

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 May 2024

DOCKET NUMBER: AR20230005035

APPLICANT REQUESTS: correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to reflect physical disability discharge and separation code JFR (Disability, other) or JFN (unknown code), in lieu of administrative discharge due to physical standards with separation code JFT (Physical standards)

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), covering the period ending 25 August 2000
- National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) for the period ending 15 September 2000
- Department of Veterans Affairs (VA) Rating Decision, dated 3 June 2021
- VA letter, dated 4 June 2021
- VA Rating Decision, dated 17 December 2021
- VA letter, dated 20 December 2021

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:

a. While serving in the military, he sustained an injury to his legs causing great discomfort which didn't allow him to operate at full speed. This is what caused him to be discharged for physical standards and be released from Active Duty Training (ADT), because he could not longer run as fast as needed to pass his final Army Physical Fitness Test (APFT)

b. He suffered stress fractures in his legs, which was documented by the medical staff at the time, leading to his legs being placed in casts. Even after all of the physical

therapy, which is in his medical records, he still suffered from discomfort that inhibited him from performing to his full abilities. He believes his discharge reason was mischaracterized and it should have been coded JFR or JFN and the narrative reason should read disability, not physical standards.

c. The VA awarded him a disability for bilateral patellofemoral pain syndrome and bilateral flat feet (pes planus). The VA doctor indicated that having pes planus led to the pain in his legs and he should not have been allowed to join the military at the time with that condition.

d. Consistently having to fight this and also dealing with the physical conditions related to his injury led to a decline in his mental health condition, with the VA also recognizing it as a disability. His discharge should be changed to an honorable disability discharge. Due to enlisting as an Army National Guard (ARNG) member, he is not allowed the same benefits as a Regular Army active duty member, but he got injured while serving in an active duty capacity. He never drilled with his ARNG unit because he was discharged while still serving at Fort Sam Houston. He finished his schooling but was not able to move forward due to his injury.

3. The applicant enlisted in the ARNG on 8 January 1999.

4. Military Entrance Processing Station (MEPS) Orders 05-10, dated 8 January 1999, ordered the applicant to initial active duty for training (IADT), with a reporting date to Basic Combat Training (BCT) at Fort Benning, GA, on 29 June 1999 and to Advanced Individual Training (AIT) at Fort Sam Houston, TX, on 10 September 1999.

5. A physical profile is used to classify a Soldier's physical disabilities in terms of six factors or body systems, as follows: "P" (Physical capacity or stamina), "U" (Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric) and is abbreviated as PULHES. Each factor has a numerical designation: 1 indicates 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.

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

a. A medical record cover sheet shows the applicant arrived at BCT on 10 July 1999, and at Fort Sam Houston, TX, for AIT on 16 September 1999. He went to the Troop Medical Clinic on 2 August 1999, after injuring himself in morning physical training. He stated he noticed pain in his lower legs while in BCT and went to sick call, where he was diagnosed with stress fractures/shin splints. He was given a physical

profile, which was his 3rd such profile. He had not yet scored 60 points or above on his 2-mile run.

b. A DA Form 3349 (Physical Profile) shows on 2 August 1999, the applicant was given a temporary physical profile rating 3 in factor L due to stress fracture, with an expiration date of 9 August 1999, which limited him in multiple activities.

c. A DD Form 2161 (Consultation Sheet), dated 2 August 1999, shows he was referred to the Physical Therapy Clinic for evaluation and treatment of shin splints.

d. A Standard Form 600 (Chronological Record of Medical Care) shows he was again seen on 24 September 1999 with complaints of pain in his lower legs after running. He was treated 1 month ago for probable stress fractures, resolved with 1 week of rest. Pain recurred secondary to road march, with evidence of shin splints and ankle pain. He was placed on a profile to run at his own pace and distance for 2 weeks and resume physical therapy. He also received a shaving profile.

e. A second Standard Form 600, shows he was again seen on 20 October 1999, for a history of shin splints and physical profiles with continued pain while running, with a plan to rule out stress fracture versus shin splints. He was placed on a no running profile.

f. A Standard Form 513 (Consultation Sheet) shows on 20 October 1999, he was referred to Physical Therapy to rule out stress fracture versus shin splints. He was seen on 26 October 1999, where he was diagnosed with posterior compartment syndrome/shin splints and given a 10 day profile.

7. A Center Brigade, U.S. Army Medical Department Center and School memorandum, dated 10 December 1999, shows the applicant's injury was determined to have been incurred in the line of duty (LOD).

