

IN THE CASE OF: ██████████

BOARD DATE: 21 February 2024

DOCKET NUMBER: AR20230007810

APPLICANT REQUESTS: in effect, physical disability separation with severance pay or physical disability retirement in lieu of expeditious discharge for disability existing prior to service(EPTS).

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

DD Form 149 (Application for Correction of Military Record)

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:
  - a. He volunteered to serve and was medically cleared/passed for induction at the board in the Des Moines, IA, and admitted to the service at Fort Bliss, TX, on 1 November 1967. After he started Basic Combat Training (BCT), he was unable to perform the duties due to a back condition he had.
  - b. He feels a correction should be made to reflect disability due to the fact he was ready to go service his country. He was admitted and inducted after seeing the health care professionals who evaluated him. The discharge papers he was issued are no longer in his possession. He arrived at Fort Bliss, TX on 1 November 1967 and was discharged about 30 December 1967.
3. A physical profile is used to classify a Soldier's physical disabilities in terms of six factors or body systems, as follows: "P" (Physical capacity or stamina), "U" (Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric) and is abbreviated as PULHES. Each factor has a numerical designation: 1 indicates 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. A Standard Form 88 (Report of Medical Examination) shows the applicant underwent medical examination on 2 November 1967, for the purpose of induction. It shows he had a congenital left club foot that was surgically corrected with a good result and full range of motion. He was found qualified for induction with a PULHES of 111111.

5. A DD Form 47 (Record of Induction) shows:

- “volunteer” in the upper left corner
- item 16 (Physical Defects) shows acceptable for Navy enlistment 30 August 1967
- his PULHES was 111111 effective 2 November 1967
- the applicant underwent complete medical and mental examination and found acceptable for induction into the Armed Forces
- the applicant was inducted into the Army of the United States on 2 November 1967

6. A Standard Form 539 (Abbreviated Clinical Record) shows:

a. The applicant was seen by a medical provider on 21 November 1967 while in BCT for a bad club foot which was twice treated with surgery and since left him with bad range of motion and little feeling in the foot. Further evaluation was requested.

b. The applicant was evaluated at the Orthopedic Clinic on 22 November 1967, with notes reflecting left leg 1/2 inch shorter and left calf atrophy.

7. A second Standard Form 88 shows the applicant underwent medical examination on 23 November 1967 for the purpose of medical discharge. He was found not qualified for further military service due to his club foot and given a PULHES of 414111.

8. A DA Form 8-118 (Medical Board Proceedings), dated 11 December 1967, shows:

a. The applicant was found medically unfit for talipes equinus varus, left, postoperative; line of duty (LOD): no; existed prior to service (EPTS).

b. His condition was congenital, not in the LOD, not cause incident to service, not aggravated by active duty, and was EPTS.

c. The summary of his medical condition shows residual club foot with weakness and limited motion. The recommendation was separation from service for an EPTS condition as he was unfit for induction and unfit for retention under the provisions of Army Regulation 635-40 (Physical Evaluation for Retention, Retirement or Separation).

d. The applicant signed and dated the form on 13 December 1967, indicating he had been informed of the approved findings and recommendations of the Board and did not desire to continue on active duty.

9. Headquarters, U.S. Army Air Defense Center Letter Orders 12-313, dated 26 December 1967, honorably discharged the applicant from the Army of the United States due to physical disability effective 28 December 1967.

10. The applicant's DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows the applicant was honorably discharged as a trainee under the provisions of Army Regulation 635-40, paragraph 9-7, due to physical disability with Separation Program Number (SPN) 277 (Physical Disability, EPTS, Established by Medical Board, Upon Application by Individual, Not Entitled to Separation Pay). Item 30 (Remarks) shows severance pay not authorized. The applicant was credited with 1 month and 27 days of net active service.

11. 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 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). He states:

"I volunteered to serve and was passed at the board in Des Moines, Iowa prior to induction and admitted to service at Fort Bliss, Texas on November 1, 1967. After starting basic training, I was unable to perform the duties due to a back condition that I had. I feel that a correction should be made due to the fact that I was ready to go to serve my country. I was admitted and inducted after seeing the professional health care people who evaluated me."

