

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 April 2024

DOCKET NUMBER: AR20230007508

APPLICANT REQUESTS: upgrade his uncharacterized discharge to a general discharge

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 293 (Application for Review of Discharge from the Armed Forces of the United States)

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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 sustained an injury that prevented him from continued service. He asked to be recycled but was told he would sign his discharge paperwork or get an Article 15, if he refused. His injuries were not properly cared for nor properly diagnosed, which caused further issues. Had he been given the chance to be properly repaired, in a timely manner, perhaps he could have finished his military service. He loves his country and only wanted to serve. He currently serves in the U.S. Coast Guard Auxiliary just for a way to try to give back even though it is not active military service, it is a way he is trying to serve with the disabilities he now has. He never had any correctives action. The Board can speak to his Army captain or anyone else who knows the applicant.
3. The applicant's service records contain the following documents:
 - a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows the applicant enlisted in the Regular Army on 6 January 2011 and entered active duty on 1 February 2011.
 - b. DA Form 3349 (Physical Profile), dated 1 April 2011 shows the applicant had a temporary profile for right scrotal varicocele. His PULHES (Physical condition/stamina, Upper extremities, Lower extremities, Hearing/ear, vision/Eyes,

neuropsychiatric/Stability) were temporary listed as "333111". The profile would expire on 30 June 2011. He could not participate in any of the Army Physical Fitness Test categories.

c. DA Form 4707 (Entrance Physical Standards Board (EPSBD) Proceedings), dated 8 April 2011 shows the applicant was evaluated for scrotal pain. The doctor recommended the applicant meet a medical board for separation. He did not meet medical fitness standards for enlistment nor induction. The injury existed prior to service and was aggravated by the service. A waiver was not recommended.

d. Memorandum subject Notification of Servicemember Pending EPSBD Proceedings, dated 11 April 2011 states the applicant was pending an EPSBD Proceeding Medical Board 200 (MED 200). The Board was for an injury/illness, prior existing before entry into the service. The applicant should be suspended from all physical activities and be made available for necessary medical appointments.

e. DA Form 4187 (Personnel Action), dated 13 April 2011 shows the applicant's commander recommended the applicant be reassigned for MED 200 separation. The applicant attended sick call for right groin pain on 23 February, 7, 13, 18, and 23 March 2011 and 1 April 2011 EPSBD proceedings stated the applicant did not meet fitness standards. The applicant's condition had been exacerbated by the physical demands of training. The commander recommended a MED 200 discharge.

f. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant was discharged on 12 May 2011 in accordance with paragraph 5-11 of AR 635-200 for failing to meet medical/physical procurement standards. His character of service was uncharacterized, his separation code was JFW and his reentry code was RE 3. He had completed 3 months and 12 days of net active service. He was did not receive a military occupational specialty during his period service.

4. On 29 February 2012, the applicant applied to the Army Discharge Review Board (ADRB) requesting an upgrade of his discharge. On 25 September 2012, the ADRB stated after careful review of the applicant's application, military records, and all other available evidence, the ADRB determined the applicant was properly and equitably discharged. Accordingly, his request for a change in the character and/or reason of his discharge was denied. The entire ADRB packet is available for the Board's consideration.

5. The applicant's claims that he incurred an injury while in training. Therefore, this case will be reviewed and discussed by the medical staff at the Army Review Boards Agency.

6. 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), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The applicant requests discharge upgrade from Uncharacterized to General, Under Honorable Conditions. He petitioned an Army Discharge Review Board in 2012 with the goal of reentry and contended his civilian doctor endorsed that he was discharged for the wrong injury.

b. The ABCMR ROP summarized the applicant's available record and circumstances surrounding the case. The applicant entered the Regular Army 01Feb2011. He was discharged 12May2011 under AR 635-200, para 5-11 for failed medical/physical/procurement standards. His service was designated as uncharacterized.

c. Summary of medical records

(1) Thirteen days after arrival, the applicant who was 31 years old at the time, presented reporting right hip and back pain since 12Feb2011. The exam showed mild lumbar paraspinal muscle tenderness and the anterior and lateral right hip was tender on palpation. The right hip film was negative for acute fractures or dislocations. Bone demineralization was noted. A follow up bone scan showed normal hips. On 17Feb2011, he reported having felt a pop while running on ice 6 days prior. He arrived on crutches which he had been using for 3 days. He reported having had back pain prior to joining the military, but he had never experienced hip pain. During this visit, the exam revealed tenderness to palpation near the inguinal region, but not in the hip or adductor muscles. He was referred for physical therapy where he received stretching exercises and a profile until 25Feb2011. The applicant was seen in the Ireland ACH emergency room on 10Mar2011 for pain in right hip groin area. The lower extremity exam was nontender and with normal ROM. He was given a Toradol injection (anti-inflammatory). He was seen by general surgery (18Mar2011) who endorsed the pain was likely musculoskeletal in origin. He was issued a profile for walk at own pace with no physical training for 1 month.

(2) In April, he began reporting right scrotal pain and tenderness (01Apr2011 Nelson Medical Clinic), despite still being on some profile restrictions per surgery service. Because of the presence of the right varicocele in addition to scrotal and groin pain, on 08Apr2011 the applicant underwent Entrance Physical Standards Board Proceedings for scrotal pain. He reported the scrotal pain began with running during week one. He denied any known scrotal trauma. The exam was significant for tenderness to palpation of the right scrotum. A right varicocele was noted. The condition had been confirmed by a scrotal ultrasound 10Feb2011 which showed a small posterior right varicocele. Diagnosis: Right Varicocele, Symptomatic. The condition

was determined to have existed prior to service and did not meet induction fitness standards in accordance with AR 40-501 chapter 2. It was also determined the condition was service aggravated. A waiver was not recommended. *Under AR 40-501 chapter 2, any right varicocele (symptomatic or asymptomatic) does not meet the standard.* He had received a temporary physical profile for Right Scrotal Varicocele dated 01Apr2011. The right scrotum was again noted to be tender on 29Apr2011; however, the scrotal exam was normal during the 18Mar2011 visit with general surgery (Ireland ACH). There were no further records for this condition.

