

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 October 2023

DOCKET NUMBER: AR20230003014

APPLICANT REQUESTS:

- Correction of his DD Form 214 (Certificate or Release or Discharge from Active Duty) to show his last name as "M\_\_\_\_o-M\_\_\_\_s" rather than "M\_\_\_\_o"
- Upgrade of his "uncharacterized" service

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge)
- Certificate of Birth
- Social Security Card
- Driver's License
- Letter from the National Personnel Records Center (NPRC)
- DD Form 214
- Military medical record documents
- Department of Veterans Affairs (DVA) documents

FACTS:

1. The applicant did not file within the three-year time frame provided in Title 10, U.S. Code (USC), 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 he desires the requested relief in order to properly identify himself using his DD Form 214 and to be eligible for receipt of DVA benefits.

3. The applicant's complete service record is not available for review by the Board. Therefore, this case is being considered using the documents available in his record and those provided by the applicant.

4. The applicant underwent a pre-enlistment medical examination on 26 January 1983. At the time, he denied any significant medical history and indicated he was in good

health. His medical examination did not reveal any significant conditions and he was determined to be qualified for service. His last name is printed as "M\_\_\_\_o" on the related documents, but he signed them using "M\_\_\_\_o-M\_\_\_\_s."

5. His DD Form 214 shows he enlisted in the Regular Army on 15 March 1983 and was subsequently assigned to a unit at Fort Benning, GA, for completion of initial entry training.

6. A DA Form 3349 (Physical Profile Board Proceedings), dated 23 March 1983, shows the applicant was assigned a temporary physical limitations profile restricting him from running or marching over 1/2 mile, lifting over twenty pounds, performing hand work, and bending. His physical defect was shown as back pain (Spondylosis). The profile would expire on 23 June 1983. The applicant's last name is shown as "M\_\_\_\_o" on this document.

7. A review of the available record shows his last name appeared inconsistently as both "M\_\_\_\_o" and "M\_\_\_\_o-M\_\_\_\_s" on the related documents, but he consistently signed them using the last name "M\_\_\_\_o-M\_\_\_\_s."

8. An Entrance Physical Standards Board (EPSBD) was conducted to evaluate the applicant's condition on 1 April 1983. The associated DA Form 4707 (EPSBD Proceedings) shows that after careful consideration of medical records, laboratory findings, and medical examinations, the board found the applicant was unfit for appointment or enlistment in accordance with current medical fitness standards and in the opinion of the evaluating physicians the condition existed prior to service (EPTS).

a. History of EPTS condition: The applicant self-reported that he had back pain that started 1 year and 8 months prior, when he fell while in civilian life. He recovered after 1 week and had no problems until he twisted his back carrying his duffle bag after induction.

b. Physical examination: Complained of muscle spasms of the paraspinal muscles. His neurology was intact to pinprick and soft touch. Straight leg raising was positive to 30 degrees on the leg. His deep tendon reflexes were equal bilaterally. There was no muscle weakness or calf atrophy.

c. Diagnosis: Symptomatic spondylolysis, L5-S1, no spondylolisthesis.

d. It was noted the applicant was physically disqualified for induction into military service under the provisions of Army Regulation 40-501 (Standards of Medical Fitness), Chapter 2, paragraph 2-36h. He was qualified for retention. It was recommended he be separated from military service under the provisions of Army Regulation 635-200

(Personnel Separations-Enlisted Personnel), paragraph 5-11, for failure to meet medical procurement standards due to his EPTS condition.

e. The applicant was assigned a permanent level-3 lower extremities profile which prohibited running or marching over 1/2 mile, lifting over twenty pounds, performing hand work, and bending.

f. The findings of the EPSBD were approved on 14 April 1983 and forwarded to the applicant's unit commander for action.

g. On 26 April 1983, the applicant indicated in Item 21 (Action by Service Member) of the DA Form 4707 he had been informed of the medical findings and he understood that legal advice from an attorney employed by the Army was available to him or that he may consult civilian counsel at his own expense. He also understood that he could request to be discharged from the U.S. Army without delay or request retention on active duty. If retained, he may be involuntarily reclassified into another military occupational specialty based upon his medical condition. The applicant concurred with the proceedings and requested to be discharged from the Army without delay.

h. His last name appears as "M\_\_\_\_o" on this document; however, he signed it using the last name "M\_\_\_\_o-M\_\_\_\_s."

9. The applicant's DD Form 214 shows he was discharged on 4 May 1983 under the provisions of Army Regulation 635-200, paragraph 5-11, for failure to meet procurement medical fitness standards-no disability. His service was "Uncharacterized," with Separation Program Designator code "JFT" and Reenlistment code "3." He was credited with completion of 1 month and 22 days of net active service. He did not complete initial entry training and was not awarded a military occupational specialty. His last name appears as "M\_\_\_\_O" in block 1 (NAME (Last, first, middle)).

