

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 October 2024

DOCKET NUMBER: AR20230005420

APPLICANT REQUESTS, in effect:

- Change his uncharacterized character of service to honorable
- Amend his DD Form 214 (Certificate of Release or Discharge from Active Duty) to reflect a separation due to physical disability

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214
- Two Department of Veterans Affairs (VA) letters
- VA Certificate of Eligibility for Loan Guaranty Benefits

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 he has been trying to get a VA Home Loan Certificate of Eligibility, but the VA has denied his requests because his DD Form 214 says, "uncharacterized."

a. The applicant contends the Army should have listed his discharge as either a medical retirement or medical discharge because he incurred multiple injuries while on active duty, and the VA has determined those injuries were service connected. During training he sustained a back injury, a traumatic brain injury (TBI), and he suffered a stroke.

b. In support of his requests, the applicant provides two VA letters, which indicate his service was honorable and show, as of 1 December 2019, a combined disability rating of 90 percent. Additionally, he submits a copy of a 2019 Certificate of Eligibility for Loan Guaranty Benefits but points out he was unable to get a certificate in 2020.

3. A review of the applicant's service record shows the following:

a. On 27 February 2009, the applicant enlisted into the U.S. Army Reserve for 8 years. On 6 April 2009, he entered initial active duty for training (IADT) at Fort Leonard Wood, MO. On 3 June 2009, the Army separated the applicant with an uncharacterized character of service. His DD Form 214 shows he completed 1 month and 28 days of net active-duty service. The report additionally reflects the following:

- Item 11 (Primary Specialty) – "None"
- Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) – "None"
- Item 14 (Military Education) – "None"
- Item 25 (Separation Authority) – Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), paragraph 5-11 (Separation of Personnel Who Did Not Meet Procurement Medical Fitness Standards)
- Item 26 (Separation (Separation Program Designator (SPD) Code) – "JFW"
- Item 27 (Reentry (RE) Code) – RE-3
- Item 28 (Narrative Reason for Separation) – Failed Medical/Physical/Procurement Standards

b. On 24 May 2011, the applicant petitioned the Army Discharge Review Board (ADRB) requesting a change in his character of service.

(1) The applicant argued he was on active duty for 96 days and the Army medically discharged him due to incurred injuries. The VA determined those injuries were service connected, but he was unable to continue his civilian employment because of his disabilities. He required the ADRB to upgrade him to an honorable discharge so he could receive education benefits. He provided the ADRB an extract from a VA disability rating decision.

(2) On 14 December 2011, after conducting a records review and determining the applicant's separation was both proper and equitable, the ADRB voted to deny relief.

4. The VA and the Army (under the Department of Defense) operate under separate provisions of Federal law (respectively Title 38 (Veterans' Benefits) and Title 10 (Armed Forces). As such, each makes independent determinations, based upon the requirements set forth within their respective parts of the law and their own internal regulations. Decisions made by the VA are not binding on the Army and do not show the Army's determinations were wrong.

5. 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 3 June 2009 uncharacterized and, in essence, a referral to the Disability Evaluation System (DES).

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 USAR Soldier entered the regular Army for basic combat training on 6 April 2009 and was discharged on 3 June 2009 under provisions provided by paragraph 5-11 of AR 635-200, Active Duty Enlisted Administrative Separations (6 June 2005): Separation of personnel who did not meet procurement medical fitness standards.

d. Paragraph 5-11a and 5-11b 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, may be separated. Such conditions must be discovered during the first 6 months of AD. Such findings will result in an entrance physical standards board [EPSBD]. This board, which must be convened within the soldier's first 6 months of AD, takes the place of the notification procedure (para 2–2) required for separation under this chapter.

b. Medical proceedings, regardless of the date completed, must establish that a medical condition was identified by an appropriate military medical authority within 6 months of the soldier's initial entrance on AD for RA or during ADT for initial entry training for ARNGUS and USAR that—

(1) Would have permanently or temporarily disqualified the soldier 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 the soldier for retention in the military service per AR 40–501 [Standards of Medical Fitness], chapter 3. As an exception, soldiers with existed prior to service (EPTS) conditions of pregnancy or HIV infection (AR 600–110) will be separated.”

e. The applicant’s pre-entrance Report of Medical Examination shows the then 42-year-old male had hypertension and though initially disqualified for enlistment, he received a medical waiver.

