

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 February 2024

DOCKET NUMBER: AR20230005026

APPLICANT REQUESTS: reconsideration of his previous request for a physical disability separation.

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

- Army Board for Correction of Military Records (ABCMR) Docket Number AR20210016106 Decision Letter, 3 March 2023
- Reconsideration Letter
- Medical Records (5 pages)
- Department of Veterans Affairs (VA) Disability Claim Article
- Article Titled, "Who is eligible to received VA disability benefits?"
- Article Titled, "What are VA disability benefits"

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Number AR20210016106 on 13 July 2022.

2. The applicant contends the Board made "an unfair and incorrect decision" in the matter of his previous case, ABCMR Docker Number AR20210016106 in determining his separation from active duty on 5 May 1978, as Trainee Discharge Program (TDP) in accordance with Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel) paragraph 5-33 was proper.

a. His argument is that he had a patella dislocation injury in basic training, which effected his performance because it would hurt every time he went to the field. He was limping with a knee brace; none of the sergeants indicated or recorded his injury. Furthermore, nobody noted his injury as the reason of discharge or separation on his DD Form 214 (Report of Separation from Active Duty). No person with an injury or pain in their body can perform their duties well. He disagrees with the fact they recorded him as TDP in accordance with AR 635-200 para 5-33. He believes that the sergeants obviously made an error by not reporting his injury.

b. He contends that he was not properly advised. He was only advised that an honorable discharge was the best option for him; he was never counseled on the option to seek a medical discharge. The reason for his poor performance at the rifle range was clearly his injury, and the pain and discomfort he experienced walking with a knee brace, which ultimately caused him to be discharged from service.

c. The condition of his left knee injury, which was diagnosed as a (chondromalacia patella injury) persists and has worsened from his time in basic training through the present time. He has required continuing care and treatment for this condition throughout his life. He understands that active-duty veterans generally need to have active-duty service beyond basic training to be eligible for disability benefits, unless the illness or injury occurred doing basic training, and that is his case.

3. The applicant underwent a medical examination for the purpose of enlistment on 23 November 1977. His Standard Form (SF) 93 (Report of Medical History) shows he reported he was in good health. The corresponding SF 88 (Report of Medical Examination) shows he was qualified for service and assigned a physical profile of 111121.

A physical profile, as reflected on a DA Form 3349 (Physical Profile) or DD Form 2808, is derived using six body systems: "P" = physical capacity or stamina; "U" = upper extremities; "L" = lower extremities; "H" = hearing; "E" = eyes; and "S" = psychiatric (abbreviated as PULHES). Each body system has a numerical designation: 1 meaning a high level of fitness; 2 indicates some activity limitations are warranted, 3 reflects significant limitations, and 4 reflects one or more medical conditions of such a severity that performance of military duties must be drastically limited. Physical profile ratings can be either permanent or temporary.

4. The applicant enlisted in the Regular Army on 17 March 1978.

5. A TDP Counseling shows:

a. Staff Sergeant (SSG) L\_A\_ observed [the applicant] on 11 April 1978. He fired very poorly on field firing so he was allowed to refire with assistance, but he improved very little.

b. SSG L\_P\_ counseled [the applicant] on 11 April 1978, about his poor performance at practice record fire. He reconfirmed his zero and received one-on-one instruction but still failed to qualify with his M-16 rifle on 17 April 1978. He fired 16. [The applicant] was counseled again on 17 April 1978, was given additional individual instruction and he fired 13. He was referred to the company commander.

c. The company commander counseled [the applicant] on 17 April 1978, after his second failure to qualify with his weapon. He re-zeroed on 18 April [1978], refired field fire on 19 April [1978] and failed to qualify after two more attempts. He fired 14 on 20 April [1978] and 12 on 24 April 1978. The company commander counseled him again on 25 April 1978. He has completely given up and, if recycled, will only cause problems for his new unit. The company commander referred him to First Sergeant (1SG) A\_E\_ for further evaluation.

d. 1SG A\_E\_ states the applicant was referred to him by the company commander on 25 April 1978. He has failed to qualify with his M-16 after 4 attempts. He has been re-zeroed twice, and refired field fire twice but his scores have gotten worse. He is completely unmotivated to continue training. Recommend discharge.

6. On 27 April 1978, his commander initiated action to discharge the applicant from the U.S. Army in accordance with (IAW) AR 635-200, paragraph 5-33. The specific reason for this proposed action was the applicant lack the aptitude and motivation to complete basic training. He had been given ample opportunity to improve, but no improvement has been noted. The applicant acknowledged notification of the proposed honorable discharge from the U.S. Army. He did not make a statement on his own behalf and did not desire to have a separation medical examination.

7. On 2 May 1978, the separation authority approved the applicant's discharge under the provisions of AR 635200, paragraph 5-33, trainee discharge program.

8. The applicant was honorably discharged from active duty on 5 May 1978, IAW AR 635-200, paragraph 5-33. He completed 1 month and 19 days of active service.

