

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 November 2023

DOCKET NUMBER: AR20230004182

APPLICANT REQUESTS: in effect, her DD Form 214 (Certificate of Release or Discharge from Active Duty) be changed from an uncharacterized discharge to an honorable medical discharge. Also, a personal appearance before the Board.

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

DD Form 149 (Application for Correction of Military 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 the correction should be made because her discharge was due to a medical release during her military training. She was informed that she was being medically discharged due to losing the arch in her feet which left her unfit to meet medical fitness standards. She was not aware of this error until she requested a copy of her DD Form 214. This is when she noticed the error that showed differently from what she was informed when she was medically discharged from Fort Jackson where she was completing her basic training.
3. The applicant had a Report of Medical Examination (Standard Form (SF) 88) completed on 13 May 1993. Under clinical evaluation the form shows item 36 (Feet): Pes planus, mod, hallux valgus, mild; item 38 (Spine, Other Musculoskeletal): slight scoliosis. She was found qualified for enlistment in the Army.
4. She enlisted in the Arkansas Army National Guard (ARARNG) on 13 May 1993.
5. She entered a period of active-duty training (ADT) on 4 October 1993.
6. On 16 December 1993, she went to sick call for her left leg having severe pain and right foot was swollen with severe pain. She was placed on a duty restriction of no

physical training (PT) and no PT testing for two weeks. A DA Form 5181-R (Screening Note of Acute Medical Care) shows the applicant was seen for pain in her right foot and severe pain in her left leg. It also shows: no trauma, with swelling for three weeks.

7. On 4 January 1994, a SF 519-B (Radiologic Consultation Request/Report) shows lower leg examination was requested. The specific reason for the request shows as tibial stress fracture. No acute changes.

8. On 5 January 1994, she was seen again for severe pain in her lower left leg/feet for 2 1/2 months. No relief with shoe orthotics or profile.

9. On 27 January 1994, she was seen at a podiatry clinic which shows EPTS (existing prior to service).

10. Orders 027-709, issued by Headquarters, United States Army Training Center, Fort Jackson, SC, on 9 February 1994, shows she was released from ADT and returned to her ARNG unit effective 10 February 1994.

11. On 10 February 1994, she was released from ADT and returned to her ARARNG unit. Her DD Form 214 shows she completed 4 months and 7 days net active service this period. It also shows in pertinent parts:

- Item 24 (Character of Service): Uncharacterized
- Item 25 (Separation Authority): AR 635-200, paragraph 5-11
- Item 26 (Separation Code): JFW
- Item 27 (Reentry Code): 3
- Item 28 (Narrative Reason for Separation): Failure to meet procurement medical fitness standards

12. Her NGB Form 22 (Report of Separation and Record of Service) shows she was discharged from the ARARNG on 10 February 1994 with an uncharacterized character of service for entry level status and conduct.

13. The Army rates only conditions determined to be physically unfitting at the time of discharge, which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career. The VA does not have authority or responsibility for determining physical fitness for military service. The VA may compensate the individual for loss of civilian employability.

14. Title 38, U.S. Code, 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.

15. Title 38, CFR, Part IV is the VA's schedule for rating disabilities. The DVA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge. As a result, the DVA, operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform his duties. Unlike the Army, the DVA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

16. By regulation (AR 635-200):

a. Paragraph 5-11 specifically provides that Soldiers who are not medically qualified under procurement medical fitness standards when accepted for enlistment, or who became medically disqualified under these standards prior to entry on active duty, active duty for training, or initial entry training will be separated. A medical proceeding conducted by an EPSBD, regardless of the date completed, must establish that a medical condition was identified by appropriate medical authority within 6 months of the Soldier's initial entrance on active duty, the condition would have permanently or temporarily disqualified the Soldier for entry into the military service had it been detected at the time of enlistment, and the medical condition does not disqualify the Soldier from retention in the service under AR 40-501, chapter 3. The characterization of service for Soldiers separated under this provision will normally be honorable but will be uncharacterized if the Soldier has not completed more than 180 days of creditable continuous active-duty service prior to the initiation of separation action.

b. An uncharacterized separation is an entry-level separation. A separation will be described as an entry-level separation if processing is initiated while a member is in entry-level status, except when characterization under other than honorable conditions is authorized by the reason for separation and is warranted by the circumstances of the case or when the Secretary of the Army, on a case-by-case basis, determines that characterization of service as honorable is clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty. A general discharge is not authorized.

17. By regulation, AR 15-185 (ABCMR) 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.

18. 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 an upgrade of her uncharacterized discharge and, in essence, a referral to the Disability Evaluation System (DES). She states:

“The correction should be made because my discharge was due to a medical release during my military training. I was informed that I was being medically discharged due to losing the arch in my feet which left me unfit to meet medical fitness standards.”

c. The Record of Proceedings outlines the applicant’s military service and the circumstances of the case. Her DD 214 shows the former Army National Guard Soldier entered active duty for training on 4 October 1993 and received an uncharacterized discharged on 10 February 1994 under the separation authority provided by paragraph 5-11 of AR 635-200, Personnel Separations – Enlisted Personnel (17 September 1990): Separation of personnel who did not meet procurement medical fitness standards.

d. Paragraph 5-11a of AR 635-200:

a. 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, will be separated. Medical proceedings, regardless of the date completed, must establish that a medical condition was identified by appropriate military medical authority within 6 months of the soldier’s initial entrance on AD for RA [regular Army], or during ADT for initial entry training for ARNGUS [Army National Guard of the United States] and USAR [United States Army Reserve], which—

(1) Would have permanently or temporarily disqualified him or her for entry into the military service or entry on AD or ADT for initial entry training had it been detected at that time.