f. The EMR shows that when the applicant was first seen for a clinical visit, it was for low back pain without noted injury on 18 April 2009. His documented blood pressure was 140/74. He was treated conservatively for his low back pain. Radiographs obtained at his 22 April 2009 follow-up appointment revealed multilevel degenerative changes from T10 thru L5. He also complained of some dizziness, his documented blood pressure was 170/98, and the provider initiated a 5-day blood pressure check.

g. He followed-up for his blood pressure on 28 April 2009, his blood pressure was 204/116, and he was placed on two medications for a diagnosis of malignant essential hypertension. He was next seen on 30 April 2009 at which time his blood pressure was 198/135 despite having been placed on medication a few days earlier. The dosages of his medications were increased as were the limitations on his temporary physical profile.

h. On 4 May 2009, he presented with an inability to move his left hand. Head CT was negative. The applicant thought it may have been a reaction to tramadol and the medication was discontinued. A brain MRI with and without contrast was obtained on 5 May 2009 and was likewise negative for intracranial pathology.

i. The applicant followed up for evaluation of his left-hand symptoms on 6 May 2009 and it was thought to be a palsy of the posterior interosseous nerve in his forearm, a diagnosis which was later confirmed by electromyography. This was treated with therapy, and the 21 May 2009 EMR encounter states the applicant “fully recovered from hand weakness.”

j. Neither the applicant's separation packet nor documentation addressing his involuntary administrative separation were submitted with the application or uploaded into iPERMS.

k. It appears he was referred to an Entry Physical Standards Board (EPSBD) under provisions provided in paragraph 5-11 of AR 635-200 for preexisting hypertension. 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 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.

l. His Entry Physical Standards Board (EPSBD) Proceedings (DA Form 4707) is not available for review:

m. Paragraph 2-19b of AR 40-501, Standards of Medical Fitness (14 December 2007), states:

“Current or history of hypertensive vascular disease (401) is disqualifying. Elevated blood pressure defined as the average of three consecutive sitting blood pressure measurements separated by at least 10 minutes, diastolic greater than 90 mmHg or three consecutive systolic pressure measurements greater than 140 mmHg is disqualifying (796.2).”

n. Given his separation authority, it must be assumed the board determined this condition had existed prior to service, had not been permanently service aggravated, failed the medical procurement standards in chapter 2 of AR 40-501, and so recommended he be discharge due to this preexisting condition.

o. There is no evidence the applicant had a 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. Thus, there was no cause for referral to the Disability Evaluation System.

p. JLV shows he has been awarded multiple VA service-connected disability ratings, including ratings major depressive disorder, lumbosacral strain, and hemorrhage of the brain. 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 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. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

q. An uncharacterized discharge is given to individuals on active duty 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.

r. It is the opinion of the Agency Medical Advisor that neither discharge upgrade nor a referral of his case to the DES is warranted.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising opinion based on the Agency Medical Advisor that neither discharge upgrade nor a referral of his case to the DES is warranted. The opine noted, no evidence the applicant had a 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.

2. The Board determined there is insufficient evidence to support the applicant's contentions for amend his DD Form 214 to reflect a separation due to physical disability. The governing regulation provides that a separation will be described as an entry-level separation, with service uncharacterized, if the separation action is initiated while a Soldier is in entry-level status. Soldiers in the USAR and ARNG are authorized and honorable discharge while in entry-level status only if they complete their active-duty schooling and earn their MOS. The applicant did not complete training and was released from active-duty due failed Medical/Physical/Procurement Standards. As such, his DD Form 214 properly shows the appropriate characterization of service as uncharacterized.

3. Additionally, regulatory guidance states that an uncharacterized discharge is not considered negative or punitive, but rather an administrative classification for early separations. Since the applicant did not complete training, he did not fulfill the

expectations necessary for an honorable discharge, which is reserved for service members who complete their training and meet performance standards. In this case, the applicant was unable to continue service due to a medical condition that did not meet enlistment standards, through no fault of his own. Based on the guidelines governing discharge upgrades, the request for a change from uncharacterized to honorable is without merit. Therefore, the Board denied relief for a discharge upgrade and amendment to the applicant's DD Form 214 to reflect a separation due to physical disability.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

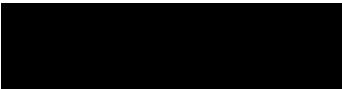
: : : GRANT PARTIAL RELIEF

: : : 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.



