

IN THE CASE OF: ██████████

BOARD DATE: 14 December 2023

DOCKET NUMBER: AR20230005378

APPLICANT REQUESTS:

- correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 26 July 2002 to show his service was characterized as "Honorable" rather than "Uncharacterized"
- to appear at his own expense before the Board

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Certificates of Achievement (two)
- Department of Veterans Affairs (VA) Rating Decisions (two)
- Contractor licenses
- Certification

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 he was discharged for medical reasons related to a knee injury that has since been determined to be a service-connected disability. He was originally granted a waiver for enlistment for a previous knee surgery and successfully completed rehabilitation after suffering a new injury to his knee during Basic Combat Training (BCT). After rehabilitation, he was awarded Soldier of the Week and served as Platoon Sergeant, where he led his platoon to being awarded Platoon of the Cycle. He served honorably and wanted to complete his enlistment term. He has continued to live up to the Army's core values in his civilian life.

3. The applicant's complete military records, including his DA Form 4707 (Entrance Physical Standards Board (EPSBD)) and separation proceedings, are not available for review. Therefore, this case is being considered based on limited documents.
4. The applicant enlisted in the Regular Army on 8 May 1996. On 22 July 1996, he was discharged under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Paragraph 5-11, by reason of "Failure to Meet Procurement Medical Fitness Standards." His Separation Program Designator (SPD) Code was "JFW", and his Reentry Eligibility (RE) Code was "3." His service was "Uncharacterized." He was credited with completion of 2 months and 15 days of net active service. He did not complete initial entry training and was not awarded a Military Occupational Specialty (MOS). He was issued a DD Form 214 for this period of service.
5. A DA Form 2808 (Report of Medical Examination) shows the applicant underwent a pre-enlistment medical examination on 26 September 2001. It was noted that he had a surgical scar on his right knee from a repair of his anterior cruciate ligament (ACL). The ACL injury was a potential disqualifier for enlistment so, the examining physician requested the matter be forwarded to the waiver authority.
6. The applicant re-enlisted in the Regular Army for a period of 3 years on 17 January 2001.
7. Orders and his DD Form 214 show he was discharged on 26 July 2002 with an "Uncharacterized" characterization of service. He was credited with completion of 6 months and 10 days of net active service this period. He did not complete initial entry training and was not awarded a MOS. The authority for his separation was Army Regulation 635-200, paragraph 5-11, by reason of "Failure to Meet Procurement Medical Fitness Standards."
8. The applicant provides the following documents in support of his petition:
  - a. A Certificate of Achievement presented to the applicant in recognition of being selected as the Outstanding Soldier of the Week for the week of 10-14 June 2002.
  - b. A Certificate of Achievement presented to the applicant by the Commanding General in recognition of him being selected as the Outstanding Soldier of the Week for First Basic Combat Training Brigade.
  - c. A VA Rating Decision dated 16 November 2022, which shows the VA granted the applicant service connection for:
    - right knee meniscal tear, shin splints, and ACL tear with an evaluation of 10 percent effective 1 August 2022

- right knee meniscal tear, shin splints, and ACL tear with limitation of extension with an evaluation of 10 percent effective 1 August 2022

d. A VA Rating Decision, dated 20 September 2023, which shows the VA granted the applicant service connection for major depressive disorder with anxious distress and insomnia (previously denied as a mental health condition) with an evaluation of 70 percent (%) effective 24 January 2023. This resulted in his new combined rating evaluation increasing to 80% effective 24 January 2023.

e. Two Contractors State License Board licenses issued on 18 August 2011 and 19 October 2021 which show he was licensed to engage in business or act in the capacity of a contractor in the classifications of W-Air Heating, Ventilating, and Air-Conditioning.

f. An International Code Council Certificate, dated 21 December 2020, which shows he was certified as a [REDACTED] Commercial Mechanical Inspector.

9. Army Regulation 635-200, in effect at the time, stated commanders were to separate Soldiers who were not medically qualified under procurement medical fitness standards when they enlisted. EPSBD proceedings were required to be convened within the Soldier's first 6 months of active duty service.

10. The applicant was in an entry-level status at the time of his separation processing. As a result, his service was appropriately described as "uncharacterized" in accordance with governing regulations.

11. By regulation, an applicant is not entitled to a hearing before the Board. Hearings may be authorized by a panel of the Board or by the Director of the ABCMR.

12. 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 an upgrade of his 26 July 2002 uncharacterized discharge. He states:

“I was discharged for medical reasons related to a knee injury that has since been determined to be a service-connected disability. I was originally granted a waiver for enlistment for a previous knee surgery and successfully completed rehab PTRP after suffering a new injury to my knee during basic training. After rehab, I was awarded soldier of the week and served as platoon sergeant where I led my platoon to being awarded the platoon of the cycle. I served honorably and wanted to complete my enlistment term. I have continued to live up to the army's core values in my civilian life.”

