

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 February 2024

DOCKET NUMBER: AR20230001576

APPLICANT REQUESTS: a change to the narrative reason for separation to reflect "Failure to Meet Weight Requirements, due to Congestive Heart Failure."

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored statements addressed to Command Management Division, National Personnel Records Center, and the Board
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Photographs
- Information paper
- Character statement
- DA Form 3647 (Inpatient Treatment Record Coversheet)
- U.S. Army Medical Records for [REDACTED]
- Veterans Affairs (VA) letter

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, via additional statements, in effect:

a. He was misdiagnosed when his weight suddenly started increasing in 1987, when he was assigned to an underground, damp, and moldy office. His heart was damaged by the mold. He did not and does not have an overeating disorder, leading to a large amount of body fat. His heart is leaking fluid into his abdomen causing the excess weight.

b. In his previous assignments from 1977 to 1986, he was in good health. Once he started working for Sergeant (SGT) [REDACTED] in the damp and moldy mail operations office

located in the basement, SGT [REDACTED] helped him work with a dietician and do extra physical training before his weight exceeded the limit during 1987 and 1988, but nothing helped. SGT [REDACTED] then gave him a recommendation for his last assignment to the Communications Center at Pirmasens Germany. He developed a heart condition during his tour of duty in Germany between 1987-1991.

c. In August 1991, he was sent home with an incorrect diagnosis. He did not realize when he put on his eligibility form for low income co-pays in 2020 that stating his illness is also service connected that you considered that a claim. No one called to verify the details of his situation before incorrectly ruling his illness was not service connected. After being sent home, he continued to retain large amounts of fluid. In the next ten years, he blew up to almost 400 pounds. Nothing he did helped, and he was unable to stay employed consistently either. The heart and weight problems also ruined his marriage.

d. He is hoping with the following additional details and the attached statement from his former Army supervisor and a review of the three heart ultrasounds done, the Board will see that he is correct in stating his heart condition started when he was working in the damp and moldy basement mail operations at the 63rd Battalion from 1987 to 1988 and that his last assignment with the 270th Signal Company in prior to and during the first Persian Gulf War added to his heart condition to the extent he had to be sent home in 1991.

e. He continues to struggle with the heart damage to this day and only found out in February 2020 that he has congestive heart failure among other problems. He realizes most vets diagnosed with congestive heart failure don't live very long. He has been lucky to have a wife who, without knowing what the actual condition was, was able to help take care of him, well enough to allow him to survive. And yes, he did have yearly doctor physicals on the outside and not one doctor realized his weight problem was because his heart was leaking fluid. The month prior to being admitted to the hospital in February of 2020, doctors thought he had gained 50 pounds in a month because of an allergic reaction to his new medication.

f. He has been receiving care from the Heart Clinic at Bay Pines ever since. They have him weighing himself every day, so if he ever gains a lot of pounds in a week again, he is to go back to the hospital. He and his wife still eat really well. When he explained that to the nurses, he wasn't sent to any dietician classes. I haven't had a repeat weight gain since then. So it is possible to survive with congestive heart failure with the proper care. Now, thanks to the correct diagnosis and the care he received from [REDACTED] Veterans Hospital in [REDACTED], he hopefully can last a few years longer.

3. The applicant provides:

- a. DD Form 214 covering the period of service from 22 July 1977 thru 14 August 1991.
- b. Photographs of himself in 2001, 2002, and 2017, as well as a photo of where he worked when he developed congestive heart failure.
- c. Information paper regarding exposure to mold, which ultimately leads to heart damage.
- d. Character statement, written by his former supervisor, sergeant first class (SFC) (retired) █████, speaks of the damp conditions in the office which he and the applicant worked in, the applicant's efforts to lose the weight, and extra measures taken to assist the applicant in his goal to lose the excess weight.
- e. DA Form 3647 (Inpatient Treatment Record Coversheet) reflects the date of admission as 20 May 1990 and the date of disposition as 8 June 1990 at the Army Regional Medical Center Landstuhl, Germany. Item 34 (Diagnosis/Operations and Special Procedures) reflect the following:
 - DG 1. V5789 - - 0 Rehabilitation (Weight Reduction)
 - DG 2. 79431 - - 0 Abnormal Electrocardiogram
 - DG 3. 71997 - - 0 Laxity of Ankle
- f. U.S. Army Medical Records shows dates, blood pressure, weight of applicant, along with written notes. It is unclear where and when this document was generated and by whom the notes were written by.
- g. VA letter, dated 11 April 2022, reflects the applicant was granted a service connected evaluation of 100 percent for valvular heart disease and cardiomyopathy with congestive heart failure status post inferior myocardial infarction.