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) 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, prescribed policies and procedures for enlisted administrative separations. It provides:

a. Paragraph 3-7a (Honorable Discharge). An honorable discharge was a separation with honor. The honorable characterization was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and duty performance.

b. Paragraph 3-7b (General Discharge). A general discharge was 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.

c. Paragraph 3-9 (Uncharacterized Separations). Soldiers separated in an entry-level status receive an uncharacterized character of service. A separation was considered to be entry level when processing was initiated during the Soldier's first 180 days of continuous active duty. The Secretary of the Army was authorized, on a case-by-case basis, to direct the issuance of an honorable character of service when such action was clearly warranted by unusual circumstances involving personal conduct or duty performance.

d. Paragraph 5-11 (Separation of Personnel Who Did Not Meet Procurement Medical Fitness Standards) provided that Soldiers who were not medically qualified under procurement medical fitness standards when accepted for enlistment were to be separated. Medical proceedings were required to be convened within the Soldier's first 6 months of active duty service, and had to establish the following:

- Medical authority identified the disqualifying medical condition(s) within 6 months of the Soldier's initial entrance on active duty
- The condition(s) would have permanently or temporarily disqualified the Soldier from entry into military service, had it been detected earlier; and
- The medical condition did not disqualify him/her for retention in military service; a Soldier disqualified under this provision could request retention on active duty; the separation authority made the final determination.

3. AR 635-5 (Separation Documents), in effect at the time, prescribed policies and procedures for DD Form 214 preparation. The regulation stated the narrative reason for separation was tied to the Soldier's regulatory separation authority and directed DD Form 214 preparers to AR 635-5-1 (Separation Program Designators (SPD)) for the appropriate entries in item 28 (Narrative Reason for Separation). For item

27 (RE Code), the regulation referred preparers to AR 601-210 (Active and Reserve Components Enlistment Program).

4. AR 635-5-1, in effect at the time, stated Soldiers separated in accordance with paragraph 5-11, AR 635-200 were to receive an SPD of "JFW" and have, "Failed Medical/Physical/Procurement Standards" entered in item 28 of their DD Form 214.

5. AR 601-210, in effect at the time, prescribed policies and procedures for the enlisting prospective and former Soldiers.

a. Table 3-1 (U.S. Army RE Codes) showed the following:

- RE-1 – Fully qualified for immediate reenlistment
- RE-3 – Not eligible for reenlistment unless waiver consideration was permissible and was granted

b. Paragraph 4-5 (Waiver Requirements for Medical Disqualifications). Any applicant who was last separated or discharged from any Component of the U.S. Armed Forces for medical reasons with or without disability for enlistment into the Regular Army, U.S. Army Reserve, or Army National Guard will require a waiver.

6. AR 635-40, then in effect, prescribed policies, and procedures for disability separations.

a. Paragraph 3-1 stated the mere presence of an impairment did not, of itself, justify a finding of unfitness due to a physical disability. Each individual Soldier's case had to be assessed to determine whether the nature of the disability caused the Soldier to become unable to perform the duties expected of a Soldier of his/her rank.

b. Chapter 4 addressed physical evaluation board (PEB) procedures.

(1) PEBs were charged with investigating the nature, cause, degree of severity, and probable permanency of a Soldier's disabling conditions; assessing the Soldier's physical conditions against the physical requirements of the Soldier's particular office, grade, rank, or rating; and making findings and recommendations in accordance with the law.

(2) The PEBs could decide that a Soldier's physical defect existed prior to service (EPTS); if so, the board had to further consider whether military service aggravated the unfitting defect. In cases where the Soldier's military service made the condition worse or hastened the natural progression of the condition beyond the normal or anticipated rate had he or she not been exposed to such service, a finding of aggravation had to be considered.

(3) The PEB's available dispositions for the Soldier were:

- returned to duty
- separated with severance pay when the combined disability rating was 20 percent or less
- Concerning combined ratings of 30 percent or more: when the PEB could not confirm the permanency of a disabling condition, it recommended the Soldier for the Temporary Disability Retired List; conditions not likely to change over time resulted in placement on the Permanent Disability Retired List

7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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.

//NOTHING FOLLOWS//