

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 January 2024

DOCKET NUMBER: AR20230003355

APPLICANT REQUESTS: in effect, to change the narrative reason for separation on his DD Form 214 (Certificate of Release or Discharge from Active Duty), from “condition, not a disability” to “medical disability.”

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

- DD Form 149 (Application for Correction of Military Record)
- Orders Number 159-1307, 8 June 2021
- DD Form 214, 11 June 2021
- Department of Veterans Affairs (VA), Rating Decision, 13 October 2021

FACTS:

1. The applicant states he is requesting a change in the narrative reason for his separation because the VA rated him 40 percent disabled from service-connected activities.

2. The applicant provides the following:

a. Orders Number 159-1307, issued by the Directorate of Garrison Human Resources, Fort Leonard Wood, MO dated 8 June 2021, which shows he was discharged on 11 June 2021.

b. A copy of his DD Form 214 for the period ending 11 June 2021.

c. VA rating decision dated 13 October 2021, which shows:

1) He was granted an evaluation of 10 percent for service connection for ganglion cyst, left wrist.

2) Evaluation of his left adductor tendon strain tendinopathy was evaluated as 20 percent disabling. His claim for an increased evaluation for left adductor tendon strain tendinopathy was deferred for examination.

3) Evaluation of pseudofolliculitis barbae was evaluated as 0 percent disabling. His claim for an increased evaluation was deferred for examination.

4) His combined rating evaluation is 40 percent.

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

a. DD Form 4 (Enlistment Document) shows he enlisted in the Regular Army on 2 November 2020.

b. On 16 December 2020, he was assigned to Golf Company, 2nd Battalion, 48th Infantry Regiment, 3rd Chemical Brigade, Fort Leonard Wood, MO for Basic Combat Training (BCT).

c. DA Form 4856 (Developmental Counseling Form) shows the applicant received counseling on 3 May 2021 to inform him that he was being flagged in accordance with Army Regulation (AR) 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), chapter 5-17 (Other designated physical or mental conditions), for involuntary separation.

d. DA Form 268 (Report to Suspend Favorable Personnel Actions (Flag)) shows the flag was initiated on 3 May 2021 for involuntary separation.

e. DA Form 3349 (Physical Profile Record), dated 4 May 2021, states the applicant had a left sided sports hernia/muscle strain injury. He completed four months of physical therapy and the Warrior Training and Rehabilitation Program (WTRP), but he did not appear to progress towards returning to duty in a timely manner despite healing indicated on imaging. It was noted that the applicant was not able to take a record Army Physical Fitness Test. The profiling provider recommended the unit consider administrative options moving forward.

f. On 5 May 2021 the applicant was medically cleared for separation. The medical provider noted no further treatment was required.

g. A DA Form 4856 shows he was counseled on 18 May 2021, informing him that based on his results from WTRP and medical staff at Fort Leonard Wood, he was being recommended for a chapter 5-17 discharge from the U.S. Army. The counseling stated that due to his lasting injuries and/or medical condition, along with failure to progress in the Fort Leonard Wood WTRP, he met the requirements as a chapter 5-17 candidate.

h. A memorandum from the Chief, Medical Readiness Service Line, U.S. Army Medical Department Activity, Fort Leonard Wood, MO, dated 20 May 2021, shows the

applicant's medical condition precluded his return to military training. His condition did not meet requirements for chapter 5-11 (Separation of personnel who did not meet procurement medical fitness standards) or Medical Evaluation Board (MEB) recommendation. The Chief stated that the applicant should immediately be removed from all training and physical activity prohibited by his profile.

i. On 1 June 2021, the applicant's immediate commander notified him of his intent to initiate separation in accordance with AR 635-200, chapter 5-17, for other designated physical or mental conditions. The commander listed the following reason for the proposed action: He was diagnosed by the Richard Wilson Army Medical Home with a left sided sports hernia/muscle strain injury. Due to the condition, he was unable to complete BCT. The commander informed the applicant of his rights.

