

IN THE CASE OF: ██████████

BOARD DATE: 28 March 2024

DOCKET NUMBER: AR20230008514

APPLICANT REQUESTS: correction of his record to show he was discharged due to a service-incurred medical disability.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- 13 pages of military medical records
- Department of Veterans Affairs (VA) Rating Decision and benefits letter

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's complete military service record is not available to the Board for review. His records were requested from the National Archives and Record Administration, but without success. His case is being considered based on the documents he provided.
3. The applicant states he was led to believe he would receive a medical discharge because he was hurt during training. Additionally, he is receiving service-connected disability compensation from the VA.
4. The applicant's DD Form 214 shows he was a member of the Army National Guard (ARNG), and he entered initial active duty for training on 4 May 1993.
5. The medical records provided by the applicant show, while he was attending basic combat training, he was examined due to left ankle and chronic bilateral knee pain. The records also show his knee condition existed prior to service (EPTS).

6. The applicant's DD Form 214 shows he was released from active duty, discharged as a Reserve of the Army, and transferred to his ARNG unit on 28 June 1993, under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 5-11, by reason of did not meet procurement medical fitness standard - no disability. The DD Form 214 also shows he was credited with 1 month and 25 days of active service.

7. The applicant provided a VA Rating Decision, dated 17 March 2023, showing he was granted service-connected disability compensation for the following conditions:

- right hip strain with instability
- right hip limitation of motion, extension
- right hip limitation of motion, flexion
- scars, status post left and right arthroscopy surgery

8. 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.

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 (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 was led to believe my discharge would be medical since I was hurt during training. Plus, I received service-connected disability.”

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 former Army National Guard Soldier entered active duty for training on 4 May 1993 and was discharged 28 June 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. The applicant's pre-entrance Report of Medical History and Report of Medical Examination show the applicant to be in good health. Other than mild asymptomatic pes planus (flat feet), he was without significant medical history or conditions.

e. The applicant was evaluated on 16 May 1993 for left ankle and knee pain two days after an Army Physical Fitness Test. He was evaluated by orthopedics on 28 May 1993 and diagnosed with two conditions determined to have existed prior to service: Osgood Schlatter Disease and mild right knee instability.

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

g. It is assumed the applicant was referred to an entry physical standards board (EPSBD) IAW paragraph 5-11 of AR 635-200 for these conditions determined by orthopedics to have existed prior to his entrance onto active duty. Paragraph 5-11a of AR 635-200:

h. 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 [active duty] or ADT [active duty for training] 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 [regular Army], or during ADT for initial entry training for ARNGUS [Army National Guard of the United States] and USAR [United States Army Reserve], 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.

i. EPSBD's are convened IAW paragraph 7-12 of AR 40-400, Patient Administration. This process is for enlisted Soldiers who within their first 4 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.

Given his separation authority, it is implicit the EPSBD determined these conditions had existed prior to service (EPTS), failed the enlistment standards of AR 40-501, had not been permanently aggravated by his military service, and were not compatible with continued service.

j. There is no probative 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 and remains no cause for referral to the Disability Evaluation System.

k. JLV shows the applicant has multiple VA service-connected disabilities, including three related to a knee condition(s). 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; or which did not cause or contribute to the termination of their military career. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

l. An uncharacterized discharge is given to individuals on active duty who separate prior to completing 180 days of military service, or when the discharge action was initiated prior to 180 days of service. For the reserve components, it also includes discharges prior to completing initial entry training (IET). There are two phases - Basic Combat Training (BCT) and Advanced Individual Training (AIT). Because the applicant did not complete BCT, he was in an entry level status at the time of his discharge and so received an uncharacterized discharge. This type of discharge does not attempt to characterize service as good or bad. Through no fault of his own, he simply had medical conditions which were, unfortunately, not within enlistment standards.

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

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted.
2. The Board concurred with the conclusion of the ARBA Medical Advisor that the evidence does not demonstrate that the applicant had any conditions that would have been a basis for his referral to the Disability Evaluation System to determine if he should be retired or discharged with severance pay due to disability. Based on a preponderance of the evidence, the Board determined the applicant's discharge due to not meeting procurement medical fitness standards was 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 the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

X [Redacted Signature]

CHAIRPERSON

[Redacted Title]

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 635-200 sets forth the basic authority for the separation of enlisted personnel. Paragraph 5-11, of the regulation in effect at the time, 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 or active duty training for initial entry training, may be separated. Such conditions must be discovered during the first 6 months of the member's initial entrance on active duty. Such findings will result in an Entrance Physical Standards Board. This board must be convened within the Soldier's first 6 months of active duty. Medical proceedings, regardless of the date completed, must establish that a medical condition was identified by an appropriate military medical authority within 6 months of the Soldier's initial entrance on active duty that:

a. Would have permanently or temporarily disqualified the Soldier for entry into the military service or entry on active duty or active duty training for initial entry training had it been detected at that time.

b. Does not disqualify the Soldier for retention in the military service per Army Regulation 40-501 (Standards of Medical Fitness), chapter 3.

3. 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.

4. Title 38, Code of Federal Regulations, Part IV, is the VA 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/her 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.

5. 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 ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//