9. A memorandum showing the reason for separation reflects trainee discharge program marginal or non-productive. He was ineligible for enlistment unless a waiver is granted.

10. On 13 July 2022, in ABCMR Docket Number AR20210016106, the Board considered his application but determined that after reviewing the application and all supporting documents, that relief was not warranted. The Board denied his request.

11. The applicant provides:

a. Medical records (5 pages) in support of his claim. The complete documents are available for the boards review.

b. VA disability claim article highlighting a portion related to length of service eligibility.

c. Who is eligible to received VA disability benefits? article The applicant highlighted “Essentially, the date you start boot camp or basic training, you are on active duty and therefore subject to service connection for any disabilities incurred.” Also highlighted “However, it is important to note that they can later receive benefits for events, injuries, and/or illnesses that occurred during any of the active duty circumstances described above (including boot camp).”

d. What are VA disability benefits? article The applicant highlighted “A service-connected condition is one that resulted from military service, whether at boot camp or deployed, as determined by VA. Specifically, entitlement to service connection requires the following:

- A current, diagnosed condition;
- An in-service event, injury, or illness; “

12. 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.

#### 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 requesting reconsideration of the prior ABCMR decision he was properly discharged under the Trainee Discharge Program and not eligible for referral to the Disability Evaluation System (DES).

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 17 March 1978 and was honorably discharged on 5 May 1978 under provisions provided in paragraph 5-33a of AR 635-200, Personnel Separations – Enlisted Personnel (1 March 1978): Trainee Discharge Program (TDP). His military separation code of JEM denotes “Army Trainee Discharge.”

d. This request was previously denied by the ABCMR on 13 July 2022 (AR20210016106). Rather than repeat their findings here, the board is referred to the record of proceedings and medical advisory opinion for that case. This review will concentrate on the new evidence submitted by the applicant.

e. In his self-authored request for reconsideration, the applicant's arguments are the same as in the prior case: That he sustained a patellar dislocation during basic combat training, the injury prevented him from qualifying with his weapon, that leadership advised him an honorable discharge was best for him, and leadership did not advise him of the option of seeking a medical discharge.

f. No new medical documentation was submitted with the application. The prior medical advisory provides an extensive review of the medical documentation in this case as well as other documentation apparently present in the prior case.

g. There remains insufficient evidence the applicant had a service incurred permanent medical condition which would have failed the medical retention standards of chapter 3, AR 40-501 prior to his discharge; or that prevented him from succeeding during basic combat training, to included qualifying with his weapon. Thus, there was no cause for referral to the Disability Evaluation System.

h. It is the opinion of the ARBA Medical Advisor that a referral of this case to the Disability Evaluation System continues to be unwarranted.

#### 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 Board concurred with the medical advisor's review there remains insufficient evidence the applicant incurred a permanent medical condition which would have failed medical retention standard prior to his discharge. Additionally, a referral to the IDDES 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 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 to amend the decision of the ABCMR set forth in Docket Number AR20210016106 on 13 July 2022.

X

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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) 635-40 (Physical Evaluation for Retention, Retirements, or Separation) the mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of his or her office, grade, rank, or rating. 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 they can no longer continue to reasonably perform because of a physical disability incurred or aggravated in service.

2. AR 635-200 (Personnel Separations - Enlisted Personnel), chapter 5 (Separation for Convenience of the Government), in effect at the time, 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 with service characterized as honorable or under honorable conditions, as appropriate.

a. Section X (Involuntary Separation), paragraph 5-29 states Title 10, U.S. Code (USC), Section 1169 provides that enlisted personnel may be discharged or released from active duty, as appropriate under the provisions paragraph 5-33, prior to the expiration of their terms of service or periods for which ordered to active duty.

b. Paragraph 5-33 provides that commanders may expeditiously separate members who lack the necessary motivation, discipline, ability, or aptitude to become a productive soldier when these individuals:

(1) were voluntarily enlisted in the RA, Army National Guard or U.S. Army Reserve.

(2) were in basic combat training or BT or in MOS training in AIT, a service school or on the job training prior to the award of the MOS for which being trained and will have completed no more than 179 days active duty or initial active duty for training, on current enlistment by the date of separation.

(3) had demonstrated that they are not qualified for retention because they cannot or will not adapt socially or emotionally to military life; cannot meet the minimum standards prescribed for successful completion of training because of lack of aptitude, ability, motivation or self-discipline; have demonstrated character and behavior characteristics not compatible with satisfactory continued service; and/or do not meet enlisted standards by reason of disqualifying drug use; and/or

(4) had failed to respond to counseling. Members separated under his program were to be awarded an honorable character of service.

3. AR 635-5-1 (Personnel Separations - Separation Program Designators (SPD)), in effect at the time, provided that the SPD code of "JEM" is the correct SPD code for separations in accordance with Army Regulation 635-200, paragraph 5-33, for marginal or nonproductive performance.

4. Title 38 U.S. Code 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.

5. Title 38 U.S. Code 1131 (Peacetime Disability Compensation - 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 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.

6. 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//