j. On 2 June 2021, the applicant acknowledged notification of the proposed separation under the provisions of AR 635-200, chapter 5-17, and its effects; of the rights available to him. He acknowledged that he was provided the opportunity to consult with legal counsel. He waived consulting counsel and elected not to submit a statement in his own behalf. He understood he was not entitled to consideration of his case by an administrative separation board or to appear before an administrative separation board.

k. On 1 June 2021, the immediate commander formally recommended the applicant's separation from the Army prior to his expiration of current term of service under the provisions of AR 635-200, chapter 5-17.

l. On 3 June 2021, the intermediate commander recommended approval and separation under the provisions of AR 635-200, chapter 5-17, with characterization of service as honorable.

m. On 5 June 2021, the separation authority approved the discharge, directed the applicant be issued an honorable discharge, and not be transferred to the Individual Ready Reserve.

n. The applicant was discharged on 11 June 2021. His DD Form 214 shows he was discharged under the provisions of AR 635-200, paragraph 5-17, and his service was characterized as honorable. He completed 7 months and 10 days of net active service during the covered period. Additionally, his DD Form 214 shows in:

- Block 11 (Primary Specialty): None
- Block 13 (Decorations, Medals, Badges, Citations and Campaigns): National Defense Service Medal
- Block 18 (Remarks): Member has not completed first full term of service
- Block 26 (Separation Code): JFV

- Block 27 (Reentry Code): 3
- Block 28 (Narrative Reason for Separation): Condition, not a disability

4. By regulation (AR 635-200), commanders may approve separation under paragraph 5-17, on the basis of other physical or mental conditions not amounting to disability that interfere with assignment to or performance of duty.

5. 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/or 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). He states:

"Type of separation: Discharge narrative reason for separation: Condition, not a disability. Have been rated 40% disable from service-connected activities."

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 2 November 2020 and was honorably discharged on 11 June 2021 under authority provided by paragraph 5-17 of AR 635-200, Active Duty Enlisted Administrative Separations (19 December 2016): Other designated physical or mental conditions.

d. Paragraph 5-17a of AR 635-200:

Commanders specified in paragraph 1–19 may approve separation under this paragraph on the basis of other physical or mental conditions not amounting to disability (AR 635–40) and excluding conditions appropriate for separation processing under paragraph 5–11 or 5–13 that potentially interfere with assignment to or performance of duty. Such conditions may include, but are not limited to—

- (1) Chronic airsickness.
- (2) Chronic seasickness.

- (3) Enuresis.
- (4) Sleepwalking.
- (5) Dyslexia.
- (6) Severe nightmares.
- (7) Claustrophobia.
- (8) Other disorders manifesting disturbances of perception, thinking, emotional control or behavior sufficiently severe that the soldier's ability to effectively perform military duties is significantly impaired.

e. AHLTA records shows he was first seen for a one-week history of thigh pain on 6 January 2021. The applicant stated is began while running down a flight of stairs. He was diagnosed with a left adductor muscle strain and started on conservative treatment. An MRI obtained on 8 January 2021 revealed an injury at the origin of the adductor muscle: "Findings consistent with sequela of athletic pubalgia on the left with tug injury at the origin of the adductor tendon."

f. The pain worsened and he was evaluated by orthopedics on 1 February 2021. The provider surgeon opined:

"This patient has been having pain near the origin of his abductor on his pubic ramus for nearly 2-1/2-3 months. In spite of this conservative course, the patient states that his symptoms are worsening as opposed to getting better. This is unusual in the sense that soft tissue injuries on 2 slowly improve over time as opposed to worsen.

