

IN THE CASE OF: ██████████

BOARD DATE: 27 March 2024

DOCKET NUMBER: AR20230005511

APPLICANT REQUESTS: his narrative reason for his separation be changed to show he was medically discharged or retired, instead of weight control failure.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Army Military Human Resource Record (AMHRR) (71 pages)
- Military Health Record (63 pages)
- Department of Veterans Affairs (VA) Health Record (1938 pages)

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:

a. He appeared before a Medical Evaluation Board (MEB) and believes he could have received a medical discharge. However, he requested to return to his unit and try to overcome his issues, which he failed to do. He was supposed to return to the MEB but was discharged as an overweight failure instead. He did not challenge this decision because he was threatened with a dishonorable discharge. Since he had witnesses and experienced the abuse of power, he was too afraid to take the risk. He was unaware of the option to apply to the ABCMR until May 2023 when he stumbled upon the information.

b. He requests to be discharged from the Army with an 80 percent (%) disability rating but would prefer 100%. He was abused by Sergeant First Class (SFC) ██████████ at Headquarters Company, 3rd Battalion, 187th Infantry Regiment, Fort Campbell, KY. He witnessed SFC ██████████ treat only black Soldiers with disrespect and kick out a partially black Soldier who was trying to get back into Ranger school. It was so bad that he threatened SFC ██████████ and was subsequently moved to another job. When he returned

to his unit a lot of the chain of command had been removed due to the abuse, so he was told. So, when he was threatened, he signed the documents out of fear because the past command had failed him when he brought the problem to their attention.

3. The applicant enlisted in the Regular Army on 25 June 1991 for a period of 4 years and 17 weeks. On 19 November 1993, he extended his period of enlistment for a period of 7 months to meet the service requirement for assignment to Germany.

4. He was promoted to the rank/grade of sergeant (SGT)/E-5 on 1 March 1996, the highest rank he held.

5. On 24 February 1998, he reenlisted for a period of 4 years.

6. The applicant's Army Military Human Resource Record is void of documents pertaining to his participation in the Army Weight Control Program (AWCP). However, his DA Form 2166-7 (Noncommissioned Officer (NCO) Evaluation Report (NCOER)) rendered for the period November 1998 through October 1999, shows in part, that he failed to meet Army height and weight standards for his height of 71 inches and weight of 259 pounds. As a result, he was enrolled in the AWCP in accordance with the provisions of Army Regulation 600-9 (AWCP).

7. On 27 September 2000, the applicant's immediate commander notified the applicant that he was initiating action to separate him from service, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 18, for failure to meet body fat standards. The specific reason for this action was the applicant's failure to make adequate progress in meeting appropriate body fat standards as outlined in Army Regulation 600-9. The commander advised the applicant he was recommending that the applicant receive an honorable discharge. The applicant acknowledged the notification.

8. On 27 September 2000, the applicant rendered his election of rights wherein he acknowledged being advised by consulting counsel of the basis for the contemplated action to separate him for failure to meet body fat standards under the provision of Army Regulation 635-200, Chapter 18, and its effects on the rights available to him; and the effect of any action taken by him in waiving his rights. He waived consideration of his case by an administrative separation board.

9. On 3 October 2000, the applicant's immediate commander recommended his separation with an honorable discharge. His intermediate commander concurred on 10 October 2000.

10. On 12 October 2000, the separation authority approved the request and directed his separation prior to the expiration of his current term of service, under the provisions of Army Regulation 635-200, Chapter 18, for failure to meet body fat standards.

11. Orders and the applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) show he was discharged from the Regular Army on 4 November 2000 under the provisions of Army Regulation 635-200, Chapter 18, for Weight Control Failure. His service was characterized as Honorable. He was assigned separation code "JCR" and reentry eligibility code "3." He was credited with completion of 9 years, 4 months, and 10 days of net active service this period.

12. The applicant provides the following documents that are available in their entirety for the Board's consideration:

a. His entire AMHRR (71 pages). 63 pages of documents from his Military Health Record which show he was treated for numerous medical conditions during his period of service. There is no indication that he underwent an MEB or Physical Evaluation Board (PEB).

b. Department of Veterans Affairs (VA) Health Record (1938 pages) which show he was treated for numerous medical conditions between 11 January 2013 and 4 May 2023.

13. The applicant's complete AWCP packet is not available for the Board's review. However, there is a presumption of administrative regularity in the conduct of governmental affairs.

14. During the period of the applicant's service, Army policy specifically stated separation proceedings could not be initiated under this chapter until the Soldier had been given a reasonable opportunity to meet body fat standards, as reflected in counseling or personnel records. Additionally, Soldiers who had been diagnosed by health care personnel as having a medical condition that precluded them from participating in the Army body fat reduction program would not be separated under this chapter.

15. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

16. 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 (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 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. He states:

“Should have re-appeared to MEB [medical evaluation board] for a medical discharge/retirement instead of discharged as an overweight failure. I appeared before the MEB and I believed I could have gotten a medical discharge, but request to return to the unit to try and overcome my issues which I failed.

I was suppose to return back to MEB but was discharged as an overweight failure. I did not challenge because I was threatened with a dishonorable discharge. Since I have witness and experience the abuse of power I was too scared to risk it. I was not made aware of this option until May 2023 which I stumbled upon this information.

I request that I be medically discharged from the Army with at least 80% medical but prefer 100%.”

