

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 February 2024

DOCKET NUMBER: AR20230007057

APPLICANT REQUESTS: an upgrade of his uncharacterized discharge due to failure to meet procurement medical fitness standards to an honorable medical discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 4707 (Entrance Physical Standards Board (EPSBD) Proceedings), 14 March 2013
- Department of Veterans Affairs (VA) letter, 30 March 2023

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 was hurt during training and medical treatment was performed in service. He is currently 30% disabled due to this injury per a VA investigation into the event. This was a no-fault injury, and he requests his discharge be upgraded to an honorable medical separation. He had no adverse paperwork in his record and was separated due to an injury received in service; he served honorably during this time. He was unaware how adversely an uncharacterized discharge would affect his job status. Additionally, nobody explained his options; he did not know that he should have requested a medical board.
3. The applicant had a medical examination on 2 March 2012 for the purpose of enlistment. He was assigned a PULHES of 113111 and found not qualified for service. The significant or disqualifying defect was chondromalacia left patella. He was granted a waiver on 5 March 2012.

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 18 September 2012.

5. EPSBD Proceedings, dated 14 March 2013 show the board found the applicant medically unfit for appointment or enlistment in accordance with current medical fitness standards, and in the opinion of the evaluating physicians, the condition(s) existed prior to service (EPTS). The Board notes, the applicant had progressively worsening left knee pain and left knee buckling. He was given a waiver to enter the military for chondromalacia patellae to his left knee, but not for the instability to his left knee. He is not fit for duty based on a diagnosis of Joint instability knee.

a. The Board recommended the applicant's separation from the US Army for failure to meet medical procurement standards in accordance with (IAW) Army Regulation (AR) 40-501 (Standards of Medical Fitness), chapter 2-10c (2). He was assigned a PULHES of 311111.

b. He concurred with the proceedings and requested to be discharged from the US Army without delay.

c. On 19 March 2013, his commander recommended separation and the discharge authority approved the separation.

6. On 5 April 2013, he was discharged from the Army with an uncharacterized character of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 6 months and 18 days net active service this period. His DD Form 214 also shows:

- Item 25 (Separation Authority): AR 635-200 (Active Duty Enlisted Administrative Separations), paragraph 5-11
- Item 26 (Separation Code): JFW
- Item 27 (Reentry Code): 3
- Item 28 (Narrative Reason for Separation): Failed Medical/Physical/Procurement Standards

7. The applicant provides a VA letter, dated 30 March 2023, showing he receives a 30% combined service-connected disability, effective 1 December 2022.

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 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 5 April 2013 uncharacterized discharge and, in essence, a referral to the Disability Evaluation System (DES). He states:

"I was medically injured, I was hurt during training, medical treatment was performed in service. I am currently 30% disabled due to this injury per VA investigation into the event. This was a no-fault injury and I request my Discharge to be upgraded to Honorable/Medical."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 shows he entered the Regular Army on 18 September 2012 and was discharged on 5 April 2013 under provisions provided by paragraph 5-11 of AR 635-200, Active Duty Enlisted Administrative Separations (6 September 2011): Separation of personnel who did not meet procurement medical fitness standards.

d. AHLTA shows the applicant began treatment for left hip and knee pain in February/March 2013. In a 12 March 2013 follow-up encounter, the applicant was requesting chapter options (EPTS – Existed prior to service – paragraph 5-11 of AR 635-200; or paragraph 5-17 of AR 635-200 - Other designated physical or mental conditions not constituting a disability.)

e. The applicant was subsequently referred to an entry physical standards boards (EPSBD) IAW paragraph 5-11a of AR 635-200 for increasing left knee pain due to a pre-existing injury. These boards 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, 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.

f. Form the narrative summary on his 14 March 2013 Entrance Physical Standards Board (EPSBD) Proceedings (DA Form 4707):

“HISTORY OF EPTS CONDITION: The Patient is a 23-year-old male in AIT [advance individual training] and he has progressively worsening left knee pain and left knee buckling. He had his left ACL repaired in 2009. He was given a waiver to enter the military for chondromalacia patellae to his left knee but not for the instability to his left knee. He is not fit for duty.

PHYSICAL FINDINGS: ... Left Knee: Examined Well healed scar over left knee. Anterior drawer sign was present [a sign of an incompetent ACL ligament]. No tenderness on palpation. Neurological: Balance: Normal. Gait And Stance: Abnormal.

DIAGNOSIS: JOINT INSTABILITY KNEE

RECOMMENDATIONS: It is recommended that this Soldier be separated from the US Army for failure to meet medical procurement standards IAW AR 40-501, chapter 2-10c(2).”

g. Paragraph 2-3d of AR 40-501 (4 August 2011) states: “History of uncorrected anterior (717.83) or posterior (717.84) cruciate ligament injury does not meet the standard. History of surgical correction of knee ligaments does not meet the standard only if symptomatic or unstable.”

h. On 15 March 2013, the board determined that his condition had existed prior to service, had not been permanently aggravated by his brief service, and failed the enlistment standards in chapter 2 of AR 40-501. The applicant concurred with the Board’s findings and recommendation on 19 March 2013 by selecting the elections box “I concur with these proceedings and request to be discharged from the US Army without delay.”

i. JLV shows he has been awarded two VA service-connected disability ratings related to his knee for a total of 30%. 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. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

j. 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.

k. It is the opinion of the Agency Medical Advisor that neither discharge upgrade nor a referral of his case to the DES 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 evidence shows the applicant was discharged from the Army with an uncharacterized character of service for failing Medical/Physical/Procurement Standards. His DD Form 214 shows he completed 6 months and 18 days net active service this period. The Board reviewed and agreed with the medical advisor's finding 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. The Board determined there is neither an error nor an injustice.

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 3-7 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 3-9a 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—

(1) Characterization under other than honorable conditions is authorized under the reason for separation and is warranted by the circumstances of the case.

(2) HQDA, on a case-by-case basis, determines that characterization of service as honorable is clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty. This characterization is authorized when the Soldier is separated by reason of selected changes in service obligation, convenience of the Government, and Secretarial plenary authority.

(3) 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.

d. 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. Such findings will result in an entrance physical standards board, which must be convened within the Soldier's first 6 months of active duty. For character of service, paragraph 5-1 should be adhered to.

e. Section II (Terms):

(1) Character of service for administrative separation - A determination reflecting a Soldier's military behavior and performance of duty during a specific period of service. The three characterizations are honorable, general (under honorable conditions), and under other than honorable conditions. The service of Soldiers in entry-level status is normally described as uncharacterized.

(2) Entry-level status - For Regular Army Soldiers, entry-level status is the first 180 days of continuous AD or the first 180 days of continuous AD following a break of more than 92 days of active military service.

3. Army Regulation (AR) 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. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 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 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 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 medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

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.

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. 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.

6. 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.

7. 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//