8. A DA Form 2173 (Statement of Medical Examination and Duty Status) shows:

a. The applicant was initially examined at on 2 August 1999 for early stress fracture, tibia, bilateral (shin splints). The applicant stated the injury was a result of running too much at Fort Benning GA. The injury is from the impact on the ground and running to many hills. The injury is persistent.

b. The details of the accident show the applicant began to feel lower leg pain at BCT in August 1999. The pain was constant but would diminish after running. He went to sick call and received a no running profile due to shin splints. He reported to Fort

Sam Houston, TX, in September 1999 and again felt pain in his legs while running. He went to sick call and was diagnosed with shin splints, result of stress fracture.

c. On 11 December 1999, the unit commander signed the form indicating a formal LOD investigation was not required and the injury was considered to have been incurred in the LOD.

9. The applicant's DD Form 214 shows the applicant was honorably released from ADT and from the Reserve of the Army and returned to the ARNG on 25 August 2000, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 13-2f, due to physical standards, with corresponding separation code JFT. He was credited with 1 year, 1 month, and 27 days of net active service.

10. Headquarters, Louisiana National Guard Orders 253-038, dated 9 September 2000, discharged the applicant from the ARNG effective 15 September 2000, with separation code TK (Trainee discharge program release from IADT). His service was uncharacterized.

11. The applicant's NGB Form 22 shows he received an uncharacterized discharge from the ARNG on 15 September 2000, under the provisions of National Guard Regulation 600-200 (Enlisted Personnel Management), as a result of discharge from the Reserve of the Army. He was credited with 1 year, 8 months, and 8 days of net service this period.

12. The applicant's available service records do not show:

- he was issued a permanent physical profile rating
- he was diagnosed with a condition that failed retention standards

13. A VA Rating Decision, dated 3 June 2021 shows, the applicant was granted a service-connected disability rating effective 18 May 2021, for the following conditions:

- right knee patellofemoral pain syndrome, previously 0 percent disabling, was increased to 10 percent
- left knee patellofemoral pain syndrome, previously 0 percent disabling, was increased to 10 percent

14. A corresponding VA letter, dated 4 June 2021, shows the applicant's combined evaluation was 0 percent effective 5 December 2008 and was increased to 20 percent effective 18 May 2021.

15. A second VA Rating Decision, dated 17 December 2021, shows the applicant was granted a service-connected disability rating for the following conditions effective 6 July 2021:

- bilateral flat feet, 30 percent
- pseudofolliculitis barbae, 0 percent
- major depressive disorder, 70 percent

16. A corresponding VA letter, dated 20 December 2021, shows the applicant's combined rating evaluation effective 6 July 2021, is 90 percent.

17. 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.

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 applicant's previous ABCMR denial, 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. On his DD form 149, the applicant has indicated that other mental health issues are related to his request. He states:

"While serving in the military, I sustained an injury to my legs causing great discomfort not allowing me to operate at full speed. This is what caused me to be discharged for physical standards because I could no longer run as fast to pass my final physical fitness test to released from ADT [Active Duty for Training].

I suffered stress fractures in my legs which was documented by the medical staff at the time even leading me to require to have a cast placed on my legs. Even after all of the physical therapy which is in my medical [records], I still suffered from discomfort not allowing me to perform fully to my abilities.

I believe that my discharge reason was mischaracterized and it should have been coded a JFR or JFN. This was further established with the VA awarding me disability for Bilateral Patellofemoral Pain Syndrome and Bilateral Flat Feet (pes planus) ...

The VA doctor indicated having Pes Planus led to the pain in my legs and I should not have been allowed to join the military at that time with that condition. Constantly having to fight this and also dealing with the physical conditions related to this injury led to a decline in my mental health condition which the VA also recognizes as a Disability.”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. The applicant’s DD 214 for the period of Service under consideration shows the former National Guard Soldier entered the Regular Army for initial entry training on 29 June 1999 and received an honorable discharge on 25 August 2000 under provisions provided in paragraph 13-2f of AR 635-200, Personnel Separations – Enlisted Personnel (26 June 1996): Two consecutive Army Physical Fitness Test (APFT) Failures.

d. His period of Service predates AHLTA.

e. Documentation shows the applicant had been placed on a temporary profile for shins splints starting 2 August 1999 after he was evaluated by physical therapy for shin splints / stress fractures. He was evaluated at his troop medical clinic on 24 September 1999. The applicant informed the provider his symptoms from August had resolved after a week of rest but had recurred the previous day during a road march. The previous rapid resolution of his symptoms is not consistent with the time required to heal a stress fracture. The results of a bone scan ordered during this visit are not available for review.

