

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 March 2024

DOCKET NUMBER: AR20230008043

APPLICANT REQUESTS: his uncharacterized service be upgraded to honorable and an appearance before the Board via video/telephone.

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

- DD Form 149 (Application for Correction of Military Record), 2 May 2023
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 22 November 2000
- Statement in Support of the applicant's Claim for a Service-Connected Condition, 22 December 2020
- Department of Veterans Affairs (VA) Rating Decision, 4 April 2023
- VA Appeal, 12 April 2023
- VA Service letter, 25 April 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, in effect, he completed bootcamp however because of a developing mitral valve prolapse he was separated with an uncharacterized characterization of service. The condition was thought to have developed prior to service; however, he has evidence showing a service connection for the condition and that this developed while serving. He should have been warranted a medical separation from service. It is requested that he receive an honorable discharge.

3. The applicant enlisted in the Regular Army on 5 September 2000, for a 4-year period.

4. The applicant's official military personnel record is void of the complete facts and circumstances surrounding his discharge processing. However, his DD Form 214 shows he was discharged on 22 November 2000, under the provisions of Army Regulation

(AR) 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-11, by reason of failure to meet procurement medical fitness standards, in the grade of E-2. His service was uncharacterized with separation code JFW and reentry code 3. He was credited with 2 months and 18 days of net active service, and he was not awarded a military occupational specialty.

5. The applicant provides the following:

a. A statement in support of claim for a service-connected condition, dated 22 December 2020, from a retired physician, which states the applicant did not have any abnormal or concerning findings documented at the military entrance processing station however he experienced complaints of significant exertional chest pain and shortness of breath near the conclusion of basic training. It was requested the applicant receive entitlement for a service-connected disability of mitral valve prolapse.

b. A VA rating decision showing the applicant was granted a 0% evaluation on 6 August 2013. It additionally states the denied claim for service connection for the mitral valve prolapse was being reopened.

c. A VA letter to the applicant showing his appeal on 31 March 2023 and states his combined rating is 0%.

d. A letter from the VA stating the applicant served in the Army from 5 September 2000 to 22 November 2000. His character of service is shown as honorable for VA purposes.

6. There is no indication the applicant applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

7. Soldiers are considered to be in an entry-level status when they are within their first 180 days of active-duty service. The evidence of record shows the applicant was in an entry-level status at the time of his separation. An uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It simply means the Soldier was not in the Army long enough for his or her character of service to be rated as honorable or otherwise.

8. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

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 (EMR) (AHLTA and/or MHS Genesis), 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 22 November 2000 uncharacterized discharge and, in essence, a referral to the Disability Evaluation System (DES). He states:

Veteran needs to be changed to honorable. Veteran completed boot camp, however as a result of developing mitral valve prolapse (MVP) was separated as uncharacterized because the condition was thought to have developed prior to service. Veteran now has evidence showing service connection for the condition and that it developed whilst in service. Therefore, the SM's [Service Member] character of discharge should be reopened and adjudicated to honorable.

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 for the period of service under consideration shows he entered the regular Army for basic combat training on 5 September 2000 and was discharged on 22 November 2000 under provisions provided by paragraph 5-11 of AR 635-200, Active Duty Enlisted Administrative Separations (26 June 1996): Separation of personnel who did not meet procurement medical fitness standards.

d. Paragraph 5-11a of AR 635-200:

a. 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 AD or ADT for initial entry training, will be separated. Medical proceedings, regardless of the date completed, must establish that a medical condition was identified by appropriate military medical authority within 6 months of the soldier's initial entrance on AD for RA, or during ADT for initial entry training for ARNGUS and USAR, which—

(1) Would have permanently or temporarily disqualified him or her for entry into the military service or entry on AD or ADT for initial entry training had it been detected at that time.

