

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 February 2024

DOCKET NUMBER: AR20230006588

APPLICANT REQUESTS: correction of the separation code on his DD Form 214 (Certificate of Release or Discharge from active duty) to reflect an unspecified medical condition separation code in lieu of JDG (Parenthood).

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

- DD Form 149 (Application for Correction of Military Record)
- partial DA Form 4856 (Developmental Counseling Form), dated 1 February 2022
- partial DD Form 2697 (Report of Medical Assessment), dated 13 June 2022
- partial DD Form 2808 (Report of Medical Examination), dated 16 June 2022
- partial DD Form 2807-1 (Report of Medical History), undated
- DD Form 214

FACTS:

1. The applicant states:

a. He is requesting correction to his separation code. His separation code is currently JDG. His correct separation was due to a medical condition, not parenthood. He is not currently a parent nor has he ever been a parent.

b. This separation code is connected to a debt he has incurred. The debt is directly related to the type of separation that was issued.

2. A DD Form 2808, dated 2 July 2019, shows the applicant underwent a medical examination on the date of the form for the purpose of Regular Army enlistment and was found qualified for enlistment with a physical profile rating of 1 in all factors.

3. A physical profile is used to classify a Soldier's physical disabilities in terms of six factors or body systems, as follows: "P" (Physical capacity or stamina), "U" (Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric) and is abbreviated as PULHES. Each factor has a numerical designation: 1 indicates a high level of fitness, 2 indicates some activity limitations are warranted, 3 reflects significant limitations, and 4 reflects one or more medical conditions of such a severity that

performance of military duties must be drastically limited. Physical profile ratings can be either permanent or temporary.

4. A DD Form 4 (Enlistment/Reenlistment Document) shows on 2 July 2019, the applicant enlisted in the U.S. Army Reserve (USAR) Delayed Entry Program for a period of 8 years, of which 6 years and 26 weeks was considered an active duty obligation. On 29 July 2019, the applicant was discharged from the DEP and enlisted in the Regular Army for a period of 6 years and 26 weeks.

5. A partial DA Form 4856 (Developmental Counseling Form), dated 1 February 2022, shows:

a. The applicant was counseled by his squad leader regarding his spouse's health issues, the Exceptional Family Member Program (EFMP), and a family care plan.

b. The point of the counseling was to discuss the ongoing health issues of the applicant's spouse. They would begin working to create a family care plan in order to help his wife in the case of a situation where he was not immediately available to handle it due to training, courses, classes, and overall duties.

c. He has been and will continue to be provided enough time to maintain a healthy work/life balance for his specific situation and be there for his spouse when needed.

d. He was directed to contact and set up an appointment with the Fort Carson representative for the EFMP to see if his wife qualifies for the program. If so, they will aid them both in creating an appropriate family care plan for their situation, to provide aid to his wife when he is unable to immediately care for her due to training and other duties.

6. A partial DD Form 2697, dated 13 June 2022, shows:

a. The applicant provided an assessment of his health and indicated on the first page of the form that his health was overall the same compared to his last medical assessment/physical exam.

b. He was being seen by a medical provider for repeated chest pain and light headedness.

c. He was taking the medication Famotidine.

d. He indicated he had conditions which limited his ability to work in his MOS or required geographic/assignment limitations, namely his wife was being treated for an

illness that was affecting her heart and as her only caretaker, he was having trouble splitting his work and home life.

7. A partial DD Form 2808 shows the applicant underwent medical examination, the purpose of which is not contained on the provided portion of the form. On 16 June 2022, a medical provider signed the last page of the form indicating the applicant was qualified for separation with a PULHES of 111111.

8. A partial undated DD Form 2807-1 shows:

a. The applicant provided his medical history, indicating he had:

- dizziness or fainting spells
- pain or pressure in the chest
- high or low blood pressure
- depression or excessive worry
- treatment in an emergency room (ER)

b. He was being seen for his above issues, but they have not found a solution or relief for his problems. He was treated in the ER at Evans Community Hospital when his chest problems started. His stress and mental problems were from the situation with his wife and her medical problems, which were still being diagnosed and treated.

9. The applicant's discharge packet, to include his notification of separation, acknowledgement of notification, rights election, chain of command endorsements, and final approval is not his available records for review; therefore, the complete facts and circumstances surrounding his discharge are unknown.

