

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 January 2024

DOCKET NUMBER: AR20230006107

APPLICANT REQUESTS: correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 19 October 1998 to show an unspecified narrative reason for separation and service characterization.

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- DD Form 214

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. His narrative reason for separation is inaccurate and places a negative connotation on his service. He has had much anger and bitterness over his whole military experience. He deserves correction of his DD Form 214 to help decrease his anger and bitterness. He had let this error go because he did not know the proper procedures. He asked his father for assistance; however, his father's health problems contributed to his inconsistent efforts (refer to his father's comments in the attached statement).

b. He was upfront with his medical history when working with his recruiter. He broke his left collarbone when he was 21 months old and broke his right collarbone when he was 10 years old. After his right collarbone healed, he never had any issues with swelling in his shoulders or raising his arms. Prior to going to basic training (BT), he played a lot of basketball without issues or pain.

c. He told the recruiting station commander that he needed help building strength to perform pushups. He was told they only did group exercises and he would build strength during BT. During BT he saw a doctor for swelling in his shoulders and was prescribed naproxen (nonsteroidal anti-inflammatory drug), which helped with the swelling but did not improve his ability to perform pushups.

d. Later he was seen again for increased shoulder pain from performing pushups. He was asked if he wanted to be medically discharged and responded "yes" because he did not think his shoulders would heal enough to complete the pushup requirements. Performing pushups in BT caused tendonitis in his shoulders that did not exist prior to BT, otherwise he would not have been medically cleared to attend BT.

e. He indicated other mental health issues/conditions related to his request.

f. His father, a retired U.S. Army Reserve (USAR) sergeant first class and military technician, attests to the truthfulness of his statement above. His father notes he himself suffered from Guillain-Barré syndrome as a result of a flu shot in 2013, crippling his feet and legs and causing permanent severe peripheral neuropathy. Prescription medicines prescribed over the years since then have caused many adverse side effects. Additionally, he was indirectly struck by lightning in 1996 and took medication for stomach-lining inflammation that caused muscle weakness. He now has a cardiac pacemaker.

3. On 1 August 1997, the applicant underwent a medical examination in preparation for enlistment in the USAR.

a. He stated his present health was "good" and noted the following conditions:

- took vitamins for good health
- severe tooth trouble (wisdom teeth out – past)
- skin disease (acne – Accutane (isotretinoin used to treat severe cystic acne) 6 years earlier)
- head injury (skull fracture at age 1 1/2 years)
- broken bones (fractured clavicle at age 10)
- eyeglasses (since age 10)
- foot trouble (bad feet – orthopedic support until age 8, none since)
- denied any other medical problems

b. The examining physician found him qualified for service.

4. On 12 June 1998, he enlisted in the USAR and entered initial active duty for training (IADT) on 27 August 1998.

5. The Standard Form 502 (Narrative Summary – Clinical Resume), 5 October 1998, shows he was seen for shoulder pain. The form further notes:

HISTORY OF EPTS [Existed Prior to Service] CONDITION: 18 y/o [year old] male, 4th week BT, presents 3rd visit complaining of shoulder pain not improving with medication and rest, states he fractured right clavicle at 10 years old. Right hand dominate.

SUBJECTIVE FINDINGS: "My shoulders hurt".

OBJECTIVE FINDINGS: PE [physical examination] – Full active range of motion. NV [neurovascular assessment] exam intact.

LAB AND X-RAY RESULTS: Right shoulder xray: old right clavicle fracture.

DIAGNOSIS: Chronic shoulder pain (EPTS[]).

RECOMMENDATIONS: This Soldier meets the criteria of paragraph 5-2, AR [Army Regulation] 635-40 [Physical Evaluation for Retention, Retirement, or Separation] and has been informed of the right to appeal these proceedings to a Physical Evaluation Board if so desired, Legal counsel was made available to the soldier.

6. The DA Form 3947 (Medical Evaluation Board (MEB) Proceedings), 5 October 1998, noted he had chronic shoulder pain that EPTS. The board recommended his separation under the provisions of Army Regulation 635-40, paragraph 5, for a condition that EPTS.

7. On 5 October 1998, he requested separation and waived a physical evaluation board (PEB) evaluation wherein he stated:

I request discharge for physical disability based upon the findings and recommendations of a medical evaluation board (MEBD). The MEBD considers me unqualified for retention in the military service because of physical disability that was found to have existed prior to my entry into active service (EPTS). The MEBD found the disability neither incident to nor aggravated by my military service.

I have been fully informed and understand that I am entitled to the same consideration and processing as any other soldier of the Army separated for physical disability. I understand this includes consideration of my case by a Physical Evaluation Board (PEB). However, I elect not to exercise this right. I

also understand the Department of Veterans Affairs (VA) will determine entitlement to VA benefits.

If this application is approved, I understand that I will be separated by reason of EPTS physical disability. I also understand that I will receive a discharge in keeping with the character of my service as decided by the officer designated to effect my separation.

8. On 8 October 1998, after being advised of the findings and recommendations of the PEB and receiving a full explanation of the results of the findings and recommendations and his legal rights. He concurred, waived a formal hearing of his case, and indicated he did not desire to continue on active duty.

9. On 8 October 1998, his immediate commander recommended his separation, noting he was diagnosed with chronic shoulder pain.

10. The separation authority approved the recommended separation on 13 October 1998 with uncharacterized service.

11. He was discharged on 19 October 1998 under the provisions of Army Regulation 635-40, chapter 5, by reason of "disability, existed prior to service – medical board." He completed 1 month and 23 days of net active service during this period. His service was uncharacterized.

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 Board carefully considered the applicant's contentions, the military record, and regulatory guidance. The applicant, by his own admission, states that as a child both his collar bones were broken in two separate incidences. Upon enlistment, he was ordered to initial active duty training and subsequently advanced individual training. During advanced training, due to shoulder pain, he was afforded review by a Medical Evaluation Board and determined to have a condition that existed prior to service. Based on that determination, he requested to be separated and waived further consideration by a physical evaluation board. After due consideration of the Board determined that the evidence presented does not meet the burden of proof of an error or injustice and there is no basis upon which to warrant a recommendation for relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined 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 to the records of the individual concerned to show an unspecified narrative reason for separation and service characterization.

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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. Army Regulation 40-501 (Standards of Medical Fitness) prescribes medical fitness standards for induction, enlistment, appointment, retention, and related policies and procedures. Soldiers with conditions listed in chapter 3 who do not meet the required medical standards will be evaluated by an MEB and will be referred to a PEB as defined in Army Regulation 635-40.

3. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) 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 that contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

4. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), 26 June 1996 and in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7 provided that 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. Paragraph 3-9 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.

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 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 (Standards of Medical Fitness). 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.

d. The glossary defined entry-level status for USAR Soldiers. Entry-level status begins upon enlistment in the USAR and terminates 180 days after beginning training for Soldiers ordered to IADT for one continuous period. Soldiers ordered to IADT under the split or alternate training option (Phase I (BT) and Phase II (advanced individual training)) remain in entry-level status until 90 days after beginning Phase II.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (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//