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 21 June 1991 and was honorably discharged on 4 November 2000 under provisions in chapter 18 of AR 635-40, Personnel Separations – Enlisted Personnel (26 June 1996): Failure to Meet Body Fat Standards.

d. On 27 September 2000, he was notified by his commander that his progress in the Army Weight Control Program was unsatisfactory and the initiation of separation procedures was being considered. The applicant waived his rights for consideration of his case by an administrative separation board while requesting an honorable conditions characterization of Service.

e. The request for his separation under chapter 18 of AR 635-200 with an honorable characterization of Service was approved by the brigade commander on 12 October 2000.

f. His final two NCOERs were annuals, cover the period from November 1998 thru October 2000, and show he was a successful Soldier. Both show he exceeded the weight standard for his height and that he passed both Army Physical Fitness Tests in August of 1999 and August 2000. His being overweight led to “Needs Improvements”

for the value "Physical Fitness & Military Bearing." He was marked with success or excellence for all remaining values on both NCOERs.

g. The applicant did not identify which condition(s) should have been referred to a medical evaluation board and no evidence of such a referral was identified.

h. The applicant submitted 63 pages of contemporaneous medical records. The most recent was in February 2009 and for some symptoms of an upper respiratory tract infection and follow-up on laboratory results. His medical problems list contains several diagnoses likely related to his excess weight, including chronic disease of tonsils and adenoids, sleep apnea, irregular sleep-wake rhythm, morbid obesity, and hypertension. The remaining diagnoses were for minor issues; Vasectomy, cellulitis of scalp, folliculitis, pharyngitis, sinusitis, and right sided inguinal (groin) pain (encounter shows this was related to genitalia). There are no mental health or musculoskeletal conditions listed.

i. None of these diagnoses would typically be found to fail medial retention standards are seen as a cause for excessive weight gain. Even in the event such a condition existed, paragraph 2-3d(4) of AR 600-9, The Army Weight Control Program, states:

"The use of certain medications to treat an underlying medical disorder or the inability to perform all aerobic events may contribute to weight gain but are not considered sufficient justification for noncompliance with this regulation."

j. Paragraph 2-3e of the same regulation:

"If the underlying medical condition does not require referral to an MEB/PEB and a Soldier is classified as overweight, these facts will be documented and the Soldier will be entered into the AWCP (Army Weight Control Program) except as described in paragraph 3-2b."

k. There is no probative evidence the applicant had a medical condition which failed the medical retention standards of chapter 3, AR 40-501, Standards of Medical Fitness prior to his discharge. Thus, there was no requirement for referral to the Disability Evaluation System. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge.

l. It is the opinion of the Agency Medical Advisor a referral to the DES is not 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 official finding referral to the DES is not warranted. The opine noted there is insufficient evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge. The applicant's record is absent any supporting evidence he had a medical condition which failed the medical retention standards.

2. The Board determined there is insufficient evidence to support the applicant's contentions warranting his narrative reason for his separation be changed to show he was medically discharged or retired, instead of weight control failure. The Board agreed based on the preponderance of evidence the applicant's narrative reason for separation was not in error or unjust. Therefore, the Board denied relief.

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.

4/8/2024

X [REDACTED]

CHAIRPERSON
[REDACTED]

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 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. 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 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 635-5-1 (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. At the time, this regulation prescribed the separation code "JCR" as the appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, based on weight control failure.

5. Army Regulation 635-200, in effect at the time, set forth the policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Chapter 18 provided that Soldiers who failed to meet the body fat standards set forth in Army Regulation 600-9 (The Army Body Composition Program) were subject to involuntary separation per this chapter when such condition were the sole basis for separation.

a. Separation proceedings could not be initiated under this chapter until the Soldier had been given a reasonable opportunity to meet the body fat standards, as reflected in counseling or personnel records.

(1) Soldiers who had been diagnosed by health care personnel as having a medical condition that precluded them from participating in the Army body fat reduction program would not be separated under this chapter.

(2) If there was no underlying medical condition and a Soldier enrolled in the Army Weight Control Program failed to make satisfactory progress in accordance with Army Regulation 600–9, separation proceedings would be considered.

(3) Initiation of separation proceedings was required for Soldiers who failed to meet body fat standards during the 12–month period following removal from the program, provided no medical condition existed.

b. Separation action under this chapter would not be initiated against a Soldier who met the criteria for separation under other provisions of this regulation. For example, a Soldier beyond entry-level status who, wholly apart from failure to meet body fat standards, was an unsatisfactory performer, would be processed for separation under the provisions of chapter 13.

c. The notification procedure (see chap 2, sec I) would be used for separation under this chapter.

d. The provisions of chapter 1, section VII, governed whether the Soldier would be released from active duty with transfer to Individual Ready Reserve or be discharged. See paragraph 1–11 for additional instructions on Army National Guard of the United States and U.S. Army Reserve personnel.

e. The service of those separated per this chapter would be characterized as honorable, unless an uncharacterized description of service was required for Soldiers in entry-level status.

f. Except as provided in paragraph 1–19f, commanders specified in paragraph 1–19 were authorized to order separation under this chapter.

6. The Under Secretary of Defense for Personnel and Readiness issued guidance to Service Discharge Review Boards and Service Boards for Correction of Military/Naval Records (BCM/NR) on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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, Boards 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//