

IN THE CASE OF: ██████████

BOARD DATE: 15 February 2024

DOCKET NUMBER: AR20230007387

APPLICANT REQUESTS: in effect,

- an upgrade of his uncharacterized discharge to honorable
- narrative reason for separation changed to physical disability with severance pay
- corresponding separation program designator (SPD) code changed to "JFL"
- a hearing 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)
- Department of Veterans Affairs (VA) hearing transcript, 21 March 1997
- VA rating decision, 19 May 1997

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 denied a Certificate of Eligibility (COE) to purchase a home and other benefits because he received the wrong SPD code of "JFT" on his DD Form 214 (Certificate of Release or Discharge from Active Duty).
3. The applicant enlisted in the Regular Army on 25 May 1989, for 3 years. He did not complete training and was never awarded a military occupational specialty (MOS).
4. A DA Form 4707 (Entrance Physical Standards Board [EPSBD] Proceedings), dated 15 September 1989, shows:
  - a. He was diagnosed with functional scoliosis not service aggravated and had been placed on a permanent profile of no running, no jumping, no prolonged marching.

b. The EPSBD recommended the applicant be separated from service, under the provisions of Army Regulation (AR) 635-200 (Personnel-Separations –Enlisted Personnel), paragraph 5-11, for a condition that existed prior to service.

c. The applicant acknowledged the EPSBD findings on 20 September 1989. He further acknowledged:

(1) He had been advised that legal counsel from an Army attorney was available to him or he could consult civilian counsel at his own expense.

(2) He could request discharge from the Army without delay or request retention on active duty.

(3) He concurred with the proceedings and requested discharge from the Army without delay.

d. The applicant's commander recommended the applicant's separation from service on 22 September 1989.

e. The separation authority approved the recommendation on 2 October 1989 and directed the applicant's entry level separation with uncharacterized service.

5. The applicant was discharged accordingly on 6 October 1989, under the provisions of AR 635-200, paragraph 5-11, by reason of did not meet procurement medical fitness standards –no disability, with an uncharacterized character of service. He received a separation code of “JFT” and reenlistment code “3.” He completed 4 months and 12 days of net active service during the period covered.

6. The applicant provides:

a. A VA hearing transcript, showing the VA conducted a formal hearing for the issue of service connection for residuals of a back injury during military service.

b. A VA rating decision showing:

(1) He received service-connected disability for residuals of back injury during military service and was granted an evaluation of 40 percent effective 26 September 1994.

(2) Effective 17 April 1996, he received a service-connected disability evaluation of 100 percent based on surgical or other treatment necessitating convalescence.

7. There is no indication the applicant petitioned the Army Discharge Review Board for an upgrade of his discharge within that Boards 15-year Statute of limitations.

8. Regulatory guidance in effect at the time provided Soldiers are considered to be in an entry-level status when they are within their first 180 days of active-duty service.

9. The Board should consider the applicant's argument and evidence, along with the overall record, in accordance with the published equity, injustice, or clemency determination guidance.

10. 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 in essence requesting a referral to the Disability Evaluation System (DES).

c. The Record of Proceedings outlines the applicant's military service and the circumstances of the case. His DD 214 shows he entered the Regular Army on 25 May 1989 and received an uncharacterized discharge on 6 October 1989 under authority provided by paragraph 5-11 of AR 635-200, Personnel Separations – Enlisted Personnel (22 January 1988): Separation of personnel who did not meet procurement medical fitness.

d. The applicant was referred to an Entrance Physical Standards Board (EPSBD) for "Back and leg pain with asymmetry of his shoulders" IAW paragraph 5-11 of AR 635-200. EPSBDs 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 aggravated by their military service.

e. From the 15 September 1989 EPSBD Proceedings (DA form 4707) for his preexisting scoliosis prepared by two orthopedic surgeons:

“HISTORY OF PRESENT ILLNESS: The patient is a 20-year-old active-duty soldier who was in his usual state of good health until approximately the middle of June when he was carrying his own rucksack and another rucksack and stepped in a pothole and sustained a twisting type motion to his back. Since that time, he has had pain in his back with occasional radiation to his right leg posteriorly ... The patient also noted that his shoulders became asymmetric with his right shoulder drooping more than his left.

Because of his symptoms, the patient became unable to participate in the activities of basic training, was unable to run, jump, march, or do the other activities required. He, at that time, was admitted to the hospital (5 July) and an extensive workup was performed.

The patient mentioned that when he was in the MEPS undergoing screening examination, several doctors looked at his back and told him he would probably be okay; however, there is nothing on his history or physical concerning his back.