(2) Does not disqualify him or her for retention in the military service under the provisions of AR 40–501, chapter 3.

e. On her 13 May 1993 pre-entrance Report of Medical Examination, the provider documented moderate pes planus (aka “flat feet”) and mild hallux valgus (aka

“bunions”). There was no significant medical history on the accompanying Report of Medical History.

f. The applicant was seen for a more than three-week history of bilateral leg and foot pain on 16 December 1993. Conservative management failed to significantly improve her condition and she was referred to podiatry on 5 January 1994. When she was seen by podiatry the next day, she was diagnosed with bilateral hallux valgus and plantar fasciitis secondary to moderate pes planus. Conservative management again failed to significantly alleviate her symptoms and on 27 January 1994, the podiatrist simply wrote “EPTS [existed prior to service] this date.”

g. Her separation packet or documents addressing her separation were not submitted with the application nor uploaded into iPERMS.

h. The applicant was likely referred to an Entrance Physical Standards Board (EPSBD) for IAW paragraph 5-11 of AR 635-200 for bilateral foot pain that had failed to respond to conservative treatment.

i. 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 or develop a condition which does not meet the enlistment standard in chapter 2 of AR 40-501, Standards of Medical Fitness (1 December 1983), 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.

j. Her Entrance Physical Standards Board (EPSBD) Proceedings (DA Form 4707) are not available for review. Given her 5-11 discharge, it must be assumed the EPSBD determined the conditions had existed prior to service, failed the enlistment standards in chapter 2 AR 40-501, had not been permanently aggravated by his military service, and were not compatible with continued service. 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 her own, she simply had medical conditions which were, unfortunately, not within enlistment standards.

k. It is the opinion of the Agency Medical Advisor that neither an upgrade of her discharge nor referral of her case to the DES is 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 applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence of record shows the applicant was discharged due to a preexisting condition,

while in initial entry training, and received an uncharacterized discharge. A separation will be described as entry-level with service uncharacterized if processing is initiated within the first 180 days of service. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the advising official. The Board concurred with the medical advisory opinion finding insufficient evidence of in-service mitigating factors. The EPSBD clearly determined his EPTS condition(s) failed the enlistment standards in chapter 2 AR 40-501, had not been permanently aggravated by her military service, and was not compatible with continued service. The applicant agreed with these findings, marking and initialing the option "I concur with these proceedings and request to be discharged from the U.S. Army without delay." Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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.

[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 (AR) 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.
3. AR 40-501 (Standards of Medical Fitness) governs medical fitness standards for enlistment, induction, appointment, retention, and separation. Chapter 2 provides the physical standards for enlistment/induction. Paragraph 2-11 refers to conditions which may result in failure of procurement standards.
4. AR 635-5 (Separation Documents), in effect at the time, prescribes policies and procedures for the completion of the DD Form 214. It stated, based on the specific separation authority, the source of the SPD code and narrative reason for separation was AR 635-5-1 (SPD Codes).
5. AR 635-5-1, in effect at the time, provided the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identified the SPD code of "JFW" as being associated with separations under the provisions of chapter 5-11, AR 635-200; the required narrative reason for separation was " Failed Medical/Physical/Procurement Standards."
6. AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation) governs the evaluation of physical fitness of Soldiers who may be unfit to perform their military duties because of physical disability. It states that according to accepted medical principles, certain abnormalities and residual conditions exist that, when discovered,

lead to the conclusion that they must have existed or have started before the individual entered the military service. Examples are manifestation of lesions or symptoms of chronic disease from date of entry on active military service (or so close to that date of entry that the disease could not have started in so short a period) will be accepted as proof that the disease existed prior to entrance into active military service.

7. AR 635-200 sets forth the basic authority for separation of enlisted personnel.

a. Paragraph 5-11 specifically provides that Soldiers who are not medically qualified under procurement medical fitness standards when accepted for enlistment, or who became medically disqualified under these standards prior to entry on active duty, active duty for training, or initial entry training will be separated. A medical proceeding conducted by an EPSBD, regardless of the date completed, must establish that a medical condition was identified by appropriate medical authority within 6 months of the Soldier's initial entrance on active duty, the condition would have permanently or temporarily disqualified the Soldier for entry into the military service had it been detected at the time of enlistment, and the medical condition does not disqualify the Soldier from retention in the service under the provisions of AR 40-501, chapter 3. The characterization of service for Soldiers separated under this provision will normally be honorable but will be uncharacterized if the Soldier has not completed more than 180 days of creditable continuous active-duty service prior to the initiation of separation action.

b. An uncharacterized separation is an entry-level separation. A separation will be described as an entry-level separation if processing is initiated while a member is in entry-level status, except when characterization under other than honorable conditions is authorized by the reason for separation and is warranted by the circumstances of the case or when the Secretary of the Army, on a case-by-case basis, determines that characterization of service as honorable is clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty.

c. Paragraph 3-7a states that 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.

8. 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-

marital; 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.

//NOTHING FOLLOWS//