Nevertheless, the patient subjectively is informing us that he is worsening. As such, I think that further restricting his activity level is appropriate. We have written a prescription for him to go to physical therapy and get crutches and to be toe-touch weight bear status to his left lower extremity. In addition, I have written for him to take ibuprofen 800 mg by mouth 3 times a day with food for 10 days in a row. We will see the patient back in 10-14 days."

g. At his 22 February 2021 reevaluation by orthopedics, the applicant told the provider his symptoms began in basic training around 2 November 2020 and that "his symptoms "are overall worsening." A 25 February 2021 MRI of the left thigh was normal. The patient continued with conservative treatment (physical therapy, anti-inflammatory medication, limited activity, etc.).

h. At his 8 March 2021 orthopedic follow-up, the applicant again reported that symptoms not only failed to improve but continued to worsen and that he desired to

separate from the Army. The surgeon began to consider that his worsening symptoms despite rest and conservative treatment could be related to a desire to separate from the Army:

“In spite of an extensive conservative course, the patient states that his symptoms are worsening as opposed to getting better. This is EXTREMELY unusual in the sense that soft tissue injuries should slowly improve over time as opposed to worsen ... If someone is not getting better, typically this is due to one of three things. A) the patient’s pathology is either misdiagnosed or worsening. B) The patient is decreasing pain medications. C) The patient has increased his/her activity levels.

I suppose a 4th consideration is that the patient may not be telling us the truth regarding his subjective symptomatology and has lost his motivation to continue. I honestly do not know whether the patient’s subjective worsening of left pubic/adductor symptomatology is due to increased activity levels (by report) or due to his lack of motivation to continue in the Army.

The objective data obtained by his most recent MRI of February 25, 2021, suggests that his subjective complaints are out of proportion to the data available.

I have specifically told the patient that I cannot recommend that he be a red shirt versus an orange shirt. This is a decision that his Command must make. I have instructed the patient to return to his PCP and discuss with them his lack of desire to continue in the military.

From my standpoint, this patient has a soft tissue injury that began nearly 5 months ago. Subjectively, the patient states that he is worsening as opposed to improving. There is a paucity of objective data to support his claims of a worsening condition. As such, I think that his potential for being productive going forward is minimal.

Therefore, as per the patient’s request, I support separation. I have had a face-to-face and detailed discussion with the patient about his mental and emotional status. I have specifically asked the patient if he is suicidal or has any intent of hurting himself or others. The patient states that although he is distressed and distraught, he is not suicidal and has no intention of ever hurting anybody.

From my standpoint, I do not have much more to offer this patient other than

further rest restrictions. I recommend that he have activity restrictions which include no prolonged standing or walking. Sedentary work only ... The patient will follow-up with us more on an as-needed basis.”

i. The applicant was flagged for involuntary separation on 3 May 2021. On 18 May 2021, he was counseled by his company commander on his recommendation for a 5-17 discharge:

SPC [Applicant], this counseling is to inform you that based off your results from WTRP [Warrior Training and Rehabilitation Program] and medical staff at Fort Leonard Wood GLWACH [General Leonard Wood Army Community Hospital] that you will be recommended for a Chapter 5-17 discharge from the United States Army.

The Golf Company Operations cell will give you further guidance on your requirements and you begin to process out of the service. This Enlisted Separation is non-punishable offense. Simply due to your lasting injuries and/or medical condition along with your failure to progress in the Fort Leonard Wood WTRP program, you've met the requirements as a CH 5-17 candidate.

I am recommending that you be discharged under Chapter 5-17 (Other designated physical or mental conditions) at this time.”

j. The applicant agreed with the counseling without comment.

k. On 20 May 2021, the physician assistant who was Chief of The Medical Readiness Service Line provided a Memorandum for Record for the applicant's separation packet stating:

“Upon review of SPC [Applicant]'s medical records it has been determined, IAW Chap 5-11 {sic, should read 5-17} AR 635-200 and Chap 2 DoDI 6130.03 the Service member has a medical condition that will preclude his return to military training. His condition does not meet requirements for 5-11 [Separation of personnel who did not meet procurement medical fitness standards] or MEB [medical evaluation board] recommendation. The Service member should immediately be removed from all training and physical activity prohibited by their profile.

