

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 March 2024

DOCKET NUMBER: AR20230008876

APPLICANT REQUESTS, in effect, correction of his DD Form 214, Certificate of Discharge or Release from Active Duty, to show -

- he was discharge due to a disability
- the applicable separation program designator (SPD) code for a disability discharge

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

- DD Form 149, Application for Correction of Military Record
- Applicant's Statement
- DD Form 214

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, that while in Basic Combat Training (BCT) he suffered an injury to his left foot which required stiches. He also suffered a severe asthma attack and was taken to the Fort Dix, NJ Military Hospital for treatment. He contends that while in the hospital two commissioned officers informed him that he would be honorably discharged under the provisions of Army Regulation (AR) 635-200, Personnel Separations-Enlisted Personnel, paragraph 5-9, Discharge of Personnel Who Did Not Meet Procurement Medical Fitness Standards, and SPD code JFT. He contends that his injury was a direct result of his participation in BCT and he should have been medically discharged.

3. On 21 June 1977, the applicant underwent an entrance physical examination for entry into the Regular Army. The examining medical officer did not note any additional defects and found the applicant qualified for military service.

4. The applicant enlisted in the Regular Army on 31 August 1977.
5. His record contains a Standard Form 93, Report of Medical History, which shows the applicant underwent a "Special" examination on 30 September 1977 as part of medical board proceedings. The applicant noted wearing glasses to correct his vision, eye trouble, and hay fever.
6. On 7 October 1977 –
 - a. The applicant underwent a separation physical examination as part of his appearance before a Medical Evaluation Board (MEB). The Standard Form 88, Report of Medical Examination, shows the medical officer indicated the applicant had an abnormality in the lungs and chest, specifically bronchial asthma. The applicant was found to be qualified for separation.
 - b. He appeared before a MEB at Fort Dix, NJ to evaluate his bronchial asthma. The Board found him medically fit by current medical fitness standards. His condition was found to have existed prior to service (EPTS) and was not in the line of duty. The Board further recommended he be separated from the military service under the provisions of AR 635-200, paragraph 5-9.
7. The findings and recommendation of the medical board were approved on 11 October 1977.
8. On 17 October 1977, the separation authority approved the applicant's discharge under the provisions of AR 635-200, paragraph 5-9.
9. The applicant was honorably discharged on 20 October 1977, under the provisions of AR 635-200, paragraph 5-9. He was credited with completing 1 month and 20 days of net active service this period.
10. The record is void of medical documentation related to a foot injury.
11. 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.
12. 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 referral to the Disability Evaluation System. He states through counsel:

“While in basic training, I suffered a Left foot injury which required laceration and stitches. I also suffered a severe asthma attack and was taken to the hospital on base at Fort Dix, New Jersey. While in the hospital two commissioned officers came by my bedside and advise me that I would be discharged honorably. The authority and reason Code given on my DD 214 is AR 635-200 Para 5-9 SPD JFT. I am requesting that this code be changed to a medical discharge because of a direct result of my active participation in basic training for the United States Army.”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. The applicant’s DD 214 shows he entered the regular Army on 31 August 1977 and was honorably discharged on 20 October 1977 under the authority provided in paragraph 5-9 of AR 635-200, Personnel Separations – Enlisted Personnel (30 March 1976): Discharge of personnel who did not meet procurement medical fitness standards.

d. The applicant was separated under authority provided by paragraph 5-9 of AR 635-200:

“Individuals who were not medically qualified under procurement medical fitness standards when accepted for induction or initial enlistment will be discharged when a medical board, regardless of the date completed, establishes that a medical condition was identified by appropriate military medical authority within 4 months of the member's initial entrance on active duty or active duty for training under the Reserve Enlistment Program of 1963 which-

(1) Would have permanently disqualified him for entry into the military service had it been detected at that time; and

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

e. No evidence of a foot injury was submitted with the documentation. Given the period of service under consideration, there are no encounters in AHLTA and no documents in iPERMS.

f. The applicant's pre-entrance Report of Medical History and Report of Medical Examination show he was in good health, without significant medical history or conditions except for poor vision.

g. A 31 August 1977 medical summary shows the applicant was evaluated for and found to have pre-service asthma:

"HISTORY OF PRESENT ILLNESS: This patient has history of asthma characterized by wheezing and shortness of breath. He has been seen by physicians prior to entering the service for treatment of this problem.

PHYSICAL EXAMINATION: Other than evidence of wheezing on auscultation of the lungs, physical findings of the respiratory system were unrewarding ...

HOSPITAL COURSE AND PRESENT CONDITION: The patient has clinical evidence of asthma which existed-prior to his entrance into the service. He does not desire to remain in the service. MHBA 1

DIAGNOSIS: Asthma, bronchial-treated, unimproved. LOD [Liner of Duty]: No EPTS NSA [Existed prior to service, Not service aggravated]

RECOMMENDATION: The patient was unfit for induction UP AR 40-501, 2-26 (b). He is fit for retention UP AR 40-501, 3-25 (a). He is eligible to apply for administrative separation UP AR 635-200, Para 5-9. He is medically cleared for separation from the service."

h. It is the opinion of the ARBA Medical Advisor that neither a change in the authority paragraph and/or narrative reason for his discharge nor a referral of his case to the Disability Evaluation System is 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, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising official finding insufficient evidence to support neither a change in the applicant's separation code, narrative reason for his discharge nor a

referral of his case to the Disability Evaluation System is warranted. The Board noted the opine which found no evidence of a foot injury being submitted with the documentation. The Board agreed, based on the preponderance of evidence the applicant's contentions for correction to his discharge due to a disability and amending his separation program designator (SPD) code for a disability discharge is without merit and relief is 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.

X [Redacted Signature]

CHAIRPERSON

[Redacted Name]

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 Army Board for Correction of Military Records (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 (AR) 635-200, Personnel Separations-Enlisted Personnel, sets forth the policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

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 5-9, then in effect, provided the policy and outlined the procedures for separating individuals who did not meet medical fitness standards. This regulations, states, individuals who were not medically qualified under procurement medical fitness standards when accepted for induction or initial enlistment will be discharged when a medical board, regardless of the date completed, establishes that a medical condition was identified by appropriate military medical authority within 4 months of the member's initial entrance on active duty or active duty for training under the Reserve Enlistment Program of 1963 which would have permanently disqualified him for entry into the military service had it been detected at that time; and does not disqualify him for retention in the military service under the provisions of chapter 3, AR 40-501.

3. AR 635-5-1, Personnel Separations-Separation Program Designators (SPD), lists the specific authorities – regulatory, statutory, or other directive – and reasons for separation from active duty, active duty for training, or full-time training duty. The SPD code “JFT” is the appropriate code for Soldiers involuntarily separated for failure to meet established physical standards (no disability).

4. 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 Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//