

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 September 2024

DOCKET NUMBER: AR20230007297

APPLICANT REQUESTS: reconsideration of his previous request for an:

- honorable physical disability separation in lieu of an uncharacterized discharge due to failure to meet procurement medical standards
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Radiographic Report
- Operative Report, Podiatry
- Standard Form (SF) 88 (Report of Medical Examination)
- SF 89 (Report of Medical History)
- Orders 210-7, Baltimore Military Entrance Processing Station (MEPS)
- DA Form 4707 (Entrance Physical Standards Board (EPSBD) Proceedings)
- Three Department of Veterans Affairs (VA) Rating Decisions
- Three VA Letters
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Two Congressional Correspondence
- Letter, [REDACTED]
- Letter, Notarized (Applicant's Parents)
- MEPS Instructions
- Articles from the [REDACTED]
- Medical Record Review Report
- Affidavit (Applicant's Father)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20210015948 on 19 July 2022.

2. The applicant states he is making these requests so that he may be eligible for VA benefits.

3. A Radiographic Report, dated 11 February 1984, shows the applicant was evaluated at the Podiatry Clinic, Martin Army General Hospital, Fort Benning, for pes planus when on active duty. Additionally, this report shows both feet: "Calcaneal pitch is 14 degrees right side and 15 degrees left side. Mild hallux valgus deformity noted. Post surgical changes first metatarsals heads medial aspect noted."

4. He provides an Operative Report from [REDACTED], dated 10 July 1984, stating a person with the applicant's name had surgery on both the right and left foot, the date of the surgery is not listed.

5. The applicant's DD Form 4 shows he enlisted in the U.S. Army Reserve (USAR) Delayed Entry Program (DEP) on 31 July 1984, at Fort Meade, MD. At age 19, he was discharged from the DEP and enlisted in the RA on 16 October 1984.

6. SF 88 and SF 89, both dated 16 October 1984, which were completed in preparation for enlisting in the Regular Army (RA).

a. The SF 88 indicates he annotated this form to show in item 18, he had foot surgery in 1983, at [REDACTED]. In item 19, he was a patient in [REDACTED] for observation in 1980, due to stomach cramps. Item 25 (Physicians Summary and Laboratories) notes that he had bilateral bunions, 1 year ago. Asymptomatic dizziness and sudden posture changes. Chest pains, no treatment, about 1 year ago. He was determined to be qualified for service and his Physical Profile, PULHES are listed as "1 1 1 1 1 1."

b. The SF 89 shows he indicated his present health was good, currently he was taking no medication and he had no known allergies. He now had or at some point had experienced: Swollen painful joints, dizziness or fainting spells, skin disease, pain, or pressure in his chest, and he had experienced an adverse reaction to serum, drugs, or medicine.

7. Baltimore MEPS Orders 210-7, dated 16 October 1984, ordered the applicant to report to Fort Bragg, NC, Reception Station, effective 16 October 1984. However, the available evidence shows he reported to Fort Benning, GA, for basic training on or about 16 October 1984.

8. On 7 December 1984, an EPSBD after careful consideration of medical records, laboratory findings, and medical examination found the applicant was medically unfit for appointment or enlistment in accordance with current medical standards and in the

opinion of the evaluating physicians the condition(s) existed prior to service. The applicant had the following medical condition(s) and/or physical defects.

- a. Chief Complaint: Pain in both feet.
- b. History of Present Illness: Patient had a history of pes planus and juvenile bunions, both feet. In July 1983, he had the bunions surgically removed. He was now complaining of chronic pain in both feet in the area of the "MPJ's" and the plantar fasciae.
- c. Physical Examination: Was clearly within normal limits except for pes planus and previous bunion surgery of both feet.
- d. Laboratory Data: X-rays revealed pes planus deformities of the feet and removal of exostoses of the "MPJ's," both feet.
- e. Final Diagnosis: Pes planus with previous surgery of "HAV" deformity.
- f. Recommendation: He was physically disqualified from induction into the military in accordance with paragraph 2-10(b) 5, Army Regulation 40-501. He was qualified for retention. It was recommended that he be separated from the military service under the provisions of 5-11, Army Regulation 635-200.
- g. The Proceedings of the board are documented on a DA Form 4707. He had a permanent L-3 profile: No running, jumping, marching, or physical training. No walking over 1 mile. No standing over 30 minutes.
- h. The appropriate approving authority approved the findings.
- i. He concurred with the proceedings and requested to be discharged from the US Army without delay.

