

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 May 2025

DOCKET NUMBER: AR20240011775

APPLICANT REQUESTS: physical disability retirement in lieu of honorable administrative release from active duty due to expiration term of service (ETS)

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

- DD Form 149 (Application for Correction of Military Record)
- partial Department of Veterans Affairs (VA) appeal record

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:

a. He is requesting that it be determined he was medically retired due to disability from Federal Government employments as of 17 June 1977 or 23 August 1976.

b. The Army failed to disclose his correct medical diagnosis. There was a tuberculosis (TB) outbreak in Korea in 1953, which the Army did not protect him against immunization. His job exposed him to toxins/herbicides in his daily work as an ammo clerk from 1975 – 1978, which the Army knew or should have known would infect him.

c. He was reduced in grade from an E-4 to an E-3 because he acted up as a result of being sick from the exposure to toxins. His sickness continued into manifest itself in mental illness, resulting in him attempting to shoot two Korean soldiers on 30 November 1975. He should not have had to try to function on jobs when he was tired and sick. He had 40 jobs in 20 years. The Army and the VA concealed the outbreak of the TB as well as the toxin and herbicide exposure from 1975 through July 2023.

3. The applicant enlisted in the Regular Army on 20 June 1974 and was awarded the Military Occupational Specialty (MOS) 55B (Ammunition Specialist).

4. DA Forms 2627 (Record of Proceedings under Article 15 of the Uniform Code of Military Justice (UCMJ)) show the applicant accepted nonjudicial punishment (NJP) under Article 15 of the UCMJ on the following occasions for the following misconduct:

- on 27 June 1975, for disobeying an order on 17 June 1975, to not see the company commander until after work
- on 16 December 1975, for willfully disobeying an order on 30 November 1975, to open the gate and let the General's car out at Camp Thompson, Korea
- on 15 April 1977, for disobeying a lawful order on 12 April 1977, to get out of his car at Fort Benning, GA

5. Headquarters, U.S. Army Infantry Center Orders 130-65, 10 May 1977, reduced the applicant in rank/grade from specialist (SPC)/E-4 to private first class (PFC)/E-3, effective 15 April 1977.

6. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably released from active duty on 17 June 1977, due to ETS, and transferred to the U.S. Army Reserve (USAR). He was credited with 2 years, 11 months, and 28 days of net active service this period, including 1 year and 1 month of foreign service in Korea.

7. The applicant provided what appears to be a partial VA record of proceedings pertaining to his appeal for service-connection for psychiatric disability, chancroid with lymphadenitis, and occult blood/red blood cells in the urine or dysuria, including kidney disorder, which has been provided in full to the Board for review.

8. On 4 March 2025, the applicant was requested to provide a copy of any medical documents he might have supported his application, but he did not respond.

9. Title 38, USC, 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.

10. 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 MHS Genesis (DoD electronic Medical), Joint Longitudinal Viewer (JLV) (a Repository of DoD and VA electronic medical record), 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).

b. The ARBA Medical Advisor made the following findings and recommendations:

c. The applicant is applying to the ABCMR requesting a physical disability retirement in lieu of honorable administrative release from active duty due to expiration term of service (ETS).

d. Due to the period of the Applicant's service, there was no electronic medical record available for review, except for VA Clinic encounters from 12 July 2000 to 28 February 2025. None of these encounters have sufficient evidence documented to support the Applicant's claim.

e. Review of supporting documentation submitted by the Applicant provided insufficient evidence to support the Applicant's request. Therefore, from the medical standpoint, the applicant did not have any career terminating condition while in service that would require this case to be sent to the Disability Evaluation System.

BEHAVIORAL HEALTH REVIEW:

a. The applicant is applying to the ABCMR requesting a physical disability retirement in lieu of honorable administrative release from active duty due to expiration term of service (ETS). In part, the applicant asserts mental health conditions are related to his request. 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 20 June 1974; 2) The applicant accepted nonjudicial punishments (NJP) on three occasions between June 1975 and April 1977 for disobeying an order; 3) The applicant was honorably released from active duty on 17 June 1977, due to ETS, and transferred to the U.S. Army Reserve (USAR). He was credited with 2 years, 11 months, and 28 days of net active service this period, including 1 year and 1 month of foreign service in Korea.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) and hardcopy VA medical documentation provided by the applicant were also examined.

c. The applicant asserts he should have received physical disability retirement in lieu of honorable administrative release from active duty due to ETS. In part, the applicant asserts mental health conditions are related to his request. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition during his active service.

d. A review of JLV provided insufficient evidence the applicant has been diagnosed with a service-connected mental health condition, and he does not receive any service-connected disability for a mental health condition. The applicant provided hardcopy VA documentation, undated, where he reported being treated during his active service for mental health symptoms. In addition, he was reported, during the evaluation, to be experiencing an Anxiety Disorder unrelated to his military service.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence the applicant, during his active service; met criteria for mental health condition; determined to not meet medical retention standards for a mental health condition; attended six months of consistent mental health treatment without improvement; required two inpatient psychiatric admissions; or was ever placed on a permeant psychiatric profile. Therefore, there is insufficient evidence the applicant's case warrants a referral to IDES to be assessed for a physical disability retirement for a mental health condition.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No, there is insufficient evidence the applicant, during his active service; met criteria for mental health condition; determined to not meet medical retention standards for a mental health condition; attended six months of consistent mental health treatment without improvement; required two inpatient psychiatric admissions; or was ever placed on a permeant psychiatric profile. Therefore, there is insufficient evidence the applicant's case warrants a referral to IDES to be assessed for a physical disability retirement for a mental health condition.

(2) Did the condition exist or experience occur during military service? N/A.

(3) Does the condition experience actually excuse or mitigate the misconduct? N/A.

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 and behavioral health reviews, 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:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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//

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. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRBs) and Boards for Correction of Military/Naval Records (BCM/NRs) when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), sexual assault, or sexual harassment.

Boards are to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based, in whole or in part, on those conditions or experiences.

3. 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 physical disability evaluation system (DES) and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 (Discharge Review Board (DRB) Procedures and Standards) and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in a Medical Evaluation Board (MEB); when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an Military Occupational Specialty (MOS) Medical Retention Board (MMRB); and/or they are command-referred for a fitness-for-duty medical examination.

b. The disability evaluation assessment process involves two distinct stages: the MEB and 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 either are 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

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 his or her 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 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 PEB 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.

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. Title 38, U.S. Code, section 1110 (General – Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

7. Title 38, U.S. Code, section 1131 (Peacetime Disability Compensation – Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

8. Title 10, U.S. Code, section 1556 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//