(2) Does not disqualify him or her for retention in the military service under the provisions of AR 40–501, chapter 3.

e. Neither the applicant’s pre-entrance Report of Medical History nor Report of Medical Examination are available for review.

f. The applicant supplies a statement from a physician stating there is no evidence the applicant’s MVP and Tricuspid valve regurgitation existed prior to and actually developed due to the rigors of basic training.

g. No other medical documentation or evidence was submitted with the application and there are no clinical encounters in the EMR. The EMR does contain the radiologist’s 6 October 2000 report for a normal chest x-ray and consult requests for an echocardiogram (10 October 2000) and pulmonary function testing (24 October 2000), both without the results. The echocardiogram consult request does state “19-year-old male with 3-week history of chest pain, coughing at night, and shortness of breath after runs ... 2/6 systolic murmur.”

h. Paragraph 2-18a of AR 40-501, Standards of Medical Fitness (30 August 1995), outlines the conditions when valvular heart conditions medical enlistment standards:

All valvular heart diseases including those improved by surgery except mitral valve prolapse and bicuspid aortic valve. These latter two conditions are not reasons for rejection unless there is associated tachyarrhythmia, mitral regurgitation, aortic stenosis, insufficiency, or cardiomegaly.

i. The applicant’s supplied statement from the physician notes the applicant had regurgitation.

j. Neither the applicant’s separation packet nor documentation addressing his administrative separation was submitted with the application or uploaded into iPERMS.

k. The applicant’s paragraph 5-11 of AR 635-200 separation authority indicates he was referred to an Entry Physical Standards Board (EPSBD) for valvular heart disease under provisions provided in 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 service aggravated.

l. His Entrance Physical Standards Board (EPSBD) Proceedings (DA Form 4707) was not available for review. Given his paragraph 5-11 of AR 635-200 administrative separation without evidence to the contrary, it must be assumed the board determined his valvular heart disease 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.

m. JLV shows he was initially awarded one VA service-connected disability rating of 100% for valvular heart disease effective 6 August 2013. The rating remains at 100%.

n. 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. 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.

o. 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.

p. It is the opinion of the ARBA Medical Advisor that neither an upgrade of his discharge nor a referral of his case to the DES is warranted.

BOARD DISCUSSION:

1. The Board determined the applicant's request for an upgrade of his service characterization from uncharacterized to honorable and an appearance before the Board via video/telephone and determined does not warrant relief.
2. Prior to making a determination, the Board carefully considered the applicant's request, the statements and evidence he provides with his application, his military service record, the opinion of the Army Review Boards Agency (ARBA) Medical Advisor, the applicable regulatory and statutory guidance, and published Department of Defense guidance for consideration of discharge upgrade requests based upon liberal consideration and/or clemency.
3. The Board found, in this case, the evidence of record and independent evidence provided by the applicant 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.
4. The Board found the applicant's current reason for separation and characterization of service were appropriate based on the overall evidence of record.
 - a. The evidence shows the applicant was referred to an EPSBD for valvular heart disease under provisions provided in paragraph 5-11 of AR 635-200, before completing even two months of active service. Without evidence to the contrary, the Board presumes the EPSBD determined his valvular heart disease 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, as such, the applicant was properly and appropriately discharged under the provisions of Army Regulation 625-200, paragraph 5-11.
 - b. The applicant was in an entry-level status at the time of his discharge; therefore, an uncharacterized service characterization was appropriate.

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.



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. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.

3. AR 15-185 (ABCMR), the regulation governing this Board, 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.

4. AR 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 3 provides that a separation will be described as entry level with uncharacterized service if the Soldier has less than 180 days of continuous active duty service at the time separation action is initiated.

b. Paragraph 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.

c. Paragraph 3-9, in effect at the time of the applicant's separation, provided that a separation would be described as entry level with uncharacterized service if processing was initiated while a Soldier was in an entry-level status, except when:

(1) a discharge under other than honorable conditions was authorized, due to the reason for separation and was warranted by the circumstances of the case; or

(2) the Secretary of the Army, on a case-by-case basis, determined a characterization of service as honorable was clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty. This characterization was authorized when the Soldier was separated by reason of selected changes in service obligation, for convenience of the government, and under Secretarial plenary authority.

d. Paragraph 5-11 provides that Soldiers who are not medically qualified under procurement medical fitness standards when accepted for enlistment or who become medically disqualified under these standards prior to entrance on active duty, active duty for training, or initial entry training will be separated. A medical proceeding, regardless of the date completed, must establish that a medical condition was identified by appropriate medical authority within 6 months of the Soldier's initial entrance on

active duty, that the condition would have permanently or temporarily disqualified the Soldier for entry into military service had it been detected at that time, and the medical condition did not disqualify the Soldier from retention in the service. The character of service for Soldiers separated under this provision would normally be honorable but would be uncharacterized if the Soldier was in an entry-level status.

5. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder; traumatic brain injury; sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//