9. Accordingly on 1 February 1985 he was discharged and issued a DD Form 214 documenting his active service of 3 months and 16 days. He did not complete training; therefore, he was not awarded a military occupational specialty. His DD Form 214 contains the following pertinent entries:

- Type of Separation – Discharge
- Character of Service – Uncharacterized
- Separation Authority – Army Regulation 635-200, Paragraph 5-11
- Separation Code - JFT
- Narrative Reason for Separation – "Did Not Meet Procurement Medical Fitness Standards-No Disability"

10. The applicant previously requested the Army Board for Correction of Military Records (ABCMR) upgrade his character of service to under honorable conditions. The Board considered the applicant's request in ABCMR docket number AR20160011428, on 11 March 2019.

a. During the processing of this case, the ARBA Senior Medical Advisor rendered a medical advisory opinion on 8 March 2018, which states:

(1) A review of VA medical record indicated the applicant had a diagnosis of paranoid schizophrenia and a history of serious mental illness, to include psychosis, delusions, and disorganizations.

(2) Based on a review of his available medical records, there is insufficient evidence to determine if a behavioral health condition existed during the time of his separation.

(3) The applicant's military records are void of a basis for separation, to include any history of misconduct and reasons for being discharged. His military records are also void of any medical information during his period of service.

(4) This observation does not negate the applicant's diagnosis of schizophrenia and treatment from the VA; however, the overall record is void of pertinent information to support a change to the applicant's reason for separation.

b. The Board ultimately denied the applicant's requested relief.

11. The applicant provided the following documentation, which was not previously discussed in this record of proceedings.

a. A VA Rating, dated 11 March 2021, advising the applicant his claim for service connection for bilateral pes planus remained denied because the evidence submitted was not relevant. He also provided Congressional Correspondence, dated 14 October 2021 and 24 May 2022, related to his previous case. The applicant's submissions were provided to their Board in their entirety.

b. A notarized letter dated 3 April 2023, from applicant's parents stating the applicant was a minor, and they never consented to any type of surgery for him. Specifically, no surgeries on his feet. Under [REDACTED] law, parental permission is necessary, with few exceptions. The surgery mentioned in the document dated on 10 July 1984, of evidence specifying a bilateral foot surgery, but not specifying the date of surgery, never occurred. We have no knowledge of where this document could have originated. There is no "wet" signature on this document, only a rubber stamp signature. Additionally, the patient is only mentioned by name. Normally, medical documents

would have further Personal Identifying Information (PII) such as date of birth, etc. This letter was not furnished by our son or by anyone else in our family. Timothy was examined by physicians at the Baltimore MEPS. His entrance physical mentions no foot abnormalities and he was medically accepted for military service. Had such a surgery pre-existed his entry into active duty, there would have been scars on his feet. No such scars are annotated on his entrance physical.

c. Medical Review Report, dated 20 November 2023, detailing the applicant's medical condition, and stating inconclusion, the applicant was found to have pes planus (flat feet) by radiological examination approximately 2 weeks after his induction examination. It is more likely than not he had pes planus upon entry into service; however, as documented in the 16 October 1984 Induction Report, he was asymptomatic. The applicant alleges he had no problems with his feet until he was issued boots that were too tight is consistent with the entry examination.

(1) On 22 October 1984, he was seen for flat feet and referred to the Podiatry Clinic for chronic pes planus not ameliorated with arch supports. In November 1984, he was evaluated for complaints about his feet including blistering, pain and bleeding that occurred during periods when he was running, marching, and walking long distances.