The patient has inability to return to training despite maximized rehabilitation.”

l. The recommended 5-17 discharge with an honorable characterization of service was approved by the brigade commander on 5 June 2021

m. Given that his condition began in basic training and would likely resolve with removal from the rigors of military training, the symptoms were likely to resolve with his discharge and did not constitute a disability IAW AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (19 January 2017).

n. JLV shows he has been awarded multiple VA service-connected disability ratings with a 20% rating related to his left lower leg.

o. Because the applicant's symptoms began and a cause was diagnosed within six months of his entrance onto active duty, he could also have been separated under, and possibly more accurately, paragraph 5-11a of AR 635-200:

“Soldiers who were not medically qualified under procurement medical fitness standards when accepted for enlistment or who became medically disqualified under these standards prior to entry on AD [active duty] or ADT [active duty for training] for initial entry training, may be separated. Such conditions must be discovered during the first 6 months of AD. Such findings will result in an entrance physical standards board. This board, which must be convened within the Soldier's first 6 months of AD, takes the place of the notification procedure (para 2-2) required for separation under this chapter.”

p. It is the opinion of the ARBA medical advisor that a referral of his case to the DES is not warranted.

#### BOARD DISCUSSION:

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 contentions, the military record, and regulatory guidance. The applicant was afforded medical evaluation and physical therapy among other treatments prior to discharge. As his symptoms did not improve, he was determined to have a medical condition that precluded further military training and recommended for discharge in accordance with applicable regulatory guidance. After due consideration of the applicant's request, the Board determined the evidence presented insufficient to warrant a recommendation for relief and referral of his case to the Disability Evaluation System is not warranted.



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 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 and a correction to his DD214 to show the narrative reason for separation on his DD Form 214 (Certificate of Release or Discharge from Active Duty) from "condition, not a disability" to "medical disability" is not warranted.

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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. Army Regulation (AR) 635-200 (Personnel Separations - Active Duty Enlisted Administrative Separations), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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 than honorable characterization would be clearly inappropriate.

b. Paragraph 5-17 (Other Designated Physical or Mental Conditions) provided that commanders may approve separation under this paragraph on the basis of other physical or mental conditions not amounting to disability (AR 635-40) and excluding conditions appropriate for separation processing under paragraph 5-11 (Separation of personnel who did not meet procurement medical fitness standards) or 5-13 (Separation because of personality disorder) that potentially interfere with assignment to or performance of duty. Such conditions may include but are not limited to other disorders manifesting disturbances of perception, thinking, emotional control or behavior sufficiently severe that the Soldier's ability to effectively perform military duties is significantly impaired.

(1) When a commander determines that a soldier has a physical or mental condition that potentially interferes with assignment to or performance of duty, the commander will refer the Soldier for a medical examination and/or mental status evaluation in accordance with AR 40-501 (Standards of Medical Fitness). A recommendation for separation must be supported by documentation confirming the existence of the physical or mental condition.

(2) Separation processing may not be initiated under this paragraph until the Soldier has been counseled formally concerning deficiencies and has been afforded ample opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records.

2. AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation) 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. Paragraph 3-2 states 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. Paragraph 3-4 states 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.

3. AR 40-501 (Standards of Medical Fitness) governs medical fitness standards for enlistment, induction, appointment (including officer procurement programs), retention, and separation (including retirement). The Department of Veterans Affairs Schedule for Rating Disabilities (VASRD) is used by the Army and the VA as part of the process of adjudicating disability claims. It is a guide for evaluating the severity of disabilities resulting from all types of diseases and injuries encountered as a result of or incident to military service. This degree of severity is expressed as a percentage rating which determines the amount of monthly compensation.

4. AR 635-5-1 (Personnel Separations - Separation Program Designator (SPD) Codes), in effect at the time, provided that enlisted Soldiers separated under the provisions of AR 635-200, paragraph 5-17, with a narrative reason of "Condition, not a disability" would receive a separation code of JFV.

5. AR 601-210 (Regular Army and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who were fully qualified for enlistment/reenlistment

- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable; they are ineligible unless a waiver is granted
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification

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. 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards 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.

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.

9. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. 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.

//NOTHING FOLLOWS//