10. The applicant provides the following documentation in support of his petition:

a. A Certificate of Birth, Social Security Card, and Driver's License all show his last name as "M\_\_\_\_o-M\_\_\_\_s."

b. A letter from the NPRC, dated 30 January 2020, that shows he was provided a copy of his DD Form 214 and an explanation of uncharacterized service. It was explained that on 1 October 1982, the Department of Defense established the "Uncharacterized Entry Level Separation." Entry Level Status is defined as the first 180 days of continuous active duty or active duty for training. A separation initiated while a member is in entry level status may be described as an "uncharacterized entry-level separation." Upon separation, the service member does not receive a discharge certificate or character of service.

c. A VA Form 21-526EZ (DVA Application for Disability Compensation and Related Compensation Benefits), dated 6 December 2022, shows the applicant initiated a request to receive DVA benefits.

11. An uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It merely means the Soldier did not serve on active duty long enough for his or her character of service to be rated.

12. The ABCMR is not authorized to grant requests for upgrade of discharges solely for the purpose of making the applicant eligible for Veterans' benefits; however, in reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

13. 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 requesting his name be corrected on his DD214, and, in essence, a referral to the Disability Evaluation System. He states:

"I want my name corrected in the attached DD 214. I am unable to properly identify myself and use the attached DD-214 for benefits requests at the VA medical center."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 for the period of Service under consideration shows he entered the regular Army on 15 March 1983 and was discharged with an uncharacterized characterization of his service on 4 May 1983 under authority provided by paragraph 5-11 of AR 635-200, Personnel Separations – Enlisted Personnel (1 May 1982): Separation of personnel who did not meet procurement medical fitness standards.

d. The applicant's full name on his birth certificate is [REDACTED] His DD 214 for the period of service under consideration shows his name now as Felix [REDACTED]

e. The applicant's pre-entrance Report of Medical History and Report of Medical Examination show the applicant tot have been in good health, without significant medical history or conditions.

f. The applicant was referred to an Entrance Physical Standards Board (EPSBD) for pre-existing low back pain IAW paragraph 5-11 of AR 635-200. EPSBDs are convened IAW paragraph 7-12 of AR 40-400, Patient Administration. This process is for enlisted Soldiers who within their first 6 months of active service are found to have a preexisting condition which does not meet the enlistment standard in chapter 2 of AR 40-501, Standards of Medical Fitness, but does meet the chapter 3 retention standard of the same regulation. The fourth criterion for this process is that the preexisting condition was not permanently aggravated by their military service.

g. From the Entrance Physical Standards Board (EPSBD) Proceedings (DA Form 4707) dated 1 April 1983:

History: This 22-year-old Spanish-American male has back pain starting 1 year 8 months ago when he fell while in civilian life. He recovered after 1 week and had no problems until he twisted his back carrying his duffle bag after induction, about 6 days ago. He complains of sharp pain in his lumbar spine when twisting, made worse by sitting down or lying down, getting better on standing ...

Physical Examination: There are muscle spasms of the paraspinous muscles. He is neurologically intact to pinprick and soft touch. Straight leg raising is positive at 30° on the left leg. The DTRs [deep tendon reflexes] are equal bilaterally. There is no muscle weakness. There is no calf atrophy.

Laboratory and X:Ray Data: Xray exam of the lumbar spine shows a spondylosis of L5-S1. There is no spondylolisthesis.

Diagnosis: Symptomatic spondylolysis, L 5 - S 1, no spondylolisthesis.

Recommendations: Member is physically disqualified for induction into military service UP para 2-36h, AR 40-501. He is qualified for retention. It is recommended he be separated from military service UP para 5-11 , AR 635-200."

h. Spondylolysis is the term for the isolated pars interarticularis defects/fractures responsible for this condition and are present in up to 6% of the population. They are most often either congenital or acquired from repetitive overuse in activities requiring hyperextension of the lumbar spine, e.g., gymnastics or a down lineman in football. They are rarely associated to acute trauma.

While reports of trauma are often associated with an onset or increase in lumbar pain associated with spondylolysis, isolated pars fractures are very rarely caused by trauma: The substantial energy required to yield these fractures through acute trauma would also lead to the fracturing of nearby associated bony structures.



i. Paragraph 2-36h of AR 40-501, Standards of Medical Fitness (1 December 1983), states “Spondylolysis or spondylolisthesis that is symptomatic or is likely to interfere with performance of duty or is likely to require assignment limitations” is a cause for rejection of enlistment.

j. On 15 April 1983, the EPSBD determined the condition had existed prior to service, failed enlistment standards, had not been permanently aggravated by his military service, and was not compatible with continued service. On 26 April 1983, the applicant agreed with these findings by marking and initialing the box for the election “ I concur with these proceedings and request to be discharged from the US Army without delay.

k. Review of his records in JLV shows he has not registered with VA.

l. An uncharacterized discharge is given to individuals who separate prior to completing 180 days of military service, or when the discharge action was initiated prior to 180 days of service. This type of discharge does not attempt to characterize service as good or bad. Through no fault of his own, he simply had a medical condition which was, unfortunately, not within enlistment standards.

m. It is the opinion of the ARBA Medical Advisor that neither an upgrade of his discharge 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 partially warranted. Although the Board recognized the need to preserve the record, the Board noted the applicant's DD214 indicates an error in the spelling of his first name. Further, the Board noted that the applicant's requested name is reflected on Standard Form 93 Report of Medical History and his signature reflects the same as does the supporting Immunization Record. After due consideration of the request, the Board determined that relief was partially warranted.