(2) On 7 December 1984, he was evaluated for chronic pain of both feet and plantar fascia. As previously stated, arches can collapse abruptly after an injury, or the tendon that runs along the inside of the ankle and helps support the arch can get weakened or tear. Wearing tight shoes while running or walking on uneven ground or with heavy loads can exacerbate pain and discomfort of flat feet. For physical activity to aggravate pes planus, the signs/symptoms of pes planus commence during the activity or within 2 to 3 days after ceasing the activity. Within 24 hours of the injury, there may be development of tenderness, pain, swelling, discoloration, or altered mobility often recur, either continuously or intermittently, from the time of the specific trauma to the time of diagnosis as was seen in this case.

(3) A permanent acceleration of the disease process, or permanent increase in severity or frequency of signs or symptoms, or the development of secondary changes in the surrounding bones and soft tissues including plantar fasciitis is consistent with aggravation of pes planus, as was seen in this case. Plantar fasciitis can be caused by a number of factors, including type of shoes, foot structure, overuse, and types of walking surfaces. The plantar fascia can be torn as a result of repetitive strain or trauma, among other factors, resulting in an overuse injury. Therefore, it is at least as likely as not that the applicant's condition of asymptomatic bilateral pes planus was aggravated during service resulting in a symptomatic pes planus and plantar fasciitis.

d. Applicant's Fathers Affidavit stating his son [the applicant] was released from the Army in February of 1985 and he reported home shortly after his release. At that time,

he appeared to be in severe pain when he was standing at his doorstep. He stated he was released because of his feet. The applicant's father observed the applicant's feet were blistered, swollen, and bloody. He was wearing gym shoes for comfort and his socks, and the inside of his shoes were bloody as well. The applicant stated he was having issues with his footwear being too small and too tight during basic training. He stated he told his drill sergeant repeatedly about these issues and was advised to "break them (his boots) in" and that would alleviate the situation.

(1) The applicant stated he was seen by medical staff several times in basic training with no real care rendered to alleviate the situation with his feet. The applicant was a regularly active person working as a laborer and frequently playing sports prior to entry into the Army. After he return from basic training, he was in severe pain and presenting with several injuries to his feet.

(2) Shortly after returning from basic training, he was depressed and turned to a life on the streets. He remained homeless from that point in his life, and his father did not encounter him again until 30 years later; whereby chance, he was found on the street as a double amputee.

12. Soldiers who did not meet medical procurement medical fitness standards for enlistment or who became medically disqualified after entrance onto active duty within the initial 120 days of active duty service are separated under the provisions of AR 635-200, paragraph 5-11. This type of separation requires the Medical proceedings to establish that a medical condition was identified by appropriate military medical authority within 6 months of the Soldier's initial entrance on active duty for the RA.

13. MEDICAL REVIEW:

a. Background: Per information in JLV, the applicant is deceased as of 17 December 2023. The applicant applied to the ABCMR requesting reconsideration of his previous request for an honorable physical disability separation in lieu of an uncharacterized discharge due to failure to meet procurement medical standards.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following:

- The applicant enlisted into the Regular Army on 16 October 1984.
- On 7 December 1984, an EPSBD after careful consideration of medical records, laboratory findings, and medical examination found the applicant was medically unfit for appointment or enlistment in accordance with current medical standards and in the opinion of the evaluating physicians the condition(s) existed prior to service. The applicant had the following medical condition(s) and/or physical defects: pes planus and juvenile bunions, both feet. In July 1983, he had the

bunions surgically removed. He was now complaining of chronic pain in both feet in the area of the “MPJ’s” and the plantar fasciae.

