

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 April 2024

DOCKET NUMBER: AR20230009778

APPLICANT REQUESTS:

- correction of his records to show he was discharged due to a service-incurred medical disability
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 2808 (Report of Medical Examination)
- DD Form 2807-1 (Report of Medical History)
- DA Form 4856 (Developmental Counseling Form)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Department of Veterans Affairs (VA) certification of receipt of service-connected disability compensation 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 states he could not perform his military duties due to his medical condition. He was not aware of his physical disability until his back was loaded with military gear.
3. A DD Form 2808 shows the applicant underwent a medical examination on 4 June 2015 for the purpose of enlistment. Section 74a of the form shows he was found qualified for enlistment.
4. The applicant enlisted in the Regular Army on 26 January 2016.

5. The applicant's records contain a Sick Slip showing he was examined at the Troop Medical Clinic on 4 February due to back pain.
6. On 4 February 2016, an Entrance Physical Standards Board (EPSBD) found the applicant medically unfit for enlistment in accordance with Army Regulation 40-501 (Standards of Medical Fitness) due lumbar spine minimal scoliotic deformity of lumbar spine convex to right (existed prior to service (EPTS)).
7. A DA Form 4856 shows he was counseled on 5 February 2016 and informed that he was being recommended for separation from the Army under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 5-11, due to failure to meet procurement medical fitness standards for an EPTS condition (scoliosis).
8. On 9 February 2016, the applicant acknowledged he had been informed of the medical findings. He also acknowledged he understood that legal advice of an attorney employed by the Army was available to him or that he could consult civilian counsel at his own expense. He further acknowledged he understood that he could request to be discharged without delay or to request retention on active duty. If retained, he could be involuntarily reclassified into another military occupational specialty based upon his medical condition. He concurred with the proceedings and requested to be discharged from the U.S. Army without delay.
9. On 9 February 2016, the separation authority approved the recommendation and directed the applicant's discharge from the Army.
10. The applicant's DD Form 214 shows he was discharged on 16 February 2016 under the provisions of Army Regulation 635-200, paragraph 5-11, by reason of "failed medical/physical/procurement standards." (Separation Code JFW, Reentry Code 3) The DD Form 214 also shows he completed 21 days of active service and a character of service of uncharacterized.
11. The applicant provided a VA certification of receipt of service-connected disability compensation letter showing he is receiving service-connected disability compensation for undisclosed condition(s) with a combined 60% disability rating.
12. MEDICAL REVIEW:
  1. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy

Viewer (JLV). The applicant had several requests. The applicant requests for his uncharacterized discharge to be changed to medical disability.

2. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The applicant entered the Regular Army 26Jan2016. He was discharged 16Feb2016 under provisions of AR 635-200 para 5-11 for failure to meet medical/physical/procurement standards. His service was designated as uncharacterized.

3. Pertinent medical records and related

a. 01Jun2015 Report of Medical History (DD Form 2807-1) and exam (DD Form 2808) for enlistment did not reveal any relevant findings—the spine exam was normal.

b. 04Feb2016 TMC Reception Station. The applicant stated he felt his back pain was related to playing rugby about 3 years prior. He did not seek care at the time. He had lower back pain on the right. He did not have lower left back pain. Upper back pain or back pain in the thoracic region was not mentioned.

c. 04Feb2016 Entrance Physical Standards Board Proceedings. The narrative indicated the applicant complained of right-side lower back pain which was aggravated by carrying his duffle bag and standing for long periods. There was no reported history of injury/trauma. The exam showed full active ROM (range of motion). There was pain with flexion. No signs/symptoms of radiculopathy were documented: Straight leg testing was negative and there were no complaints of pain radiating down either leg. The lumbosacral spine x-ray showed minimal scoliotic curvature—there were no findings of acute bony injury. Diagnosis: Lower Back Pain. The determination that the condition existed prior to service (EPTS) was made in the second week of his initial enlistment.

