition was ever of such severity that a profile would have been indicated. As such, there is insufficient medical evidence that the applicant failed medical retention standards for BH reasons IAW AR 40-501, Chapter 3-33.

g. Kurta Questions:

- (1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? N/A
- (2) Did the condition exist or experience occur during military service? N/A
- (3) Does the condition or experience actually excuse or mitigate the discharge? N/A

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 applicant's contentions, the military record, and regulatory guidance were carefully considered. The Board carefully considered the applicant's request, evidence in the records, and published Department of Defense guidance for liberal consideration. The applicant was discharged due to voluntary early retirement. The Board concurred with the medical advisor's review finding insufficient evidence that the applicant failed medical retention standards or evidence that referral to the Disability Evaluation System is warranted.
2. 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:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.

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. 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 USAPDA, under the operational control of the Commander, U.S. Army Human Resources Command (HRC), is responsible for administering the Physical DES and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DoDI 1332.18 and Army Regulation 635-40.

a. Soldiers are referred to the Physical Disability Evaluation System (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 military occupational specialty 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 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.

3. 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.

4. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation) 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.

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. Defense Directive-Type Memorandum (DTM 11-015, 19 December 2011, provides for the IDES. The IDES is the joint Department of Defense (DOD) - VA process by which DOD determines whether wounded, ill, or injured Service members are fit for continued military service and by which DOD and VA determine appropriate benefits for Service members who are separated or retired for a service-connected disability.

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, U.S. 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.

9. 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//