- He was physically disqualified from induction into the military in accordance with paragraph 2-10(b) 5, Army Regulation 40-501. It was recommended that he be separated from the military service under the provisions of 5-11, Army Regulation 635-200.
- Proceedings of the board are documented on a DA Form 4707. He had a permanent L-3 profile: No running, jumping, marching, or physical training. No walking over 1 mile. No standing over 30 minutes.
- Applicant concurred with the proceedings and requested to be discharged from the US Army without delay.
- 1 February 1985 he was discharged under the provisions of AR 635-200, paragraph 5-11, by reason of “Did Not Meet Procurement Medical Fitness Standards-No Disability”. He did not complete training; therefore, he was not awarded a military occupational specialty. His DD Form 214 confirms his service was Uncharacterized, with separation code JFT.
- The applicant previously requested the Army Board for Correction of Military Records (ABCMR) upgrade his character of service to under honorable conditions. The Board considered the applicant's request in ABCMR docket number AR20160011428, on 11 March 2019. The Board denied the applicant's request.

c. Review of Available Records: The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents contained in the applicant’s file. The applicant states he is asking for a discharge upgrade for medical reasons since he is seeking eligibility for VA benefits. In a letter to the Board the applicant’s father states the applicant, “was depressed he was discharged, feeling he let everyone down. He noticed physical and mental changes in his son; he would complain about his feet hurting; he couldn’t hold a job, wanted to be alone, and did not want to hold conversations. Over the years of living like this in social isolation, with interpersonal conflicts, anxiety disorder, he developed alcohol and substance abuse problems, significant health problems, and homelessness. His son has had physical and mental problems since he left the Army in February 1985 and as a result of his military service”. In an affidavit, the applicant’s father further states: “Shortly after returning from basic training, my son was depressed and turned to a life on the streets. My son remained homeless from that point in his life, and I did not encounter him again until 30 years later; whereby chance, I found him on the street as a double amputee”.

d. The VA’s Joint Legacy Viewer (JLV) was reviewed and indicates the applicant has no VA service-connected disability ratings. The VA electronic medical record indicates the applicant participated in a psychiatric evaluation on 6 April 2021, while in the hospital due to chronic medical conditions. The applicant was described as an amputee, who was homeless, and the evaluation was required in order to determine possible

housing resources. He was diagnosed with Adjustment Disorder during that encounter, but during the course of his hospitalization, he was later diagnosed with Anxiety Disorder and Major Depressive Disorder related to his psychosocial stressors and medical issues. He did not follow-up on recommended treatment post hospital discharge and was medically hospitalized once again on 5 June 2021 to 26 June 2021. The applicant was psychiatrically hospitalized from 29 October 2021 and discharged on 1 November 2021, due to suicidal ideation and depression related to his "homelessness and inability to fully care for himself". The applicant participated in a neuropsychological evaluation on 23 September 2022. Results of that evaluation indicate he experienced significant decline in cognitive functioning, with moderate to severe impairments due to vascular risk factors. His depressive symptomatology was noted, and it was recommended he receive a psychiatric evaluation to help determine the need for medication management as well as individual psychotherapy. A psychiatry note dated 6 January 2023, indicates the applicant was domiciled in nursing home and no longer homeless. During that evaluation, the applicant was diagnosed with Major Neurocognitive Disorder, Schizoaffective Disorder (by history), and Unspecified Substance Use Disorder (by history). The report indicates his Major Neurocognitive Disorder was secondary to a stroke and notes, that it is unclear whether his reported substance abuse was "driving a constellation of symptoms" that potentially presented as schizoaffective or bipolar disorder.

e. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a BH condition during military service. The applicant presented for behavioral health services over three decades post-military service and the record indicates his behavioral health conditions appear to be related to psychosocial stressors, his history of substance abuse, and his stroke later in life. In addition, there is insufficient evidence to support a referral to the IDES process at this time. Based on the documentation available for review, there is no indication that an omission or error occurred that would warrant a referral to the IDES process. In summary, his separation process appears proper, equitable and free of error, and insufficient new evidence has been provided to determine otherwise.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. Through no fault of his own, the applicant had a medical condition which did not meet medical enlistment standards.

(2) Did the condition exist or experience occur during military service? No. The applicant had a medical condition that 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.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses and the VA has not service-connected the applicant for any BH condition. And, although the VA electronic record indicates the applicant has been diagnosed with: Anxiety Disorder, Major Depressive Disorder, Major Neurocognitive Disorder, Schizoaffective Disorder (by history), and Unspecified Substance Use Disorder (by history); there is no evidence these conditions existed during military service. These conditions presented over three decades post-military service and the record indicates his behavioral health conditions appear to be related to psychosocial stressors, his history of substance abuse, and his stroke later in life.