PHYSICAL EXAMINATION: ... examination of his back where he was found to have asymmetry of his shoulders with his right shoulder being 3 inches lower than his left. The patient also had decreased range of motion with only 45 degrees of flexion at the lumbar spine and the patient was only able to reach down to approximately his knees.

X-RAY EVALUATION: Some mild narrowing at the L5-S1 joint space, also some sacralization of L5, no spondylolisthesis or spondylolysis. The patient had a workup in the hospital to include a bone scan which was within normal limits ... The patient also had CT scan, Myelogram and those were both within normal limits.

Levoscoliosis, 29 degrees, between top of T-10 and bottom of L5.

DIAGNOSIS: EPTS [existed prior to service] functional scoliosis secondary to L5-S1 disc disease. EPTS: Not Service Aggravated. Chapter 2, para 2-37c and d.

RECOMMENDATION: This soldier meet retention criteria; it is felt to be in the best interest of the soldier medically and the U.S. Government to separate the soldier from active duty. Therefore, recommend separation from the service under the provisions paragraph 5-11, AR 635-200.

f. Paragraph 2-37c of AR 40-501 (1 July 1987) states the criteria for failing procurement standards due to preexisting scoliosis:

Deviation or curvature of spine from normal alignment, structure, or function (lumbar scoliosis over 20 degrees or dorsal scoliosis over 30 degrees as measured by the Cobb method, kyphosis over 55 degrees, or lordosis) or if-

- (1) It prevents the individual from following a physically active vocation in civilian life.
- (2) It interferes with the wearing of a uniform or military equipment.
- (3) It is symptomatic and associated with positive physical finding(s) and demonstrable by x-ray.

g. On 18 September 1989, the board determined his medical condition had existed prior to service, had not been permanently aggravated by his military service, did not meet one or more medical enlistment/induction standards, and was not compatible with continued military service. The applicant agreed with the board's findings on 20 September 1989, marking the election "I concur with these proceedings and request to be discharged from the US Army without delay."

h. There is no evidence the applicant had any duty incurred medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, 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.

i. JLV shows he has been awarded two VA service-connected disability ratings, including a 60% rating for Degenerative Arthritis of the Spine. However, the DES only compensates an individual for service incurred medical condition(s) which have been determined to disqualify him or her from further military service and consequently prematurely ends their career. 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 ARBA Medical Advisor the applicant's discharge was appropriate and IAW Army regulations, and a referral of his case to the Disability Evaluation System is not warranted.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the facts and circumstances leading to the applicant's separation and the findings and recommendation of the medical advisor, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's separation documents.

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.

5/14/2024

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CHAIRPERSON  
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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. Title 10, U.S. Code, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
3. 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.
4. Title 38, U.S. Code, Sections 1110 and 1131, permit the VA to award compensation for disabilities which were incurred in or aggravated by active military service. However, an award of a VA rating does not establish an error or injustice on the part of the Army.
5. Title 38, Code of Federal Regulations, Part IV is the VA's schedule for rating disabilities. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge. As a result, the VA, operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform his duties. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.
6. Army Regulation 15-185 (ABCMR), paragraph 2-11, states applicant's do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.
7. Army Regulation 635-5-1 (SPD), in effect at the time, provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. It states that the separation code "JFT" is the appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, paragraph 5-11, did not meet procurement medical fitness standards – no disability.

8. AR 635-200, in effect at the time, set 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) Headquarters Department of the Army, 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 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 (EPSBD). This board, which must be convened within the Soldier's first 6 months of active duty, takes the place of the notification procedure required for separation under this chapter.

(1) Medical proceedings, regardless of the date completed, must establish that a medical condition, which was identified by an appropriate military medical authority within 6 months of the Soldier's initial entry on active duty would have permanently or



temporarily disqualified the Soldier for entry into military service had it been detected at that time or the medical condition does not disqualify the Soldier for retention in military service per Army Regulation 40-501 (Medical Services - Standards of Medical Fitness), chapter 3.

(2) A Soldier who is found not to have been qualified under procurement medical fitness standards at the time of enlistment after entry on active duty may request to be retained on active duty if, after considering the proceedings of an EPSBD, the separation authority determines the Soldier's disqualifying condition will not prevent the Soldier from performing satisfactorily throughout his/her period of enlistment in the MOS for which he/she is being trained or in another MOS based on the Soldier's medical condition and the Soldier, after being counseled and given the opportunity to obtain legal advice, signs a statement requesting to complete the period of service for which enlisted. Soldiers not retained will be processed for separation.

e. Section II (Terms): 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.

//NOTHING FOLLOWS//