f. He was re-evaluated by physical therapy on 26 October 1999 after which the provisional diagnosis was bilateral shin splints versus bilateral posterior compartment syndrome. He was again treated conservatively.

g. There is no further medical documentation.

h. Neither the applicant’s separation packet nor documentation addressing his involuntary administrative separation was submitted with the application or uploaded into iPERMS.

i. There is no probative evidence the applicant had any duty incurred medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge; or that a medical condition

was a significant factor in his consecutive APFT failures in the spring/summer of 2000. Thus, there was and remains no cause for referral to the Disability Evaluation System.

j. A 4 June 2021 VA Benefits Decision shows that on 5 December 2008 he was awarded two service-connected disability ratings: 0% for bilateral shin splints (claimed as left tibia stress fracture) and 0% bilateral shin splints for a combined disability rating of 0%. A 17 December 2021 VA ratings decision shows that on 6 July 2021, he was awarded a 30% rating for bilateral flat feet and a 70% rating for major depressive disorder. However, the DES only compensates an individual for service incurred medical condition(s) which have been determined to disqualify him or her from further military service. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

k. It is the opinion of the ARBA Medical Advisor that a referral of his case to the DES is 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 evidence shows the applicant was released from ADT and from the Reserve of the Army and returned to the ARNG on 25 August 2000, due to not meeting physical standards, with corresponding separation code JFT, after completing 1 year, 1 month, and 27 days of net active service. The Board reviewed and agreed with the medical reviewer's finding no probative evidence the applicant had any duty incurred medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge; or that a medical condition was a significant factor in his consecutive APFT failures in the spring/summer of 2000. Thus, the Board determined there was and remains no cause for referral to the Disability Evaluation System.

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.

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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. 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. 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 Discharge Review Boards (DRBs) and Boards for Correction of Military/Naval Records (BCM/NRs) when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress

disorder (PTSD), traumatic brain injury (TBI), sexual assault, or sexual harassment. 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.

3. Title 10, U.S. Code, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system (DES) and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 (Discharge Review Board (DRB) Procedures and Standards) and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in a Medical Evaluation Board (MEB); when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an Military Occupational Specialty (MOS) Medical Retention Board (MMRB); and/or they are command-referred for a fitness-for-duty medical examination.

b. The disability evaluation assessment process involves two distinct stages: the MEB and Physical Evaluation Board (PEB). The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the severity of the disability and length of military service. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

c. 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. Reasonable performance of the preponderance of duties will invariably result in a finding of fitness for continued duty. A Soldier is physically unfit when a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

4. Army Regulation 635-40 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. 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. 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.

c. The percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Ratings are assigned from the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD). The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting, or ratable condition, is one which renders the Soldier unable to perform the duties of their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. 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.

5. Title 10, U.S. Code, section 1201, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30 percent. Title 10, U.S. Code, section 1203, provides for the physical disability separation of a

member who has less than 20 years of service and a disability rating of less than 30 percent.

6. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 13 contains policy and outlines procedures for separating individuals for unsatisfactory performance and provides that commanders will separate a member under this chapter when, in the commander's judgment, the member will not develop sufficiently to participate satisfactorily in further training and/or become a satisfactory Soldier.

b. The service of Soldiers separated because of unsatisfactory performance will be characterized as honorable or under honorable conditions as warranted by their military records.

c. Paragraph 13-2f specifies initiation of separation proceedings is required for soldiers without medical limitations who have two consecutive failures of the Army Physical Fitness Test (APFT), or who are eliminated for cause from Noncommissioned Officer Education System courses, unless the responsible commander chooses to impose a bar to reenlistment.

7. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, provides the specific authorities and reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214 (Certificate of Release or Discharge from Active Duty).

- the SPD code of JFT is used for Soldiers discharged as unqualified for active duty under the provisions of Army Regulation 635-200, paragraph to be determined, for physical standards
- the SPD code of JHJ is used for Soldiers discharged for unsatisfactory performance under the provisions of Army Regulation 635-200, chapter 13
- the SPD code JFR is used for Soldiers discharged under the provisions of Army Regulation 635-40, paragraph to be determined, for disability, other
- the SPD code JFN is not found in this regulation
- the SPD code of JEB is currently used for Soldiers discharged under the provisions of Army Regulation 635-40, chapter 4, for disability with severance pay, non-combat related

8. 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.

9. Title 38, U.S. Code, section 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.

10. 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//