

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 April 2024

DOCKET NUMBER: AR20230009604

APPLICANT REQUESTS: Correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show he was honorably discharged. Additionally, he requests 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)

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 his back was injured so bad that he had no choice but to get out. He would like to use his G.I. Bill for school.
3. The applicant enlisted in the Regular Army on 17 August 2006. He reported to Fort Knox, KY, for completion of initial entry training. His service record indicates he did not complete his initial entry training.
4. DA Form 3349 (Physical Profile), dated 16 October 2006, shows he was placed on a temporary profile for low back pain.
5. A DA Form 4707 (Entrance Physical Standards Board (EPSBD) Proceedings), dated 1 November 2006, shows the applicant had a chronic condition for years before entry on active duty. The pain is described as sharp pain that runs down the upper portion of the legs and lower part of the back. His pain has been exacerbated since being in military service and training. His MRI [magnetic resonance imaging] dated 22 September shows manifestation of disks degenerations. Waiver was not recommended. It was determined that he did not meet retention standards.

6. The applicant acknowledged the EPSBD findings on 7 November 2006 and further acknowledged that he had been advised that legal counsel from an Army attorney was available to him or he could consult civilian counsel at his own expense. He could request discharge from the Army without delay or request retention on active duty. He concurred with the proceedings and requested discharge from the Army without delay.

7. The applicant's commander recommended the applicant's separation from service on 13 November 2006. The separation authority approved the recommendation on 14 November 2006 and directed the applicant's separation under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 5-11, by reason of failure to meet procurements of medical fitness standards.

8. Accordingly, the applicant was discharged on 21 November 2006, under the provisions of Army Regulation 635-200, paragraph 5-11, by reason of failed medical/physical/ procurement standards. He was credited with 3 months and 5 days of net active service this period. His DD Form 214 confirms his service was uncharacterized, with separation code JFW and reentry code 3. He was not awarded a military occupational specialty.

9. Soldiers are considered to be in an entry-level status when they are within their first 180 days of active duty service.

10. 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 21 November 2006 uncharacterized discharge and, in essence, a referral to the Disability Evaluation System (DES). He states through counsel:

“I would like my discharge upgraded because I had to separate because of an injury while in the military. I would like to use my GI Bill for school. My back was injured so bad that I had no choice but to opt out.”

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 17 August 2006 and was discharged on 21 November 2006 under provisions provided by paragraph 5-11 of AR 635-200, Active Duty Enlisted Administrative Separations (6 June 2005): Separation of personnel who did not meet procurement medical fitness standards.

d. Paragraph 5-11a and 5-11b 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 [active duty] or ADT [active duty for training] for initial entry training, may be separated. Such conditions must be discovered during the first 6 months of AD. Such findings will result in an entrance physical standards board [EPSBD]. This board, which must be convened within the soldier’s first 6 months of AD, takes the place of the notification procedure (para 2–2) required for separation under this chapter.

b. 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 AD for RA or during ADT for initial entry training for ARNGUS and USAR that—

(1) Would have permanently or temporarily disqualified the soldier 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 the soldier for retention in the military service per AR 40–501 [Standards of Medical Fitness], chapter 3. As an exception, soldiers with existed prior to service (EPTS) conditions of pregnancy or HIV infection (AR 600–110) will be separated.”

e. The first clinical document in the EMR is a radiologist’s report for a set of lumbar spine radiographs obtained on 30 August 2006. He reported “minimal disc narrowing to the L5-S1 disc space” and “minimal to mild dextroscoliosis.”

f. The first provider encounter in the EMR is dated 11 September 2006:

The Patient is a 19-year-old male.

In week 03/09 training, was seen 30 August for same and given profile x 06 days. Pt [patient] was given profile over weekend for 02 additional days. Please see hard copy of previous note. Pt states he is taking Motrin. Midline lower back pain worse with movement.

g. The provider diagnosed the applicant with "Lower Back Sprain," provided him with a prescription for tramadol (a mild narcotic), extended his temporary profile, and referred him to physical therapy. When seen in follow-up at physical therapy on 22 September 2006, he was complaining of increased back pain with wear of the ruck sack and the provider ordered an MRI. The radiologist's impression for this study: "Manifestations of disk degeneration at the lower two lumbar interspaces. Most notable is an inferiorly migrated extrusion at L4-5 causing mild canal stenosis."

h. Conservative treatment failed to improve the applicant's symptoms and he was referred to orthopedics where he was evaluated on 17 October 2006. The provider documented "Chronic low back pain prior to entry of service that has been worsened by training for past 6 week. Has not gotten better despite 4 weeks of rest. Activity aggravates and rest alleviates." The provider diagnosed the applicant with a herniated lumbar disc and he was referred to an Entry Physical Standards Board (EPSBD) for this condition under provisions provided in paragraph 5-11 of AR 635-200.

i. 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.

j. From the applicant's 31 October 2006 Entry Physical Standards Board (EPSBD) Proceedings (DA Form 4707) prepared by orthopedics:

"HISTORY OF PRESNET ILLNESS: The Soldier has had a chronic condition for years before entry onto active duty. Activity aggravates the pain. Rest alleviates the pain. The pain is described as sharp pain that runs down the upper portion of the legs and lower part of the back ... He had back pain but pain has been exacerbated since being in the military service and training ...

DIAGNOSIS: Lower back pain

RECOMMENDATIONS: This Soldier fails to meet medical procurement standards in accordance with AR 40-501, chapter 2-33g. He is referred to his Command for further adjudication."

k. Paragraph 2-33g of AR 40-501, Standards of Medical Fitness (29 August 2003), states "Ruptured nucleus pulposus, herniation of intervertebral disk or history of operation for this condition" is a cause for rejection for appointment, enlistment, and induction.

l. The board determined this condition had existed prior to service, had not been permanently service aggravated, failed the medical procurement standards in chapter 2 of AR 40-501, and so recommended he be discharge due to this preexisting condition. On 7 November 2006, the applicant concurred with the board's findings selecting and initialling the first of four options: "I concur with these proceedings and request to be discharged from the US Army without delay."

m. 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. 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.

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

BOARD DISCUSSION:

1. The Board determined the evidence of record 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.

2. 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 was separated for a pre-existing condition under the provisions of chapter 5 of AR 635-200, due to failing medical/physical/ procurement standards. He was credited with 3 months and 5 days of net active service this period. He did not complete initial entry training and was not awarded an MOS. His service was uncharacterized. 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. The Board reviewed and agreed with the medical reviewer's finding that there is no evidence the applicant had a medical condition or injury which would have failed the medical retention standards of chapter 3, AR 40-501 prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge. The Board determined that a discharge upgrade is unwarranted.

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.

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

3. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. 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. Army Regulation 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 provided that 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 entrance on active duty, active duty for training, or initial entry training would be separated. 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 under the provisions of Army Regulation 40-501 (Standards of Medical Fitness).

e. 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. An uncharacterized discharge is neither favorable nor unfavorable; in the case of Soldiers issued this characterization of service, an insufficient amount of time would have passed to evaluate the Soldier's conduct and performance.

//NOTHING FOLLOWS//