

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 January 2024

DOCKET NUMBER: AR20230006225

APPLICANT REQUESTS: in effect, a medical discharge instead of an uncharacterized separation.

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

- DD Form 149 (Application for Correction of Military Record)
- NGB Form 22 (Report of Separation and Record of Service, 3 August 1983)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 3 August 1983
- NGB Form 23 (Army National Guard Retirement Credits Record)
- DA Form 2-1 (Personnel Qualification Record – Part II)

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 is asking that the uncharacterized separation be changed to a medical one. This will allow for medical care at Veterans Affairs (VA). He entered the service in good faith to serve his country. In basic training he was exposed to Tuberculosis and came down with the illness. He did not receive treatment through the service and was discharged as not medically fit, he was denied VA medical care as well once he was out. He was not aware that he could request a change in status.
3. The applicant's service records are not available for review. An exhaustive search was conducted to locate the service records, but they could not be found. The only documents available were the documents provided by the applicant. These documents are sufficient for the Board to conduct a fair and impartial review of this case.
4. The applicant enlisted in the New York Army National Guard (NYARNG) on 4 March 1983. He entered a period of active-duty training on 18 April 1983. He was released from ADT on 3 August 1983, due to not meeting procurement fitness standards – no

disability under the provisions (UP) of Army Regulation (AR) 635-200, paragraph 5-11. He completed 3 months and 16 days net active service this period. His service was uncharacterized. He received a separation code of "JFT" and a reenlistment code of "3."

5. On 3 August 1983, he was honorably discharged from the NYARNG UP of National Guard Regulation 600-200 (Enlisted Personnel Management), paragraph 7-9n, for failure to meet enlistment medical standards of AR 40-501 (Standards of Medical Fitness). He completed 4 months and 29 days net service this period.

6. The Army rates only conditions determined to be physically unfitting at the time of discharge, which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career. The VA does not have authority or responsibility for determining physical fitness for military service. The VA may compensate the individual for loss of civilian employability.

7. 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/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 August 1983 uncharacterized discharge and, in essence, a referral to the Disability Evaluation System (DES). He states:

"I entered the service in good faith to serve my country. In basic training, I was exposed to TB and came down with the illness. I did not receive treatment through the service and I was discharged as not medically fit. I was denied VA medical care as well once I was out."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 for the period of service under consideration shows the former Guard Soldier entered the Regular Army for training on 18 April 1983 and was discharged on 3 August 1983 under authority provided by paragraph 5-11 of AR 635-200, Personnel Separations – Enlisted Personnel (1 October 1982): Separation of personnel who did not meet procurement medical fitness standards.

His Report of Separation and Record of Service (NG Form 22) shows he had entered the New York Army National Guard (NYARNG) on 4 March 1983 and was discharged

on 3 August 1983 with the reason noted in the Remarks block: "Separated from Reserve to the Army status upon relief from IADT [Initial Active Duty for Training]."

d. No medical documentation was submitted with the application and his period of service predates AHLTA. JLV shows the applicant is not registered with the VA.

e. Neither his separation packet nor documentation addressing his involuntary administrative separation was submitted with applicant nor uploaded into iPERMS.

f. It is assumed the applicant was referred to an entry physical standards board (EPSBD) IAW paragraph 5-11 of AR 635-200 for tuberculosis which had existed prior to his entrance onto active duty.

"5-11. Separation of personnel who did not meet procurement medical fitness standards. a.

Members who were not medically qualified under procurement medical fitness standards when accepted for initial enlistment will be separated. Medical proceedings, regardless of the date completed, must establish that a medical condition was identified by appropriate military medical authority within 4 months of the member's initial entrance on AD or ADT under the Reserve Enlistment Program of 1963 which –

(1) Would have permanently disqualified him or her for entry into the military service had it been detected at that time; and

(2) Does not disqualify him or her for retention in the military service under the provisions of AR 40-501, chapter 3."

g. EPSBD's are convened IAW paragraph 7-12 of AR 40-400, Patient Administration. This process is for enlisted Soldiers who within their first 4 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.

h. Given his separation authority, it is implicit 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.

i. 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. For the reserve components, it also includes discharges prior to completing initial entry training (IET). There are two phases - Basic

Combat Training (BCT) and Advanced Individual Training (AIT). Because the applicant did not complete BCT, he was in an entry level status at the time of his discharge and so received an uncharacterized discharge. 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.

j. It is the opinion of the ARBA Medical Advisor that neither an upgrade of his discharge nor a referral of his case to the Disability Evaluation System is warranted.

