

IN THE CASE OF: ██████████

BOARD DATE: 17 October 2024

DOCKET NUMBER: AR20230005025

APPLICANT REQUESTS: in effect, medical disability discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Letter
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge)
- Medical documents
- Letter from Department of Veterans Affairs (VA)

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, in effect:

a. He is requesting medical disability. He was told by his family doctor that he had scoliosis. He was told his scoliosis was not that bad by the military doctor at the time of his induction physical.

b. It turns out the curvature of his spine was over the 38 degree threshold at the time of his induction, and he had a 45 degree thoracic curve when he was seen at ██████████ Fort Lewis, Washington. He should be compensated for 54 years of wrongful induction and disability.

c. He has had physical pain for over 50 years that started at his basic training at Fort Lewis, Washington. He was unable to work because of the type of discharge he received.

d. If the doctor had done the right thing at the time of his induction, he would not have the complications he does now. He would have continued his education and college and maybe would have had a life that was worthwhile.

e. His medical documents showing his x-rays are at the VA hospitals and the [REDACTED] at Fort Lewis, Washington.

f. Upon his release from the military in 1968, he contacted Senator [REDACTED] and Congressman [REDACTED] concerning his discharge from the Army and the voided induction. Both the Senator and Congressman wrote him letters letting him know they could not help him with this problem.

g. In 2020, he returned to the VA care system and was welcomed into their program that covered chiropractic services. His first appointment with the doctor at the VA was very interesting. He was told that his x-rays that were taken at his induction physical had shown that his scoliosis was over the limit the Army allowed of 10 percent and he should have not been drafted into the Army. His chiropractic doctor at the VA informed him of the fact that the doctor who okayed his induction should have lost his medical license.

h. In 1968, he as a young man, became a Soldier at Fort Lewis, Washington. Basic training at any military basis is hard enough but for him, he had a disability, which got worse each day of training. He did not complain because he had no voice in the matter. It was do what you were told to do or go to jail.

i. Seventy-five days into his training, he caught a cold and a cough, so he went to the dispensary to get some medical attention. The doctor examined him and upon looking over his physical condition noticed the curvature of his spine. The doctor asked if the condition caused him much pain to which he answered yes. The doctor immediately responded that the applicant would be a civilian soon.

j. The doctor gave him Darvon pain pills and sent him on his way. He thought, on his way back to the barracks, it was strange that he was fit enough to become a Soldier but his disability was now the reason for his discharge. Was the Army at fault for the cause? Should he not have been drafted? Is the Army responsible or can they hide behind a voided induction and decline all claims?

k. So as a 19 year old, he went home with a discharge after 88 days with no compensation, no disability claim, no returning back to college, and no job because who is going to hire an uneducated 19 year old with a bad back and a voided induction from the Army? Possible employers would avoid him if he showed them his DD Form 214, so to get a job, he had to lie his whole life on any employment application and hope he was never found out. Because of this military blunder, he has had to work low income jobs

from employers who did not do background checks. Thanks to the U.S. Army he now lives at the poverty level. He is 74 years old and lives on social security and a small allotment from his ex-wife.

3. The applicant's service records contain the following documents:

a. DD Form 47 (Record of Induction) shows he was inducted in the Army of the United States as an enlisted Soldier on 22 May 1968.

b. Prior to his induction, he underwent a physical examination. His Report of Medical History and Report of Medical Examination show he was in fair health, and he was treated for a curved spine and diagnosed with scoliosis. He was qualified for induction into the Army.

c. A Consultation Sheet, 3 July 1968, shows he had a curve in his spine and the pain increased with exercise and standing. His curve was at 45 degrees.

d. A Report of Medical Examination, 16 July 1968, shows he had scoliosis and was cleared for separation from the Army.

e. DA Form 1049 (Personnel Action), 16 July 1968, shows he requested release from custody and control of the Army by virtue of a voided induction, under the provisions of Army Regulation 635-200 (Personnel Separations-Enlisted Personnel), paragraph 5-9.1. His Report of Medical Examination indicates he did not meet the medical fitness standards for induction when he was inducted on 22 May 1968. He did not desire to complete the period of service for which he was inducted. He understood his release from the Army would be without entitlement to disability benefits from the service.

f. On 31 July 1968, it was directed that he be released from the custody and control of the service by virtue of a voided induction.

g. DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was discharged on 16 August 1968 for a voided induction. His characterization of service was honorable. He had completed 2 months and 25 days of active duty service.

h. The applicant's service record was void of a medical evaluation board.

4. 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 (EMR – AHLTA and/or MHS Genesis), 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) for his scoliosis which existed prior to induction and resulted in his involuntary separation.

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 May 1968 and was honorably discharged on 16 August 1968 under the authority provided in paragraph 5-9.1 of AR 635-200, Personnel Separations – Enlisted Personnel 1 June 1967): Discharge of personnel who did not meet procurement medical fitness standards. The separation program number 376 denotes "Release from military Control (Void Inductions) because of not meeting medical fitness standards at time of induction."

d. Because of the period of service under consideration, there are no encounters in the EMR or documents in iPERMS.

e. On his pre-enlistment Report of Medical History, the applicant noted a history of "Back – Spine (Curved) and he told the examiner he had a "Crooked spine." On the accompanying Report of Medical Examination, the provider documented "mild" scoliosis and that the applicant was qualified for induction.

f. He was evaluated by orthopedics 3 July 1968 for back pain with exertion and standing with scoliosis. The provider documented a right thoracic curve with rotation, radiographs revealed a 45 degree thoracic curve, and that the applicant should be separated as he failed the enlistment standard in paragraph 2-36c of AR 40-501, Standards of Medical Fitness.

g. Paragraph 2-36c of AR 40-501 (19 June 1968) states scoliosis is a cause for rejection for appointment, enlistment, and induction if:

"(1) Mobility and weight-bearing power is poor.

