

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 5 March 2024

DOCKET NUMBER: AR20230008623

APPLICANT REQUESTS: correction of his DD Form 2808 (Report of Medical Examination), dated 4 October 2019, to show he was diagnosed with pes planus instead of pes cavus.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 2808, dated 4 October 2019
- Department of Veterans Affairs (VA) Rating Decision (page 5 of 7)

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 was diagnosed with flat feet during his expiration term of service (ETS) medical examination. The medical examiner made a clerical error on the form by circling in item 35 (Feet (Continued) Circle Category) the entries Pes Cavus – Mild – Asymptomatic and by writing in item 44 (Notes) the entry "mild pes cavus, asymptomatic" instead of "mild pes planus, asymptomatic." During his VA Compensation and Pension examination, the medical examiner diagnosed him with flat feet, but he was denied service-connected disability compensation by the VA due to the clerical error on his DD Form 2808.
3. The applicant enlisted in the Regular Army on 18 July 2016.
4. The applicant provided a DD Form 2808 showing he underwent a medical examination on 4 October 2019 for the purpose of ETS. The form also shows the medical examiner circled in item 35 the entries Pes Cavus – Mild – Asymptomatic and wrote in item 44 the entry "mild pes cavus, asymptomatic."

5. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was released from active duty and transferred to the U.S. Army Reserve (USAR) on 18 December 2019, after completing 3 years, 5 months and 1 days of active service.

6. The applicant's record shows he is a current member of the USAR Control Group (Annual Training).

7. The applicant provided a VA rating decision (page 5 of 7) showing he was denied service connection for bilateral flatfoot because his treatment records do not contain complaints, treatment, or diagnosis for this condition.

8. 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 his military health records be modified to show he had pes planus and not pes cavus as documented on his separation health examination.

c. The Record of Proceedings details the applicant's service and the circumstances of the case.

d. Review of the applicant's clinical encounters in the EMR shows the applicant was treated for a laceration on his right ear and bilateral keratoconjunctivitis, an inflammatory process that involves both the conjunctiva and the superficial cornea. The remainder of the limited encounters were administrative, e.g., immunizations, hearing examinations, etc. There are no lower extremity related encounters. As such, there is no evidence upon which to base a correction of his military health records.

e. The Privacy Rule, part of the Health Insurance Portability and Accountability Act (HIPAA), gives patients, with few exceptions, the right to inspect, review, and receive a copy of their medical records and billing records that are held by health plans and health care providers covered by the Privacy Rule. This includes the ability to request corrections or amendments to these records when a patient believes information in their medical or billing record is incorrect.

f. The Privacy Rule provides individuals with this right to have their protected health information (PHI) amended in a manner that is fully consistent with the Correction Principle in the Privacy and Security Framework (See 45 C.F.R. § 164.526). The health care provider or health plan must respond to this request, and if it created the information, it must amend inaccurate or incomplete information. If the provider or plan does not agree to the request, the patient has the right to submit a statement of disagreement that the provider or plan must add to the record.

g. It is the recommendation of the ARBA medical advisor the applicant's request be denied and he be encouraged to seek to correct his medical record utilizing the process outlined in HIPAA.

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 applicant contends his military health records should be modified to show he had pes planus and not pes cavus as documented on his separation health examination.

a. The Board reviewed and agreed with the medical reviewer's finding that there is no evidence upon which to base a correction of his military health records. The HIPAA Privacy Rule gives patients, with few exceptions, the right to inspect, review, and receive a copy of their medical records and billing records that are held by health plans and health care providers covered by the Privacy Rule. This includes the ability to request corrections or amendments to these records when a patient believes information in their medical or billing record is incorrect.

b. The Privacy Rule provides individuals with this right to have their protected health information (PHI) amended in a manner that is fully consistent with the Correction Principle in the Privacy and Security Framework. The health care provider or health plan must respond to this request, and if it created the information, it must amend inaccurate or incomplete information. If the provider or plan does not agree to the request, the patient has the right to submit a statement of disagreement that the provider or plan must add to the record. The applicant is advised to seek a correction to his medical record utilizing the process outlined in HIPAA.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : 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.²

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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 40-66 (Medical Records Administration and Healthcare Documentation) sets policies and procedures for the preparation, disposition, and use of Army electronic and paper medical records and other healthcare documentation. The regulation states in:

a. Paragraph 1-5 (Background), the purpose of a medical record is to provide a complete medical and dental history for patient care, medicolegal support (for example, reimbursement and tort claims), research, and education. A medical record also provides a means of communication, where necessary, to fulfill other Army functions (for example, identification of remains).

b. Paragraph 3-4e (Correction to Entries), to correct an entry, a single line is drawn through the incorrect information, and it is noted as "error," then dated and initialed. This information must remain readable. Deletion, obliteration, or destruction of medical record information is not authorized. The new information is then added, with the reason for the change (for example, "wrong patient's chart"), the date, and signature (with title) of the person making the change. Electronic corrections to entries must show a complete audit trail.

b. Paragraph 3-4f (Amendment to Medical Records), under the Health Insurance Portability and Accountability Act (HIPAA), individuals have the right to request an amendment or correction to their protected health information (PHI). Medical treatment facilities (MTF) will have procedures in place to address this issue. MTFs may deny any individual's request for amendment, if they determine that the PHI that is subject to the request:

(1) Was not created by the covered entity, unless the individual provides a reasonable basis to believe that the originator of PHI is no longer available to act on the requested amendment.

(2) Would not be available for inspection under Department of Defense (DoD) Instruction 6025.18-R (HIPAA Privacy Rule Compliance in DoD Health Care Programs)

(3) Is accurate and complete.

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

//NOTHING FOLLOWS//