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 applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. The complete facts and circumstances surround his discharge from the ARNG are unknown. However, his DD Form 214 shows he entered ADT on 18 April 1983, and he was released from ADT on 3 August 1983, due to not meeting procurement fitness standards – no disability under the provisions of AR 635-200, paragraph 5-11. He completed 3 months and 16 days net active service this period. It is assumed the applicant was referred to an entry physical standards board (EPSBD) in accordance with paragraph 5-11 of AR 635-200 for tuberculosis which had existed prior to his entrance onto active duty. The Board reviewed and agreed with the medical advisor's finding that given his separation authority, it is implicit the EPSBD determined the condition had existed prior to service, failed the enlistment standard of AR 40-501, had not been permanently aggravated by his military service, and was not compatible with continued service.

b. 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. For the reserve components, it also includes discharges prior to completing initial entry training (IET). The Board determined that neither an upgrade of his discharge nor a referral of his case to the Disability Evaluation System is warranted.

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.

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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 635-200 (Active Duty Enlisted Administrative Separations) sets 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. Readiness is promoted by maintaining high standards of conduct and performance.

a. Paragraph 3-4(2) Entry-Level status. Service will be uncharacterized, and so indicated in block 24 of DD Form 214, except as provided in paragraph 3–9a.

b. Paragraph 3-7a states an honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the soldier'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. Paragraph 3-7b states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. Paragraph 3-9a Entry-level status separation. A separation will be described as entry-level with service uncharacterized if processing is initiated while a Soldier is in entry-level status, except when the Soldier has less than 181 days of continuous active military service, has completed Initial Entry Training, has been awarded an MOS, and has reported for duty at a follow-on unit of assignment.

e. Paragraph 5-11 states 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 active duty or active duty for training for initial entry training may be separated. Such conditions must be discovered during the first 6 months of active duty.

f. Section II (Terms) states entry-level status, for ARNGUS and USAR Soldiers, begins upon enlistment in the ARNG or USAR. For Soldiers ordered to IADT for one continuous period, It terminates 180 days after beginning training. For Soldiers ordered to IADT for the split or alternate training option, it terminates 90 days after beginning Phase II advanced individual training (AIT). (Soldiers completing Phase I BT or basic combat training (BCT) remain in entry-level status until 90 days after starting Phase II.)

3. Title 10, U.S. Code, chapter 61, provides the Secretaries of the Military Departments authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency, under the operational control of the Commander, U.S. Army Human Resources Command (HRC), is responsible for administering the PDES and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with Department of Defense Directive 1332.18 and Army Regulation 635-40.

a. The objectives of the system are to maintain an effective and fit military organization with maximum use of available manpower, provide benefits for eligible Soldiers whose military service is terminated because of service-connected disability,

and provide prompt disability processing while ensuring that the rights and interests of the government and the Soldier are protected.

b. Soldiers are referred to the PDES when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in a medical evaluation board, when they receive a permanent medical profile, P3 or P4, and are referred by an MOS Medical Retention Board, when they are command-referred for a fitness-for-duty medical examination, and when they are referred by the Commander, Human Resources Command.

c. The PDES assessment process involves two distinct stages: the MEB and the PEB. The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability are either separated from the military or are permanently retired, depending on the severity of the disability and length of military service. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retirement payments and have access to all other benefits afforded to military retirees.

d. The mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of his or her office, grade, rank, or rating. Reasonable performance of the preponderance of duties will invariably result in a finding of fitness for continued duty. A Soldier is physically unfit when a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

4. Army Regulation 40-501 (Standards of Medical Fitness) provides that for an individual to be found unfit by reason of physical disability, he or she must be unable to perform the duties of his or her office, grade, rank or rating. Performance of duty despite impairment would be considered presumptive evidence of physical fitness.

5. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) establishes the Physical Disability Evaluation System (PDES) 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 or her office, grade, rank, or rating. It provides that an MEB is convened to document a Soldier's medical status and duty limitations insofar as duty is affected by the Soldier's status. A

decision is made as to the Soldier's medical qualifications for retention based on the criteria in Army Regulation 40-501. Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in service.

6. Title 10, U.S. Code, section 1201, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30 percent. Title 10 U.S. Code, section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating of less than 30 percent.

7. Title 38, U.S. Code, sections 1110 and 1131, permits the VA to award compensation for medical conditions incurred in or aggravated by active military service. The VA, however, is not empowered 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. Consequently, due to the two concepts involved, an individual may have a medical condition that is not considered medically unfitting for military service at the time of processing for separation, discharge, or retirement, but that same condition may be sufficient to qualify the individual for VA benefits based on an evaluation by that agency.

8. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//