

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 January 2024

DOCKET NUMBER: AR20230008308

APPLICANT REQUESTS: reconsideration of his previous request to change his uncharacterized discharge to an honorable discharge.

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

DD Form 149 (Application for Correction of Military Record)

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 AR20220005138 on 10 January 2023.

2. The applicant states the reason for his discharge was that he did not meet procurement medical fitness standards. However, he was advised that he was discharged due to degenerative arthritis by a physician after injuring his left ankle during basic training, which was the reasoning for his discharge. He never had a physical disability that prohibited him from performing activities during basic training. He also passed an additional physical examination at the MEPS (Military Entrance Processing Station) prior to being sent to the VA (Department of Veterans Affairs) where the doctor stated he had a disability but didn't qualify for disability. Due to this decision, he could not serve his country nor receive any Veteran benefits. He is hoping to get his discharge status updated and correct so that he can receive such benefits.,

3. Review of the applicant's service records shows:

a. The applicant enlisted in the Regular Army on 7 April 1993 for 3 years. He was assigned to Fort Benning, GA for one station unit training.

b. The service record shows the applicant did not complete initial entry training and was not awarded a military occupational specialty.

c. The applicant's separation packet, consisting of a DA Form 4707 (Entrance Physical Standards Board (EPSBD) Proceedings), is not available for review. This form would have shown the following:

- a diagnosis by a medical provider of an EPTS (existed prior to service) medical condition
- a recommendation by the examining medical provider of separation for failure to meet medical procurement standards of Army Regulation (AR) 40-501 (Standards of Medical Fitness), chapter 2
- approval by the medical approving authority of the findings shown on the DA Form 4707
- counseling, acknowledgement, and understanding by the applicant of his/her rights, including requesting discharge without delay
- recommendation by the unit commander and approval of discharge by the discharge authority

e. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged on 1 July 1993 under the provisions of AR 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-11, by reason of failure to meet procurement medical fitness standards and his service was uncharacterized. He completed 2 months and 25 days of net active service and was not awarded a military occupational specialty.

4. By regulation (AR 635-200), enlisted Soldiers are considered to be in an entry-level status when they are within their first 180 days of active duty service.

5. On 10 January 2023, the Board considered his request to change his characterization of service from uncharacterized to honorable. 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 Board noted that the applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing. However, his DD Form 214 shows that he was discharged on 1 July 1993, while still in entry level status, under AR 635-200, paragraph 5-11, due to failing to meet procurement medical fitness standards and his service was uncharacterized. He completed 2 months and 25 days of active service and was not awarded a military occupational specialty. 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 his separation processing commenced. As a result, his service was appropriately described as "uncharacterized" in accordance with governing regulations.

6. 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 again applying to the ABCMR in essence requesting a referral to the Disability Evaluation System (DES). He states:

“Reason for Discharge as did not meet procurement Med fitness. However, I was advised that I was discharge due to degenerative arthritis by Physician after injuring my left ankle during Basic Training, which was the reasoning for my discharge. I never had a physical disability that prohibited me from preforming activities during basic training.

I also passed an additional physical Exam from MEPS, prior to been sent to the VA, were the doctor stated I had a disability but didn't qualify for disability. Due to this decision, I couldn't serve my country nor receive any Veteran benefits. I'm hoping to get my discharge status updated and correct so that I can receive such benefits.”

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 for the period of Service under consideration shows the then Army National Guard Soldier entered the regular Army on 7 April 1993 and was discharged 1 July 1993 under authority provided by paragraph 5-11 of AR 635-200, Personnel Separations – Enlisted Personnel (17 September 1990): Separation of personnel who did not meet procurement medical fitness standards.

d. This request was previously denied by the ABCMR on 10 January 2023 (AR20220005138). Rather than repeat their findings here, the board is referred to the record of proceedings for that case. This review will concentrate on the new evidence submitted by the applicant.

e. No documentation was submitted with the case other than the DD form 293 requesting discharge review from the ADRB.

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

g. The only encounter in the electronic medical records is a radiologist's report of a 3-view right ankle series obtained on 4 April 1998 which states "Mild degenerative disease of the tibiotalar joint (ankle joint)." There are no additional encounters with the DoD or VA, and there are no entries on the applicant's medical problem list.

h. It is the opinion of the ARBA Medical Advisor that a referral of his case to the DES remains unwarranted.

BOARD DISCUSSION:

The Board carefully considered the applicant's request, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of requests for changes to discharges. The Board found no new evidence that would support a finding different than the determination made in the first consideration of this case. There is no evidence of error in the applicant's discharge processing. Further, the evidence confirms the applicant was an entry-level Soldier when he was discharged and his service was uncharacterized in accordance with the governing regulation. The Board determined the applicant's uncharacterized service is not in error or unjust.

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 that the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20220005138 on 10 January 2023.

4/15/2024

X

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. Army Regulation 635-200 (Personnel Separations) sets forth the basic authority for separation of enlisted personnel.

a. Paragraph 5-11 specifically provides that Soldiers who are 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, active duty for training, or initial entry training will be separated. A medical proceeding conducted by an EPSBD, (Entrance Physical Standards Board Proceedings) 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, the condition would have permanently or temporarily disqualified the Soldier for entry into the military service had it been detected at the time of enlistment, and the medical condition does not disqualify the Soldier from retention in the service under the provisions of Army Regulation 40-501 (Standards of Medical Fitness), chapter 3. The characterization of service for Soldiers separated under this provision will normally be honorable but will be uncharacterized if the Soldier has not completed more than 180 days of creditable continuous active duty service prior to the initiation of separation action.

b. An uncharacterized separation is an entry-level separation. A separation will be described as an entry-level separation if processing is initiated while a member is in entry-level status, except when characterization under other than honorable conditions is authorized by the reason for separation and is warranted by the circumstances of the case or when the Secretary 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.

c. 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.

2. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), in effect at the time, governs the evaluation of physical fitness of Soldiers who may be unfit to perform their military duties because of physical disability. It states that according to accepted medical principles, certain abnormalities and residual conditions exist that, when discovered, lead to the conclusion that they must have existed or have started before the individual entered the military service. Examples are manifestation of lesions or symptoms of chronic disease from date of entry on active military service (or so close to that date of entry that the disease could not have started in so short a period) will be accepted as proof that the disease existed prior to entrance into active military service.

3. 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. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief based on equity, injustice, or clemency grounds, BCM/NRs 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. 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.

4. Section 1556 of Title 10, U.S. 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//