10. The applicant's DD Form 214 shows:

a. He was honorably discharged on 26 August 2022, under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph unlisted, due to parenthood, with a corresponding separation code of JDG (Parenthood).

b. He was credited with 3 years and 28 days of net active service.

c. He was paid an enlistment bonus of \$40,000.00 on 10 December 2019, and did not complete his first full term of service.

11. The applicant's Enlisted Record Brief (ERB), dated 29 August 2022, shows:

a. Section IV (Personal/Family Data) shows:

- he had 1 adult dependent and 0 dependent children
- his marital status was single
- EFMP date was 1 April 2024
- his last physical exam was on 23 November 2021
- his PULHES was 111111
- his MRC (Medical Readiness Code) was 2 (items that can be corrected within 72 hours), IM (Immunizations not current);deployable

b. Section X (Remarks) shows:

- Service member with exceptional family member
- Compassionate stabilization

12. The applicant's available service records do not show:

- he was issued a permanent physical profile rating
- he suffered from a medical condition, physical or mental, that affected his ability to perform the duties required by his MOS and/or grade or rendered him unfit for military service
- he was diagnosed with a medical condition that warranted his entry into the Army Physical Disability Evaluation System (PDES)
- he was diagnosed with a condition that failed retention standards and/or was unfitting

13. 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 a change in his separation authority and, in essence, a referral to the Disability Evaluation System (DES). He states: "Correct separation was due to medical condition and not Parenthood. Veteran is not currently a parent nor has he ever been a parent. The Separation Code is connected to a debt incurred. The debt is directly related to the type of separation that was issued."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His signed DD 214 for the period of Service under consideration shows he reentered the regular Army on 29 July 2019 and received an honorable discharge on 26 August 2022 under provisions provided in AR 635-200, Active Duty Enlisted Administrative Separations (28 June 2021): Involuntary separation due to parenthood. The separation code JDG denotes parenthood.

d. Paragraph 5-7a of AR 635-200:

a. Soldiers will be considered for involuntary separation when parental obligations interfere with fulfillment of military responsibilities. See AR 600 – 20 concerning Soldiers' responsibilities for care of Family members as related to military responsibilities. Specific reasons for separation because of parenthood include:

(1) Inability to perform prescribed duties satisfactorily.

(2) Repeated absenteeism.

(3) Repeated tardiness.

(4) Inability to participate in field training exercises or perform special duties such as charge of quarters and staff duty NCO.

(5) Non-availability for worldwide assignment or deployment according to the needs of the Army.

e. The applicant's separation packet was not submitted with the application or uploaded into iPERMS. Only the front page of a 01 February 2022 counseling state shows it appears do do a possible failure of the applicant to provide a family care plan for care of his wife. It reads in part: "SPC [Applicant], the point of this counseling is to discuss your spouse's ongoing health issues. We will begin working to create a family care plan in order to help your wife in the case of a situation where you are not immediately available to handle it due to training, any courses, classes, overall duties, etc."

f. The applicant completed his separation examinations in mid-June 2022. On his Report of Medical Assessment, he marked "YES" to the question "Do you have any conditions which currently limit your ability to work in your primary military specialty or require geographic or assignment limitations?" He typed in "My wife is currently being treated for an illness that is affecting her heart and as her only caretaker right now I am having trouble splitting my work and home life."

g. On his separation Report of Medical History, the applicant checked yes to Dizziness, pain or pressure in chest, high or low blood pressure, and frequent trouble sleeping, and depression or excessive worry. He went on to type:

“I am currently being seen for my issues above but we have not found a solution or relief for my problems.

I was treated in the ER when my chest problems were starting at Evans community hospital.

My stress and mental problems right now are from the situation with my wife and her medical problems which is still being diagnosed and treated.”

h. The EMR

On 24 July 2006, the applicant was counseled by his platoon leader on the commander’s concern for his family care and the requirements for a complete family care plan. On 28 August 2006, his platoon leader informed him of the pending initiation of separation action under paragraph 5-8 of AR 635-200 for failure to have an adequate family care plan: “SGT {Applicant}, you have failed to submit the required items for an adequate Family Care Plan. You are currently a single parent military member. As a result, you are required to maintain a Family Care Plan. You were counseled previously of the required items needed to maintain a Family Care Plan. You were allowed longer than 30 days to gather the needed information. SGT {Applicant}, you did not submit your required items in the afforded time. By failing to complete your Family Care Plan is a result of processing {sic} for separation from the military IA WAR 635-200, Chapter 5-8, Involuntary Separations due to Parenthood (Lack of an Adequate Family Care Plan).”