(2) More than moderate restriction of normal physical activities is required.

(3) Of such a nature as to prevent the individual from following a physically active vocation in civilian life.

(4) Of a degree which will interfere with the wearing of a uniform or military equipment.

(5) Symptomatic, associated with positive physical finding(s) demonstrable by X-ray."

h. The applicant requested release from the Army on 16 July 1968.

i. It is the opinion of the ARBA Medical Advisor that a referral of his case to the Disability Evaluation System is unwarranted.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted.

2. The Board concurred with the conclusion of the ARBA Medical Advisor that there was no basis for referring the applicant to the Disability Evaluation System. Based on a preponderance of the evidence, the Board determined the applicant's honorable discharge by reason of a voided induction 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.

3/31/2025

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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 that time, set forth the basic authority for the separation of enlisted personnel. Chapter 5 (Separation for Convenience of the Government) set forth the conditions under which enlisted personnel may be discharged, released from active duty or active duty for training, or released from military control, for the convenience of the Government. Paragraph 5-9 (Discharge of personnel who did not meet procurement medical fitness standards) states:

a. Individuals who were not medically qualified under procurement medical fitness standards when accepted for induction or initial enlistment will be discharged when a medical board, regardless of the date completed, establishes that a medical condition was identified by appropriate medical authority within 4 months of the members initial entrance on active duty or active duty for training which:

(1) Would have permanently disqualified him for entry into the military service had it been detected at that time; and

(2) Does not disqualify him for retention in the military service under chapter 3 Army Regulation 40-501(Standards of Medical Fitness).

b. As an exception, an individual who is found to meet the requirements of a, but who elects to complete the period of service for which inducted or enlisted, will not be discharged under this paragraph. Such member will be required to sign a statement electing to complete his period of service, notwithstanding his eligibility for discharge under this paragraph.

3. Title 38, USC, section 1110 (General - Basic Entitlement): 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.

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

5. Title 38, United States Code, sections 1110 and 1131 , permits the Veterans Administration (VA) to award compensation for a medical condition which was incurred in or aggravated by active military service. The VA, however, is not required by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. The VA can evaluate a veteran throughout his lifetime, adjusting the percentage of disability based upon that agency's examinations and findings. However, these changes do not call into question the application of the fitness standards and the disability ratings assigned by proper military medical authorities during the applicant's processing through the Army Physical Disability Evaluation System (PDES).

6. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement or Separation) Chapter 9 (Expeditions Discharge for Disabilities Existing Prior to Service) in effect at the time provides that when an enlisted member on active duty is believed to be incapable of performing his duties with reasonable effectiveness because of a

disability which is believed not to have been incurred or aggravated during any period of active service, the commander concerned will initiate action to request a medical examination.

a. When a medical board recommends that a member be separated because of medical unfitness which existed prior to entry into military service or which was incurred when the member was not entitled to basic pay and which has not been aggravated by such service, the medical treatment facility commander will cause the member to be offered the opportunity for expeditious separation, if he is otherwise eligible.

b. Any member of the Army discharged under the provisions of this chapter may not be considered for any disability benefits administered by the Army. He may, however, and should apply for compensation, pension, or other benefits administered by the Veterans Administration. Entitlement to these benefits will be determined by the Veterans Administration.

7. Army Regulation 40-501 (Standards of Medical Fitness) Chapter 3, paragraph 3-16 (Vision) in effect at that time provides that visual acuity which cannot be corrected to at least 20/40 in the better eye or visual acuity in the poorer eye has been reduced to light perception or less. Further noted concerning a person's field of vision is the presence of bilateral concentric constriction of the fields to less than 20 degrees. Normally members with conditions listed within this chapter will be considered unfit by reason of physical disability.

a. A single impairment or the combined effect of two or more impairments normally makes an individual unfit because of physical disability if the individual is precluded from a reasonable fulfillment of the purpose of his employment in the military service.

b. An individual who is accepted for and enters the military service is presumed to be in sound physical condition except for those conditions and abnormalities recorded in his procurement medical records. However, this presumption may be overcome by conclusive evidence that an impairment was incurred while the individual was not entitled to receive basic pay. Likewise, the presumption that an increase in severity of such an impairment is the result of service, must be overcome by conclusive evidence.

8. Army Regulation 635-40A (Personnel Separations) in effect at that time provides that Title 10, United States Code, chapter 61, prescribes that any member of the uniformed services found to be unfit to perform the duties of his office, rank, grade, or rating by reason of physical disability and who otherwise qualifies as herein after provided may be retired or separated subject to the provisions of this title. When it is determined that the member has incurred a physical disability which renders him unfit and which is determined to have existed prior to, his term of active service and not permanently

aggravated as a result of active service, such member will be discharged without entitlement to any benefits provided by these regulations.

9. 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.

10. 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; traumatic brain injury (TBI); sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

11. 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.

a. 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 on the basis of 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.

b. 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.

12. Title 10, U.S. Code, section 1556 requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//