

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 January 2024

DOCKET NUMBER: AR20230006620

APPLICANT REQUESTS: in effect,

- a medical retirement vice failing procurement medical fitness standards
- a personal appearance before the Board via video or telephone

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), 30 April 1987

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, in effect, he believes he is due compensation for what could have been a long career in the Army, in the form of permanent identification cards for himself and his family, medical for life, and possibly monetary compensation. He believes he is entitled to this compensation because the Army did not correct his medical situation during his service. He contends his life would not be as bad as it is today if the Army had given him a choice or corrected the medical issue at the time. He would have wanted to stay in the Army, but the doctors gave him no choices.
3. The applicant underwent a medical examination for the purpose of enlistment on 18 November 1986. He was found qualified for enlistment. He was assigned a PULHES of 111121.

A physical profile, as reflected on a DA Form 3349 (Physical Profile) or DD Form 2808, is derived using six body systems: "P" = physical capacity or stamina; "U" = upper extremities; "L" = lower extremities; "H" = hearing; "E" = eyes; and "S" = psychiatric (abbreviated as PULHES). Each body system has a numerical

designation: 1 meaning 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. The applicant enlisted in the Regular Army on 10 February 1987.
5. On 19 February 1987, the applicant was seen at the troop medical center (TMC) for extremity pain (shin splints).
6. On 24 February 1987, he was again seen by medical providers for severe pain in his groin and blood in his stool. He received a provisional diagnosis of inguinal hernia. Medical notes show the plan was to check to see if an existed prior to service (EPTS) board could be initiated because the applicant desired release from the Army.
7. Medical notes, dated 27 February 1987 show, the applicant, who was currently on day 8 of basic combat training, reported being in good health until July 1986, when he noticed a large bulge "in [left] inguinal hernia" that increased in size with activity. Since then, he has had intermittent pain in right inguinal area. The applicant began basic training on 16 February 1987. On 24 February 1987 he reported to sick call for pain in the right inguinal area. He was recommended for an Entrance Physical Standards Board (EPSBD).
6. A DA Form 4707 (EPSBD Proceedings), dated 2 April 1987 shows after careful consideration of medical records, laboratory findings, and medical examination, the board found the applicant was medically unfit for appointment or enlistment in accordance with current medical fitness standards and in the opinion of the evaluating physicians the condition(s) was an EPTS condition. He received a diagnosis of right communicating hydrocele, large, painful. [Note: A hydrocele is an abnormal accumulation of fluid most commonly occurring in the scrotum. A communicating hydrocele is similar to a hernia except that the sac connecting the abdomen to the scrotum contains only fluid rather than abdominal contents.]
 - a. Present Illness: He was in good health until July 1986, when he noted a large bulge in the right inguinal and scrotal area. This bulge would increase in size with increase in activity. Since that time, he has had intermittent pain and swelling in the right inguinal area. He began Basic Training on 16 February 1987 and on 24 February 1987 reported to sick call for pain in his right inguinal area, greater than he had had previously, with swelling. At that time, he was referred to and seen in the General Surgery Clinic and was placed on a profile with limitations.

b. Physical Examination: Complete physical examination reveals the following pertinent findings. There is an enlarged right scrotal mass which is tender to palpation and noted to be trans illuminable with an external light source, consistent with a sac of fluid.

c. Recommendation: The applicant is fit for retention but unfit for enlistment, due to an EPTS condition. Therefore, it is, recommended that he be expeditiously separated in accordance with (IAW) Army Regulation (AR) 40-501 (Standards of Medical Fitness), Chapter 2; 14g and under the provisions (UP) AR 635-200 (Personnel Separations – Enlisted Personnel), 5-11, condition is not aggravated by service.

d. He was issued a P3 profile with no lifting greater than 15 pounds, no stooping, crawling, or standing greater than 15 minutes.

e. The findings were approved by the appropriate approving authority.

f. He was informed of the medical findings, and he concurred with the proceedings and requested to be discharged from the U.S. Army without delay.

g. The unit commander recommended that the applicant be discharged on 15 April 1987.

h. The discharge authority approved discharge from the U.S. Army on 24 April 1987 UP of AR 635-200, paragraph 5-11, for failure to meet procurement medical fitness standards.

7. The applicant's DD Form 214 shows, on 30 April 1987, he was discharged UP of AR 635-200, paragraph 5-11. He was credited with completing 2 months and 21 days of net active service. His service was characterized as entry level status. His DD Form 214 also shows:

- Item 26 (Separation Code): JFT
- Item 27 (Reenlistment Code): RE-3
- Item 28 (Narrative Reason for Separation): Did not meet procurement medical fitness standards

8. 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.

9. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (IPERMS), and the VA's Joint Legacy Viewer (JLV). The applicant requests a discharge change from Entry Level Status to Honorable with medical discharge processing. He stated he was put out of basic training due to a hernia.

b. The applicant was a member of the Regular Army from 19870210 to 19870430. He was discharged under provisions of AR 635-200, para 6-11, for failure to meet procurement medical fitness standards. He was in entry level status.

c. 18Nov1986 Report of Medical Exam for entry into service revealed the genitourinary exam finding of an enlarged right testicle and a smaller than normal left testicle. He was deemed qualified for service. The applicant denied history of hernia in the Report of Medical History. His usual occupation was car lot clean-up.

d. The applicant presented during the 2nd week of training, with complaint of groin pain for 2 weeks (24Feb1987 Screening Note of Acute Medical Care). Injury was not reported. Consultation with general surgery yielded diagnosis Right Communicating Hydrocele. The applicant reported to general surgery that he noted a large bulge in the inguinal area in July 1986 that increased in size with activity. The exam showed an enlarged right testicle. Transillumination exam was consistent with fluid in the sac. General surgery recommended an EPTS (existed prior to service) Board and disposition release from the Army.

e. Examination during the 02Apr1987 Entrance Physical Standards Board (EPSBD) Proceedings revealed an enlarged tender right scrotal mass. He was determined to be Fit for retention, but he was unfit for enlistment due to the EPTS Right Communicating Hydrocele condition. The condition was not aggravated by his service.

f. JLV search revealed that there are no VA facility records and the applicant was not service connected for any disability by the VA. JLV search also revealed an April 2017 note that the applicant underwent hernia repair. The date was not specified.

g. During the military entrance exam, the examining physician noted a physical abnormality during the genitourinary exam. In addition, the applicant reportedly stated he noticed the large bulge in July 1986. This was before his entrance on active duty. There was no report of injury while the applicant was in service or other evidence of permanent service aggravation. The condition failed medical procurement standards. AR 40-501 in effect at the time provided that right side hydrocele or varicocele failed procurement standards unless urological evaluation revealed no disease (chapter 2-14f

Genitalia). The applicant's hydrocele was symptomatic—it was large and painful signifying a problem. Based on records available for review, evidence was insufficient to support that the Right Communicating Hydrocele condition failed medical retention standards of AR 40-501 chapter 3. In the ARBA Medical Reviewer's opinion, the applicant was appropriately separated under AR 635-200 chapter 6-11. Referral for medical disability discharge processing is not warranted.

BOARD DISCUSSION:

1. The applicant's request for a personal appearance hearing was carefully considered. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. 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 evidence shows the applicant was released from active duty on 30 April 1987 after completing 2 months and 21 days of active service with his character of service is shown as "uncharacterized" and the narrative reason for separation as "did not meet procurement medical fitness standards" due to a medical condition that existed prior to his service. He did not complete initial entry training and was not awarded an MOS. 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:

<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.



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 (AR) 15-185 (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, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 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.

3. 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 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. This guidance does not mandate relief, but rather provides standards and principles to guide BCM/NRs 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.

4. 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 and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 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 an MEB; when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an MOS Medical Retention Board; 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 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.

5. AR 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 which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with AR 40-501, chapter 3, as evidenced in a medical evaluation board (MEB); when they receive a permanent physical profile rating of "3" or "4" in any functional capacity factor and are referred by a Military Occupational Specialty Medical Retention Board; 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 or 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 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 onetime 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.

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d. 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.

e. 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.

6. AR 40-501 (Standards of Medical Fitness) governs medical fitness standards for enlistment, induction, appointment (including officer procurement programs), retention, and separation (including retirement). The Department of Veterans Affairs Schedule for Rating Disabilities (VASRD). VASRD is used by the Army and the VA as part of the process of adjudicating disability claims. It is a guide for evaluating the severity of disabilities resulting from all types of diseases and injuries encountered as a result of or incident to military service. This degree of severity is expressed as a percentage rating which determines the amount of monthly compensation.

7. 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, USC, 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.

8. Title 38, U.S. Code, section 1110 (General - Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered, or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

9. Title 38, U.S. Code, section 1131 (Peacetime Disability Compensation - Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

10. AR 635-200 (Personnel Separations - Enlisted Personnel), sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 5-1 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 an entry-level status.

b. 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. For character of service, paragraph 5-1 should be adhered to.

c. Section II (Terms) of the Glossary defines entry-level status for Regular Army Soldiers as the first 180 days of continuous active duty or the first 180 days of continuous active duty following a break of more than 92 days of active military service.

11. Section 1556 of Title 10, U.S. 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//