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 2 November 1967 and received an honorable discharge on 28 December 1967 under the provisions provided in paragraph 9-7 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (15 May 1967). The applicant's separation program number (SPN) 277 denotes "Physical disability, EPTS (existing prior to service), established by

medical board. Discharged by reason of physical disability upon application by individual. Not entitled to severance pay.”

d. Because of the period of Service under consideration, there are no encounters in AHLTA and no documents in iPERMS. There is no record of the applicant in JLV.

e. On his pre-entrance Report of Medical Examination, the provider noted the applicant had previously had a left club foot which had been surgically corrected. He stated “Asymptomatic, good result” and determined the applicant was qualified for induction.

f. The applicant was evaluated by orthopedics on 22 November 1967 and subsequently referred to a medical evaluation board for this pre-existing condition. The board determined this surgically corrected congenital clubfoot failed medical standards, he was unfit for induction or retention, and as it had existed prior to service, it was non-compensable. The applicant initialed the election “The patient does not desire to continue on active duty under AR 616-41 [Enlisted MOS Suitable for the Physically Handicapped].”

g. Paragraph 2-10b(4) of AR 40-501, Standards of Medical Fitness (4 April 1967), stated that the presence of a clubfoot is a cause for rejection for appointment, enlistment, and induction.

h. No additional medical documentation submitted with the application.

i. There is no evidence the applicant had a service incurred medical condition 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.

j. It is the opinion of the ARBA Medical Advisor that a referral of his case to the Disability Evaluation System is not warranted.

#### BOARD DISCUSSION:

1. 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising official finding no evidence the applicant had a service incurred medical condition which would have failed the medical retention standards prior to his discharge or that referral to Disability Evaluation System is warranted.

2. The Board noted, based on the opine review, the applicant was evaluated by orthopedics and subsequently referred to a medical evaluation board for this pre-existing condition. Based on the evaluation, the medical board determined this surgically corrected congenital clubfoot failed medical standards, and the applicant was unfit for induction or retention, as it had existed prior to service. The Board determined based on the preponderance of evidence the applicant's contentions for a physical disability separation with severance pay or physical disability retirement in lieu of expeditious discharge for disability existing prior to service (EPTS) is without merit and relief was denied..

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.

3/4/2024

  
 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. Title 10, U.S. Code, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system (DES) and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 (Discharge Review Board (DRB) Procedures and Standards) and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in a Medical Evaluation Board (MEB); when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an Military Occupational Specialty (MOS) Medical Retention Board (MMRB); 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/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.

3. Army Regulation 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. 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.

b. 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.

c. The percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Ratings are assigned from the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD). The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting, or ratable condition, is one which renders the Soldier unable to perform the duties of their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. 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.

d. Chapter 9 (Expeditious Discharge for Disabilities Existing Prior to Service) in effect at the time, provides for the expeditious discharge of enlisted personnel who, in accordance with chapter 3, Army Regulation 40-501, are unfit for retention on active duty by reason of physical disability which was neither incurred nor aggravated during any period in which the member was entitled to basic pay.

(1) When an enlisted member on active duty is believed to be incapable of performing his duties with reasonable effectiveness because of a disability which is believed not to have been incurred or aggravated during a period of active service, the commander concerned will initiate action to request a physical examination.

(2) A medical examination, recorded on a Standard Form 88 (Report of Medical Examination) will be accomplished and referred to a medical board. If the medical board recommends that a member be separated because of medical unfitness which existed prior to entry into military service or which was incurred when the member was not entitled to basic pay and which has not been aggravated by such service, the member will be offered the opportunity for expeditious separation under paragraph 9-7 of this chapter.

(3) If the member agrees with the findings of the medical board that his/her physical disqualifying condition existed prior to service (EPTS) and was not aggravated thereby, he may apply for expeditious discharge under the provisions of this chapter. Once approved, Separation Program Number (SPN) 277 (Physical Disability – EPTS – Army Regulation 635-40) will be shown in item 11c (Reason and Authority) of the DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge). An entry, "Severance pay not authorized" will be made in item 30 (Remarks) of the DD Form 214.

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 10, U.S. Code, section 1556 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//