4. A review of the applicant's service record shows:

- a. He enlisted in the Regular Army on 22 July 1977 for 6 years. He subsequently reenlisted and extended as follows:
 - 13 February 1980, reenlisted for 4 years
 - 18 July 1986, extended for 6 years and 2 months
 - 29 June 1989, reenlisted for 6 years
- b. 73rd Signal Battalion 270th Signal Company memorandum addressed to the applicant, dated 8 September 1989, informs the applicant that it had been determined that he exceed the body fat standard and a goal of 3-8 pounds of wight loss per month

is considered to be satisfactory progress. Failure to make satisfactory progress or achieve the body fat standards could result in separation from the service. The applicant acknowledged and indicated that he understood his responsibilities to achieve the body fat standards and to have his weight recorded monthly.

c. 270th Signal Company, 160th Signal Brigade memorandum addressed to the Commander, 56th General Hospital (Muenchweiler Troop Clinic), dated 19 June 1991, Subject: Weight Control Program, informs the recipient of the applicant exceeding the weight for height tables by 10 pounds and exceeds the body fat standards by 5.55 percent. Further recommending a medical evaluation be conducted in view of the initiation of separation action (failure to make satisfactory progress in a Weight Control Program).

d. 56th General Hospital (Muenchweiler Troop Clinic) memorandum, dated 21 June 1991, states the applicant was examined and found to be fit for participation in the Weight Control/Physical Exercise Program. Further stating, the cause of the overweight is not due to a medical condition. The recommended action was "initiation or continuation in a weight reduction program."

e. On 28 June 1991, the applicant's immediate commander recommended under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Separations), paragraph 5-15, Weight Control Program Failure, the applicant be separated from the U.S. Army prior to the expiration of his term of service.

f. On 28 June 1991, the applicant's immediate commander notified the applicant of his intent to initiate separation action against him under the provisions of AR 635-200, paragraph 5-15, for Weight Control Program Failure. Specifically, the applicant had been on the Weight Control Program since 8 September 1989, failed to lose the required weight set forth in AR 600-9; therefore, the commander felt it was in the best interest of the U.S. Army that the applicant be eliminated from service.

g. The applicant acknowledged receipt of the commander's intent to separate him. On 28 June 1991, he consulted with legal counsel and was advised of the basis for the contemplated separation action for Weight Control Program Failure, the type of discharge he could receive and its effect on further enlistment or reenlistment, the possible effects of this discharge, and of the procedures/rights available to him. He requested a medical examination in accordance with AR 635-100, paragraph 2-6, writing "Re: examination by cardiologist of calcium deposits on heart valve." He waived consideration of his case by an administrative separation board and elected not to submit a statement in his own behalf. He also acknowledged he:

- understood he could expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions were issued to him

- understood he could be ineligible for many or all benefits as a veteran under Federal and State laws as a result of the issuance of a discharge under other than honorable conditions
- understood if he received a discharge characterization of less than honorable, he could make an application to the Army Discharge Review Board (ADRB) or the ABCMR for an upgrade, but he understood that an act of consideration by either board did not imply his discharge would be upgraded

h. On 3 July 1991, the separation authority approved the applicant's discharge under the provisions AR 635-200, paragraph 5-15, with his service characterized as honorable.

i. DA Form 2822-R (Report of Mental Status Evaluation), dated 16 July 1991, reflects the applicant had undergone a mental status evaluation and was found to have the mental capacity to understand and participate in the proceedings, was mentally responsible, and meets the retention requirements of Chapter 3, AR 40-501.

j. His DD Form 214 reflects he was honorably discharged on 14 August 1991, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 5-15, failure to meet body fat standards, separation code JFV. He served 14 years and 23 days of net active service this period.

5. AR 635-200 states, Soldiers separated under the provisions of paragraph 5-15 of AR 635-200 will have their DD Form 214 listing the Narrative Reason for Separation as "Failure to Meet Army Weight Control Standards."

6. Title 38 (Veterans' Benefits), U.S. Code, § 1110 and 1131 (Basic entitlement), 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.

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, 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 change in his narrative reason for separation. He states:

“Please correct Box 28 Narrative Reason for separation from “Failure to meet body fat standards” to Failure to meet weight requirement due to congestive heart failure.

I was misdiagnosed when my weight started increasing suddenly in 1987 when assigned to an underground damp and moldy office. My heart was damaged by the mold, I did and do not have an overeating disorder leading to a large amount of body fat. My heart is leaking fluid into my abdomen causing the excess weight.”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. His DD 214 shows he entered the regular Army on 22 July 1977 and was honorably discharged on 14 August 1991 under provisions in chapter 5-15 of AR 635-200, Personnel Separations – Enlisted Personnel: Failure to meet army weight control standards / body composition / weight control standards.

d. The applicant was flagged for exceeding the body fat standards and entered into the weight control program on 8 September 1989.

e. On 19 June 1991, his company commander requested a medical evaluation as required for the initiation of separation action for failure to make satisfactory progress in a Weight Control Program. In his 21 June 1991 reply to the company commander, the physician informed the commander the applicant’s obesity was not due to a medical condition.

f. On 28 June 1991, the applicant’s company commander informed him of his initiation of action to separate him under provisions in paragraph 5-15 of AR 635-200:

“The reasons for my proposed action are as follows: You have been on the Weight Control program since 8 September 1989. You have failed to lose the required weight set forth in AR 600-9. Therefore, I feel it is in the best interest of the United States Army that you be eliminated from the service.”

g. Also on 28 June 1991, the applicant requested a medical examination, writing on the memorandum “Re: Examination by cardiologist of calcium deposits on my heart valves.” In the same memorandum, he waived his right to an administrative separation board.

h. The results of this examination are not available for review and there are no AHLTA encounters for this period of Service.

i. His separation was approved by the battalion commander on 3 July 1991.

j. The applicant established care with the Veterans Hospital Administration (VHA) in 2010 and underwent a complete physical examination on 24 August 2010. The provider noted the applicant had no complaints at that time and his review of symptoms, to include pulmonary and cardiac, was negative.

“Lungs: No cough, sputum production, hemoptysis, wheezing, air hunger, or dyspnea [shortness of breath].

Heart: No murmurs, arrhythmia, rheumatic disease, valve problems, DOE [dyspnea on exertion], orthopnea [shortness of breath with lying flat], PND [paroxysmal nocturnal dyspnea], edema, angina, MI [myocardial infarction, aka heart attack], or exercise intolerance.”

k. Examinations of both systems were normal:

“Lungs: Clear to percussion and auscultation with good breath sounds in all fields.

Cardiovascular: Regular Rhythm with no gallops, murmurs, or rubs. PMI [point of maximal impact 4cm left of Mid-Sternal Line without lifts or heaves. No Jugular Venous Distension at 15 Degrees elevation, no peripheral edema, no cyanosis. Distal pulses Lower Extremities 2+ equal and simultaneous bilateral.”

l. His only diagnosis was morbid obesity and the physician provided the applicant with a plan for management of the condition.

m. The applicant was diagnosed with new onset atrial fibrillation and exacerbation of congestive heart failure on 8 February 2020 when he presented to a VHA facility emergency department with a three-week history of progressive shortness of breath.

n. There is no evidence the applicant had congestive heart failure or any other medical condition which failed the medical retention standards of chapter 3, AR 40-501, Standards of Medical Fitness prior to his discharge; or which was the cause of his significant weight gain.

o. JLV shows he has been awarded several VA service-connected disability ratings, including a 100% rating for myocardial infarction. However, the DES only compensates an individual for 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.

p. It is the opinion of the Agency Medical Advisor that neither a change in his separation authority nor a referral of his case to the DES is warranted.

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 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. Upon review of the applicant's petition, available military records, the medical review, the Board concurred with the advising official finding neither a change in his separation authority nor a referral of his case to the DES is warranted. The opine noted no evidence the applicant had congestive heart failure or any other medical condition which failed the medical retention standards of chapter 3, AR 40-501, Standards of Medical Fitness prior to his discharge; or which was the cause of his significant weight gain.

2. The Board noted the applicant was diagnosed with new onset atrial fibrillation and exacerbation of congestive heart failure on 8 February 2020 when he presented to a VHA facility emergency department with a three-week history of progressive shortness of breath. The Board carefully considered the applicant's witness statement, however it was determined there is insufficient evidence to support a change to the narrative reason for separation to reflect "Failure to Meet Weight Requirements, due to Congestive Heart Failure. Based on the preponderance of evidence, the Board denied relief.

BOARD VOTE:

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

2/22/2024

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 – Enlisted Personnel), in effect at the time, provides the basic authority for the separation of enlisted personnel. Paragraph 5-13 states, Soldiers who fail to meet the weight control standards set forth in AR 600-9 may be separated per this paragraph when such condition is the sole basis for separation. Paragraph 5-15a states, separation action may not be initiated under this paragraph until the Soldier has been given a reasonable opportunity to comply with and meet the weight reduction goals prescribed for him or her by health care personnel. Soldiers who have been diagnosed by health care personnel as having a medical condition which precludes them from participating in a weight reduction program will not be separated under this paragraph.
3. Title 38 (Veterans' Benefits), U.S. Code, § 1110 and 1131 (Basic entitlement), permit the Veterans Affairs to award compensation for disabilities that were incurred in or aggravated by active military service. (However, an award of a higher VA rating does not establish error or injustice on the part of the Army. The Army rates only conditions determined to be physically unfitting at the time of discharge which disqualify the Soldier from further military service. The VA does not have the authority or responsibility for

determining physical fitness for military service. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge, to compensate the individual for loss of civilian employability. These two government agencies operate under different policies. 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.)

4. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations, and mitigating factors, when taking action on applications from former service members administratively discharged under other than honorable conditions, and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

5. 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 DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole, or in part, to: mental health conditions, including PTSD; TBI; sexual assault; sexual harassment. Boards were directed to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria, and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for that misconduct which led to the discharge.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NRs) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief based on equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that

might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

7. 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//