d. 17Feb2016 Enlisted Record Brief showed PULHES 111111.

e. 10Aug2016 thoracic MRI showed exaggerated kyphosis, superior and inferior Schmorl's nodes and mild anterior wedging at the T7, T8, and T9 levels which was suggestive of Scheuermann's disease, especially in the setting of back pain. There were also tiny right paracentral disc herniations at T7-T8 and T8-T9. The lumbar spine MRI was unremarkable. This MRI exam completed 6 months after discharge from service, was not found in the applicant's record. These results were reported in the 23Nov2016 Back Conditions DBQ.

f. 23Nov2016 Back Conditions DBQ. The applicant reported daily low back pain which could be severe, approximately 3-4 days a week. The pain was at rest and with ROM movements. The VA examiner diagnosed Scheuermann's Disease. This is a

developmental condition involving changes in the disc and vertebra that leads to hyperkyphosis (hunchback). The thoracic spine is the most common region involved, and back pain is a common manifestation (Mansfield JT, Bennett Matthew, Scheuermann Disease National Library of Medicine).

g. 22Aug2022 Mental Disorders DBQ. After discharge he worked odd jobs for a year or so (e.g. upholstery, fork lift driver) and in 2018 he obtained EMT training and worked as an EMT since then. He worked 2 to 3 days weekly with shifts lasting 8 to 12 hours. He stated he would work more but his back and neck condition impeded working more. This VA exam was completed 6.5 years after discharge from service.

h. 03Feb2023 Lumbosacral spine film showed no bony or soft tissue abnormality.

i. 04Oct2023 Thoracic spine showed slight levocurvature of the mid to lower thoracic spine and very mild degenerative disc disease.

4. Of relevance, JLV search showed the applicant was service connected by the VA for Lumbosacral Spine Strain 20%; Paralysis of Sciatic Nerve 10%; and Paralysis of Sciatic Nerve 10%, effective 18Jan2022. Review of records showed the applicant had a developmental back condition that was commonly associated with back pain. Review of literature concerning individuals with Scheuermann Disease indicated they reported lower quality of the life and reported poorer general health than controls, and risk for disabilities in the activities of the daily living was more prevalent. The applicant reported a history of back pain during rugby 3 years prior without report of specific injury/trauma; and he experienced exacerbation of back pain while in service, also without report of specific injury/trauma. Based on review of available records, in the ARBA Medical Reviewer's opinion, medical evidence was insufficient to support that his military service permanently worsened the Lower Back Pain condition likely associated with his Scheuermann's disease, beyond its natural progression. Objective evidence in support of this conclusion is the following: Despite the applicant's complaint of low back pain while in service, the lumbosacral spine film was negative for acute soft or bony changes in February 2016; the lumbar MRI in August 2016 was reportedly unremarkable; and the lumbosacral spine film in February 2023 did not show significant chronic changes or acute soft or bony changes. In addition, his exam in February 2016 showed full active ROM. The Lower Back Pain condition was determined EPTS, and not permanently service aggravated and therefore did not warrant entry into the Disability Evaluation System.

#### 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 failure to meet medical/physical/procurement standards, due to a preexisting medical condition. He completed 21 days of active service, and he was not awarded an MOS. His service was designated as uncharacterized. The Board reviewed and agreed with the medical reviewer's finding that the lower back pain condition was determined EPTS (existed prior to service), and not permanently service aggravated and therefore did not warrant entry into the Disability Evaluation System.

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.



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 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 active duty. Such findings will result in an EPSBD. 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 for Regular Army Soldiers that 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, but does not disqualify the Soldier for retention in the military service per Army Regulation 40-501, chapter 3.

3. Army Regulation 15-185 (ABCMR) provides Department of the Army policy, criteria, and administrative instructions regarding an applicant's request for the correction of a military record. Paragraph 2-11 states 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. 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//