BOARD DISCUSSION:

1. 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 Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests.

a. Discharge Change: Deny. The evidence shows the applicant was found to have a preexisting condition which does not meet the enlistment standard in chapter 2 of AR 40-501, Standards of Medical Fitness, that was neither incurred on active duty nor permanently aggravated by service. As a result, he was separated for not meeting medical fitness standards for enlistment or retention. He completed 3 months and 16 days of net active service. He did not complete initial entry training and was not awarded an MOS. His service was uncharacterized. 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. The Board found no error or injustice in his separation processing. Also, the Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board agreed with the medical reviewer's determination that there is insufficient evidence of any mitigating behavioral health condition. Therefore, based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

b. Disability: Deny. The Board reviewed the medical reviewer's finding and agreed that there is insufficient evidence to support a referral to the integrated disability evaluation system (IDES) process. Based on the documentation available for review,

there is no indication that an omission or error occurred that would warrant a referral to the IDES process.

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 to amend the decision of the ABCMR set forth in Docket Number AR20210015948 on 19 July 2022.

9/9/2024

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CHAIRPERSON

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 15-185 (ABCMR) provides Department of the Army policy, criteria, and administrative instructions regarding an applicant's request for the correction of a military record. Paragraph 2-11 states 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. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) in effect at the time, established the Army Physical Disability Evaluation System (PDES) and set forth policies, responsibilities, and procedures that applied in determining whether a Soldier was unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. The mere presence of impairment does not, of itself, justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the member reasonably may be expected to perform because of his or her office, rank, grade, or rating. The Army must find that a service member is physically unfit to reasonably perform his or her duties and assign an appropriate disability rating before he or she can be medically retired or separated.

4. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers. Readiness is promoted by maintaining high standards of conduct and performance. Paragraph 5-11 provided for the separation of Soldiers who did not meet medical procurement medical fitness standards for enlistment or who became medically disqualified after entrance onto active duty within the initial 120 days of active duty service. Medical proceedings must establish that a medical condition was identified by appropriate military medical authority within 6 months of the Soldier's initial entrance on active duty for the RA or during active duty training. A Soldier will not be processed under these procedures if he/she has completed 180 days of active duty.

a. The medical diagnosis would have permanently or temporarily disqualified him for entry into the military service or entry on active duty or active duty for training for initial entry training had it been detected at that time.

b. No Soldier has a right to be retained under this paragraph. Soldiers not retained will be processed for separation.

c. The separation authority can retain Soldiers if he or she determines, after considering the findings of an Entrance Physical Standards Board, that the Soldier's disqualifying condition will not prevent the Soldier from performing satisfactorily throughout their period of enlistment. The board operates informally and reviews all applicable medical records. The purpose of the board is to document the medical condition(s) which existed prior to service and would have precluded induction or

enlistment. The board will also note any changes in the Soldier's physical condition since their entry onto active duty. A DA Form 4707 is used to record the board proceedings. The Soldier's commander will counsel him as to their rights including the opportunity to consult with an attorney.

d. Soldiers who do not meet the medical fitness standards for retention will be processed per Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) and Army Regulation 40-501.

e. 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 entry level status. A separation will be described as an entry level separation with service uncharacterized if processing is initiated while a Soldier is in entry level status. An entry level status is defined as the first 180 days of creditable continuous active duty or active duty for training of no more than 90 days.

f. An honorable characterization of service may be awarded to a Soldier upon completion of their first enlistment period or the period for which called or ordered to active duty or active duty for training.

5. Army Regulation 40-501, in effect at the time, governed medical fitness standards for enlistment, induction, appointment, retention, and separation. Specifically, chapter 2 prescribes the medical conditions and physical defects which are causes for rejection for military service.

//NOTHING FOLLOWS//