i. The applicant requested separation on 7 September 2006: “I, {Applicant}, at this time am requesting to be put out on a Family Care Plan Chapter. I have custody of my two oldest children J.R S. III (13) and J.R.S (10) who now reside with me. Due to my recent separation from my wife with whom the children are not from our marriage and with my current family issues, I cannot provide adequate care for my children. I have been in the army for 6 years and have been on two deployments. I feel I have put the army before my children long enough and I am ready to take on my responsibility as a father to my children.”

j. On 6 November 2006, his company commander initiated action to separate the applicant under paragraph 5-8 of AR 635-200 for failure to have a valid family care plan. The applicant acknowledged the action the same day. His administrative separation was approved by the brigade commander on 6 December 2006.

k. The applicant's penultimate NCO Evaluation Report (DA Form 2166-8) thru April 2006 shows he passed his Army Physical Fitness Test (APFT) in February 2006 and met height/weight standards. His rater top-blocked him as "Among the Best" stating:

- "promote to Staff Sergeant now
- send to BNCOC ahead of peers
- unlimited potential; ready for the next level
- a caring and gifted leader whose performance marks him as a current or next higher grade, professional

l. His senior rater top-blocked him with 1's for both overall performance and overall potential for promotion and/or service in positions of greater responsibility.

m. His final NCO Evaluation Report with a thru date of 18 December 2006 shows he passed his Army Physical Fitness Test (APFT) in June 2006 and met height/weight standards. It also shows the applicant was still performing well at the time of discharge with his rater stating:

- "promote with peers
- a top-notch NCO who expects and enjoys a challenge while instilling confidence with subordinates; sets example for all to emulate
- unlimited leadership potential; recommend attendance at BNCOC as soon as possible
- demonstrates potential to excel in leadership positions with greater responsibility

n. Review of the applicant's AHLTA encounters show he was being treated for a 2-year history of low back pain with a pending consult to neurosurgery at the time of his discharge. There are no behavioral health encounters.

o. There is insufficient evidence the applicant had any medical condition which would have failed the medical retention standards of chapter 3, AR 40-501 prior to his discharge. Thus, there was no cause 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

p. Paragraph E3.P3.5.1 of Department of Defense Instruction 1332.38 Subject: Physical Disability Evaluation (14 November 1996) states: "The DES compensates disabilities when they cause or contribute to career termination."

q. This concept from the DES's governing document is incorporated into paragraph 3-2b(1) of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (8 February 2006) which states:

“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 they can no longer continue to reasonably perform because of a physical disability incurred or aggravated in service.”

r. Review of his records in JLV shows he has been awarded multiple VA service-connected disability ratings, including ratings for PTSD, sleep apnea, intervertebral disc disease, and limited motion of right arm. However, the DES compensates an individual only for service incurred medical condition(s) which have been determined to disqualify him or her from further military service. 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.

s. It is the opinion of the ARBA Medical Advisor that a referral of his case to the DES is unwarranted.

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. The applicant contends his correct separation was due to a medical condition, not parenthood. The applicant's DD Form 214 shows he was honorably discharged due to parenthood, as evidenced by the Separation Code listed on his DD Form 214. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The Board reviewed and agreed with the medical reviewer's finding insufficient evidence the applicant had any medical condition which would have failed the medical retention standards of chapter 3, AR 40-501 prior to his discharge. Thus, there was no cause 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. Based on this medical review, the Board determined that referral of his case to the Disability Evaluation System is warranted.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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| : | : | : | 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. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) prescribes policies and standards to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Chapter 5 and chapter 6 contain policies and procedures for the voluntary and involuntary separation for the convenience of the Government.
 - a. Paragraph 5-7 (Involuntary separation due to parenthood) shows Soldiers will be considered for involuntary separation when parental obligations interfere with fulfillment of military responsibilities. Specific reasons for separation because of parenthood include:

- (1) Inability to perform prescribed duties satisfactorily
- (2) Repeated absenteeism
- (3) Repeated tardiness
- (4) Inability to participate in field training exercises or perform special duties such as charge of quarters and staff duty noncommissioned officer (NCO)
- (5) Nonavailability for worldwide assignment or deployment according to the needs of the Army

b. Separation processing under paragraph 5-17 may not be initiated until the Soldier has been adequately counseled concerning deficiencies and has been afforded the opportunity to overcome them. Prior to initiation of separation under this paragraph, the unit commander will document efforts made to assist the Soldier in overcoming the deficiencies.

c. Paragraph 5-14 (Other designated physical or mental conditions) shows, excluding conditions appropriate for separation under paragraph 5-10 (Separation of personnel who did not meet procurement medical fitness standards), commanders may initiate separation under this paragraph on the basis of other physical or mental conditions not amounting to a disability that interfere with assignment to or performance of duty. Such physical or mental conditions may include, but are not limited to:

- (1) Airsickness, motion, and/or travel sickness
- (2) Phobic fear of air, sea, and submarine modes of transportation
- (3) Attention-Deficit/Hyperactivity Disorder
- (4) Sleepwalking
- (5) Enuresis
- (6) Adjustment Disorder (except Chronic Adjustment Disorder)
- (7) Personality disorder

d. When a commander is concerned that a Soldier may have a physical or mental condition that interferes with assignment to or performance of duty under paragraph 5-14, the commander will refer the Soldier for a medical examination and /or mental status evaluation.

e. Separation processing may not be initiated under paragraph 5-14 until the Soldier has been counseled formally in writing, concerning deficiencies and has been afforded ample opportunity to overcome those deficiencies. The Soldier will also be counseled in writing that the condition does not qualify as a disability.

f. Chapter 6 (Separation Because of Dependency or Hardship) shows Soldiers may be discharged or released from active duty (REFRAD) because of genuine dependency or hardship. Discharge or REFRAD under this chapter should only be approved when the dependency or hardship can only be materially alleviated or eliminated by the discharge or REFRAD of the Soldier. Paragraph 6-3 provides the criteria and shows:

(1) Dependency exists when death of a member of a soldier's (or spouse's) immediate family or disability of a member of a Soldier's (or spouse's) immediate family causes the Soldier's (or spouse's) immediate family to rely upon the soldier for principal care or support and such care or support cannot be provided while on active duty in the Army.

(2) Hardship exists in cases, not involving death or disability of a member of the Soldier's (or Spouse's) immediate family, which caused the Soldier's (or spouse's) immediate family to rely upon the Soldier for principal care or support and such care or support cannot be provided while on active duty in the Army.

g. Paragraph 6-5 shows, in determining eligibility for separation, members of the immediate family include only:

- spouse
- children
- father
- mother
- brothers
- sisters
- only living blood relative
- any person who stood "in loco parentis" to the Soldier (or spouse) before entry into the Service

2. Title 10, U.S. Code, chapter 61, provides the Secretaries of the Military Departments with 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 is responsible for administering the Army physical disability evaluation system (DES) and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 (Discharge Review Board (DRB) Procedures and Standards) and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

a. Soldiers are referred to the disability system 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 (MEB); when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an Military Occupational Specialty (MOS) Medical Retention Board (MMRB); and/or they are command-referred for a fitness-for-duty medical examination.

b. The disability evaluation assessment process involves two distinct stages: the MEB and Physical Evaluation Board (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 either are 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 retired pay and have access to all other benefits afforded to military retirees.

c. 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.

3. Army Regulation 635-40 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 which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

a. 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 military service.

b. Soldiers who sustain or aggravate physically-unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

(1) The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

(2) The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

c. The percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Ratings are assigned from the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD). The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting, or ratable condition, is one which renders the Soldier unable to perform the duties of their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

4. 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.

5. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities and reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214 (Certificate of Release or Discharge from Active Duty).

- SPD code JDG is to be used for Soldiers discharged under the provisions of Army Regulation 635-200 for parenthood
- SPD code JFV is to be used for Soldiers discharged under the provisions of Army Regulation 635-200 for condition, not a disability
- SPD code KDB is to be used for Soldiers discharged under the provisions of Army Regulation 635-200 for hardship

- there are numerous SPD codes used for Soldiers discharged under the provisions of Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) dependent upon the specifics of the discharge

6. Title 10, U.S. Code, section 1556 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.

7. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. 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.

//NOTHING FOLLOWS//