2. The Board further determined that governing regulation provides that a separation will be described as uncharacterized if the separation action is initiated within the first 180 days of active duty service. As such, the applicant's DD Form 214 properly shows his service as uncharacterized. An uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It merely means the Soldier has not been in the Army long enough for his character of service to be rated as honorable or otherwise. As a result, there is no basis for granting that portion of the applicant's request.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:            :            :            GRANT FULL RELIEF

█           █           █           GRANT PARTIAL RELIEF

:            :            :            GRANT FORMAL HEARING

:            :            :            DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected by reissuing him a DD214 for the period ending 4 May 1983 showing his name as Felix Rene Marrero-Morales.

[REDACTED]

[REDACTED]

[REDACTED]

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 15-185 (ABCMR) paragraph 2-9 states 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.
3. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:
  - a. A separation would be described as entry level with uncharacterized service if the Soldier had less than 180 days of continuous active duty service at the time separation action was initiated.
  - b. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and



performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

c. A general discharge is a separation from the Army under honorable conditions. When authorized, it was issued to a Soldier whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. Soldiers separated in an entry-level status receive an uncharacterized character of service. A separation is an entry level status separation if its processing is initiated during the Soldier's first 180 days of continuous active duty. The Secretary of the Army could, on a case-by-case basis, issue an honorable character of service to entry-level Soldiers when clearly warranted by unusual circumstances involving personal conduct or duty performance.

e. Paragraph 5-11 specifically provided that Soldiers who were not medically qualified under procurement medical fitness standards when accepted for enlistment were to be separated. EPSBD proceedings were required to be convened within the Soldier's first 6 months of active duty service, and had to establish the following: that medical authority identified the disqualifying medical condition(s) within 6 months of the Soldier's initial entrance on active duty; that the condition(s) would have permanently disqualified the Soldier from entry into military service, had it been detected earlier; and that the medical condition did not disqualify him/her for retention in military service. A Soldier disqualified under this provision could request retention on active duty; the separation authority made the final determination.

f. The character of service for Soldiers separated under this provision would normally be honorable but would be uncharacterized if the Soldier was in an entry-level status. An uncharacterized discharge is neither favorable nor unfavorable; in the case of Soldiers issued this characterization of service, an insufficient amount of time would have passed to evaluate the Soldier's conduct and performance.

4. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), in effect at the time, governed the evaluation for physical fitness of Soldiers who might be unfit to perform their military duties due to a disability. It states the mere presence of an impairment did not, of itself, justify a finding of unfitness due to physical disability. In each case, it was necessary to compare the nature and degree of the physical disability with the duty requirements of the soldier, based on his or her office, grade, rank, or rating; and a Soldier was presumed to be in sound physical and mental condition upon entering active duty.

5. Army Regulation 635-5 (Personnel Separations - Separation Documents), in effect at the time of the applicant's separation from active duty, prescribed the separation documents that must be prepared for Soldiers on retirement, discharge, released from active duty service, or control of the Active Army. It also established standardized policy for preparing and distributing the DD Form 214.

a. Chapter 2 contains guidance on the preparation of the DD Form 214. It states that the source documents for entering information on the DD Form 214 will be the Enlisted Record Brief (ERB), Officer Record Brief (ORB), enlistment/ reenlistment documents, personnel finance records, discharge documents, separation orders, or any other document authorized for filing in the Official Military Personnel File. It shows for:

(1) item 1, enter name in all capital letters; include "JR," "SR," or "II", if appropriate. Compare the ERB/ORB to contract for possible name change; and

(2) item 18, when a DD Form 214 is administratively issued or reissued, enter "DD Form 214 ADMINISTRATIVELY ISSUED/REISSUED ON (date)." However, do not make this entry if the appellate authority; Executive Order; or Headquarters, Department of the Army, directs otherwise.

b. On direction of the ABCMR or Army Discharge Review Board, or in other instances when appropriate, the Deputy Assistant Secretary of the Army, Army Review Boards Agency, is authorized to issue or reissue a DD Form 214. Once a DD Form 214 has been issued, it will not be reissued except under specified circumstances including when it is determined that the original DD Form 214 cannot be properly corrected by issuance of a DD Form 215 (Correction to DD Form 214).

//NOTHING FOLLOWS//