

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 August 2024

DOCKET NUMBER: AR20230005825

APPLICANT REQUESTS: an upgrade of his uncharacterized discharge to honorable or medical.

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)
- Department of Veterans Affairs (VA) benefits letter

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 his DD Form 214 indicates an uncharacterized separation, but that the VA disability says it is an honorable discharge.
3. A review of the applicant's service record shows he enlisted in the Regular Army on 22 November 1995. He did not complete basic or advanced individual training.
4. On 27 November 1995 Entrance Physical Standards Board (EPSBD) found that the applicant had a long history of foot pain with a finding of mild pes planus on his entrance physical. It was noted that he has been seen multiple times in sick call and treated with arch supports, pain medications, placed on a rest and soft shoe profile without improvement. He was unable to pass a physical fitness test due to the foot pain while running. He was medically cleared for administrative separation under Army Regulation 40-501 (Standards of Medical Fitness), paragraph 2-10b(5) as he is unfit for duty. The applicant concurred with the EPSBD recommendations.
5. The applicant's entire chain of command recommended discharge under Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 5 for a preexisting medical condition.

6. On 12 June 1996 the separation authority approved the separation recommendation.

7. The applicant was discharged on 10 July 1996. His DD Form 214 shows:

- no award of a military occupational specialty
- 7 months and 28 days of creditable service
- a character of service of uncharacterized
- a narrative reason for separation of failure to meet procurement medical fitness standards

8. The VA issued the applicant a benefits entitlement letter on 11 November 2020 showing their determination that his service was considered honorable and granted him a 10 percent disability evaluation.

9. In determining whether to grant relief the Boards for Correction of Military/Navy Records (BCM/NR) can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

10. 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 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 essentially requesting a referral to the Disability Evaluation System and an upgrade of his uncharacterized discharge.

c. The Record of Proceedings outlines the applicant's military service and the circumstances of the case. His DD 214 shows he entered the regular Army on 22 November 1995 and received an uncharacterized discharged on 19 July 1996 under the separation authority provided by paragraph 5-11 of AR 635-200, Personnel Separations – Enlisted Personnel (30 August 1995): Separation of personnel who did not meet procurement medical fitness standards.

d. Paragraph 5-11a 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, will be separated. Medical proceedings, regardless of the date completed, must establish that a medical condition was identified by appropriate military medical authority within 6 months of the soldier's initial entrance on AD for RA [regular Army], or during ADT for initial entry training for ARNGUS [Army National Guard of the United States] and USAR [United States Army Reserve], which—

(1) Would have permanently or temporarily disqualified him or her 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 him or her for retention in the military service under the provisions of AR 40–501, chapter 3.

e. There are no encounters in the EMR.

f. The applicant was referred to an Entrance Physical Standards Board (EPSBD) for symptomatic pes planus (flat feet) IAW paragraph 5-11 of AR 635-200. 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 (1 December 1983), 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 aggravated by their military service.

g. From the applicant's Entrance Physical Standards Board (EPSBD) Proceedings (DA Form 4707) dated 15 May 1996:

CHIEF COMPLAINT: Foot pain

HISTORY OF PRESENT ILLNESS. E1 [Applicant] has a long history of foot pain. He was found to have mild pes planus on his MEPS [military entrance processing station] physical. He has been seen multiple times in sick call and treated with arch supports, NSAID [non-steroidal anti-inflammatory drugs], rest, and soft shoe profile without improvement. He has been unable to pass a pr Lest due to the foot pain while running.

PHYSICAL EXAMINATION: Moderate pes planus bilaterally. No erythema or other deformity.

DIAGNOSIS : Symptomatic pes planus.

RECOMMENDATION: E1 [Applicant] is medically cleared for administrative separation IAW AR 40-501, Chapter 2-10b(5) as he is unfit for duty..”

h. The applicant’s symptomatic pes planus failed the medical induction standard in paragraph 2-23d of AR 40-501, Standards of Medical Fitness (30 August 1995). This condition is a cause for rejection:

“Pes plans, pronounced cases, with decided eversion of the foot and marked bulging of the inner border, due to rotation of the talus, regardless of the presence or absence of symptoms.”

i. On 23 May 1996, the EPSBD determined the condition had existed prior to service (EPTS), failed the enlistment standard of paragraph 2-23d of AR 40-501, had not been permanently aggravated by his military service, and was not compatible with continued service.

j. On 30 May 1996, the applicant concurred with the board’s findings, selecting the option “I concur with these proceedings and request to be discharged from the US Army without delay.”

k. JLV shows he has a single VA service-connected disability ratings of 10% for flat foot condition. 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; 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.

l. 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.

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

**BOARD DISCUSSION:**

1. After reviewing the application and all supporting documents, 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 review based on law, policy and regulation. 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. The Board determined his DD Form 214 properly shows the appropriate characterization of service as uncharacterized.
2. An uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It merely means the Soldier has not been in the Army long enough for his or her character of service to be rated as honorable or otherwise. As a result, there is no basis for granting the applicant's request.
3. As it relates to the applicant's request for a medical discharge, the Board reviewed and concurred with the medical advisor's review finding the applicant had a medical condition that failed to meet procurement medical fitness standards while in an entry-level status and did not warrant 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.

10/28/2024

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, 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. 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. Title 38, United States Code, Sections 310 and 331, permit the VA to award compensation for a medical condition which was incurred in or aggravated by active military service. The VA, however, is not required by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. While both the Army and the VA use the VA Schedule for Rating Disabilities (VASRD), not all of the general policy provisions set forth in the VASRD apply to the Army. The Army rates only conditions which are determined to be physically unfitting for further military service thereby compensating the individual for the loss of his or her military career. The VA, however, may rate any service connected impairment, thus compensating for loss of civilian employment. Therefore, it is not unexpected that these two different systems would produce different evaluations.
4. Army Regulation 15–185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the Army Board for Correction of Military Records (ABCMR). Paragraph 2-9 states 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.
5. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. It provides that:
  - a. 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.

b. Chapter 5 (Separation for Convenience of the Government) states unless the reason for separation requires a specific characterization, a Soldier being separated for the convenience of the Government will be awarded a character of service of honorable, under honorable conditions, or an uncharacterized description of service if in entry-level status.

c. Paragraph 5-11 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 proceeding, 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.

6. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), paragraph 3-1, provides that the mere presence of an impairment does not, of itself, justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the member reasonably may be expected to perform because of his or her office, rank, grade or rating.

7. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records 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//