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 he entered the regular Army for basic combat training on 17 January 2002 and was discharged on 26 July 2002 under provisions provided by paragraph 5-11 of AR 635-200, Active Duty Enlisted Administrative Separations (26 June 1996): Separation of personnel who did not meet procurement medical fitness standards.

d. The Warrior Training and Rehabilitation Program, or WTRP, previously known as physical training and rehabilitation program (PTRP), provides a modified basic combat training (BCT) and/or one station unit training (OSUT) environment designed to return Soldiers to regular initial military training programs with higher levels of motivation, fitness, training, and education than when they entered, while providing them the quality health care they need to rehabilitate their injuries. Given her continued symptoms and abnormally low bone density, she would not have been a good candidate for this program.

e. On the applicant's pre-entrance Report of medical history, the physician noted the applicant had previously undergone an anterior cruciate ligament reconstruction (ACLR), had been “terminated” from active duty in 1996 for being unable to pass the Army physical fitness test (APFT), and that his case was forwarded for consideration of a waiver. It is assumed the waiver was granted given his enlistment into the Army.

f. No additional medical documentation was submitted with the application. Given the period of Service under consideration, there are no encounters in AHLTA. A submitted VA ratings decision shows the applicant was awarded two VA service-connected disability ratings of 10% related to a meniscal tear in his right knee effective 1 August 2022.

g. Neither the applicant's separation packet nor documentation addressing the circumstances of his administrative separation was submitted with the application or uploaded into iPERMS.

h. It is assumed the applicant was referred to an entry physical standards board (EPSBD) for right knee pain IAW paragraph 5-11 of AR 635-200.

i. EPSBD's 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 which does not meet the enlistment standard in chapter 2 of AR 40-501, Standards of Medical Fitness, 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 service aggravated.

j. Given his separation authority, it is assumed the EPSBD determined the condition had existed prior to service (EPTS), failed the enlistment standard of AR 40-501, had not been permanently aggravated by his military service, and was not compatible with continued service.

k. The EPSBD finding the applicant's condition EPTS precluded him from referral to the DES for a duty incurred condition. Different from the Military Services, the VA will service connect a condition when the Veteran has the onset of symptoms of during a period of service with little regard to the length of service during which the condition presented or if the condition would have existed prior to service.

l. 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 and consequently prematurely ends their career. 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; or which did not cause or contribute to the termination of their military career. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

m. 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 his own, he simply had a medical condition which was, unfortunately, not within enlistment standards.

n. It is the opinion of the ARBA medical advisor that neither an upgrade of his discharge nor a referral of his case to the DES is warranted.

#### BOARD DISCUSSION:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of requests for changes to discharges. The Board noted the applicant was in an entry-level status each time he was discharged for failure to meet procurement medical fitness standards, and the Board found no evidence of unique circumstances that would have been a basis for assigning him a character of service. Based on a preponderance of the evidence, the Board determined his uncharacterized service is not in error or unjust.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.

2/15/2024

X 

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, USC, Section 1552(b), provides that applications for correction of military records must be filed within three 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 three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.

3. 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 regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice has occurred by a preponderance of the evidence. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. 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.

4. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. A separation would be described as entry level with uncharacterized service if the Soldier had less than 180 days of continuous active duty service at the time separation action was initiated.

b. 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.

c. A general discharge is a separation from the Army under honorable conditions. When authorized, it was issued to a Soldier whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. Paragraph 3-9, in effect at the time of the applicant's separation, provided that a separation would be described as entry level with uncharacterized service if processing was initiated while a Soldier was in an entry-level status, except when:

(1) a discharge under other than honorable conditions was authorized, due to the reason for separation and was warranted by the circumstances of the case; or

(2) the Secretary of the Army, on a case-by-case basis, determined a characterization of service as honorable was clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty. This characterization was authorized when the Soldier was separated by reason of selected changes in service obligation, for convenience of the government, and under Secretarial plenary authority.

e. Paragraph 5-11 specifically provided that 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 entrance on active duty, active duty for training, or initial entry training would be separated. Medical proceedings, 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, that the condition would have permanently or temporarily disqualified the Soldier for entry into military service had it been detected at that time, and the medical condition did not disqualify the Soldier from retention in the service under the provisions of Army Regulation 40-501. A Soldier disqualified under this provision could request retention on active duty; the separation authority made the final determination.

f. The character of service for Soldiers separated under this provision would normally be honorable but would be uncharacterized if the Soldier was in an entry-level status. An uncharacterized discharge is neither favorable nor unfavorable; in the case of Soldiers issued this characterization of service, an insufficient amount of time would have passed to evaluate the Soldier's conduct and performance.

5. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. This regulation prescribed that the separation code "JFW" was the appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, paragraph 5-11, by reason of failure to meet procurement medical fitness standards. Additionally, the SPD/Reentry Eligibility (RE) Code Cross Reference Table established that RE code "3" was the proper reentry code to assign to Soldiers separated under this authority and for this reason.

6. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), in effect at the time, governed the evaluation for physical fitness of Soldiers who might be unfit to perform their military duties due to a disability. It states the mere presence of an impairment did not, of itself, justify a finding of unfitness due to physical disability. In each case, it was necessary to compare the nature and degree of the physical disability with the duty requirements of the Soldier, based on his or her office,



grade, rank, or rating; and a Soldier was presumed to be in sound physical and mental condition upon entering active duty.

//NOTHING FOLLOWS//