(3) 01Apr2011 Nelson Community Mental Health (Ireland ACH). The applicant was seen for Mental Status Evaluation for chapter 5-11 separation. He denied mental health history or current issues. He was experiencing some situational depression because he desired to stay in the military. His mood was 'frustrated' and 'unhappy'. He had normal enjoyment of activities and no interpersonal relationship problems. There was no history of psychosis, violence, suicide ideation or attempt, or psychiatric treatment including medication, therapy, and hospitalization. There was no report of substance abuse or MST. The behavioral health examiner assessed that the applicant did not have a psychiatric diagnosis or condition.

(4) Four months after separation from service, the applicant was seen by an outside provider (21Sep2011 West Chest Urgent Care) for history of injury to right groin, especially lesser trochanter area. The applicant was symptom free; and the extremity exam was normal. The provider endorsed the applicant was fully recovered from the injury and could resume full duty without restrictions. Later, during the 02Mar2015 Hip and Thigh Conditions DBQ; the applicant provided treatment records to the VA for his right hip condition. He was first seen at Mercy Harrison Orthopedics on 20Jun2012, approximately one year after separation from service. He reported problems with hip pain and a sensation of the right hip dislocating. An x-ray reportedly revealed mild to moderate osteoarthritis. The outside provider's impression was Mild to Moderate Osteoarthritis, CAM Impingement, and a possible labral tear by history. The applicant ultimately underwent arthroscopic acetabuloplasty and femoroplasty on 22Jan2013 (Holmes Hospital). Surgery was followed by physical therapy (Nova Care Rehabilitation). He subsequently continued rehab at a private gym. At the time of the evaluation, he reported intermittent pain in the right hip with prolonged standing or sitting. He was working at Dunbar Armored.

d. 4. Conclusion/Opinion

(1) The right varicocele was disqualifying under AR 40-501, chapter 2. Command endorsed that his right groin pain was worsened by the physical demands of training. He had received a temporary physical profile for Right Scrotal Varicocele indicating he was unable to evade direct and indirect fire; however, the record did not

show a permanent level 3 physical profile for this condition. JLV search did not show any subsequent treatment records for the Right Varicocele condition after discharge from service. JLV search showed the Right Varicocele condition was not rated by the VA. Based on available records, there was insufficient evidence to support that this EPTS condition was permanently aggravated by his military service.

(2) Concerning the right hip condition, the applicant was issued a temporary profile. Again, the record did not show a permanent level 3 physical profile for the right hip condition. At the time of separation from service, it is not clear that conservative treatment for the right hip condition had been exhausted. No consultation with orthopedics was found. It was also notable that the applicant was cleared by a civilian doctor to return to full duty four months after separation from service (September 2011) and he sought reentry into service in February 2012.

(3) It should also be noted that both the right scrotum condition (right varicocele) and right hip condition likely contributed to/caused right groin pain. Based on records available for review, medical evidence was insufficient to support that either the right varicocele or right hip condition failed medical retention standards of AR 40-501 chapter 3. In addition, there was insufficient evidence to support that a BH condition failed medical retention standards. Referral for medical discharge processing was not warranted. The Right Varicocele condition was discovered during the first 6 months of active duty. The chapter 5-11 separation was appropriate. Concerning the request for change in characterization of service from uncharacterized, review of medical records did not show psychosis, MST, or report of acts of extreme honor.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence shows the applicant was separated under the provisions of chapter 5 of AR 635-200, due to failing medical/physical/ procurement standards (pre-existing condition). He was credited with 3 months and 12 days of net active service. He did not complete initial entry training and was not awarded an MOS. His service was uncharacterized. The Board found no error or injustice. 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 reviewed and agreed with the medical reviewer's finding that there is no evidence the applicant had a medical condition or injury which would have failed the medical retention standards of chapter 3, AR 40-501 prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably

perform the duties of his office, grade, rank, or rating prior to his discharge. The Board determined that a discharge upgrade is unwarranted.

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.

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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 (AR) 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 3-7a provides that an honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member'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.

b. Chapter 3-7b states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. 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 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. Chapter 5-11 of the regulation 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 (AD) or active-duty training (ADT) for initial entry training may be separated. Such conditions must be discovered during the first 6 months of AD and such findings will result in an entrance physical standards board which must be convened within the Soldier's first 6 months of AD (takes the place of the notification procedure required for separation). 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.

3. Title 10, USC, 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 AR 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.

4. AR 635-8 (Separation Documents), the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation. Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designator (SPD) Codes).

5. AR 635-5-1 (Separation Program Designator Codes), enlisted Soldiers receive separation codes in accordance with the guidelines published for separations per AR 635-200. The narrative reason for the separation will be entered in block 28 of the DD

Form 214 exactly as listed in tables 2-2 or 2-3 of the regulation. Table 2-3 lists for SPD code "JFW" the narrative reason as "failed medical/physical/procurement standards," by regulatory authority AR 635-200.

6. AR 601-210 (Regular Army and Reserve Components Enlistment Program) table 3-1 (U.S. Army reentry eligibility codes) states:

a. RE-1: Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army.

b. RE-3: Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation or disqualification is waiverable.

c. RE-4: Applies to: Person separated from last period of service with a nonwaiverable disqualification.

d. RE-4R: Applies to: A person who retired for length of service with 15 or more years active federal service.

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//