

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 June 2024

DOCKET NUMBER: AR20230010432

APPLICANT REQUESTS:

- honorable physical disability discharge in lieu of uncharacterized administrative discharge due to failed medical/physical procurement standards, or
- eligibility for enlistment and/or GI Bill benefits

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:

a. He was misinformed upon agreeing to separate from the service due to an injury acquired during One Station Unit Training (OSUT)/Advanced Individual Training (AIT), that he would be permitted to reenlist in the Army approximately 1 year after his discharge.

b. He learned that he was denied any disability, Montgomery or Post-9/11 GI Bill benefits, and is not permitted to submit a medical waiver for review to attempt to reenlist. As such, he is requesting to either be granted a disability discharge due to injury and mental health issues directly caused by his separation, or be granted GI Bill benefits, or failing either option, be permitted the chance to reenlist after a medical review to earn benefits after a period of service to be decided by the Board.

c. This would provide a much needed sense of closure for him, relieving psychological trauma and providing either much needed educational aid or allowing for reenlistment. He has attempted to reenlist several times over the years and was denied

due to no waiver. All he wants to do is service and he will do whatever it takes to be given the chance to set things right.

3. A DD Form 2807-1 (Report of Medical History) shows on 6 December 2008, the applicant provided his medical history for the purpose of Regular Army enlistment. The only conditions he listed were a broken forearm at the age of 10 and wisdom teeth extraction at the age of 16.

4. A DD Form 4 (Enlistment/Reenlistment Document) shows the applicant enlisted in the U.S. Army Reserve (USAR) Delayed Entry Program (DEP) on 6 December 2008, for a period of 8 years, of which 5 years and 17 weeks was considered an active duty obligation and 2 years and 35 weeks would be served in the Reserve Component. He understood he would be ordered to active duty unless he reported on 13 August 2009 for enlistment in the Regular Army.

5. A physical profile is used to classify a Soldier's physical disabilities in terms of six factors or body systems, as follows: "P" (Physical capacity or stamina), "U" (Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric) and is abbreviated as PULHES. Each factor has a numerical designation: 1 indicates a high level of fitness, 2 indicates some activity limitations are warranted, 3 reflects significant limitations, and 4 reflects one or more medical conditions of such a severity that performance of military duties must be drastically limited. Physical profile ratings can be either permanent (P) or temporary (T).

6. A DD Form 2808 (Report of Medical Examination) shows the applicant underwent medical examination on 6 December 2008, for the purpose of enlistment in the Regular Army. He was found qualified for service with a PULHES of 111111. The medical examiner did not list any defects or diagnoses.

7. A DD Form 2366 (Montgomery GI Bill Act of 1984 (MGIB) – Basic Enrollment) shows the applicant signed the form on 6 December 2008, indicating he understood:

- he was automatically enrolled in the MGIB unless he exercised the option to disenroll
- he must complete 36 months of active duty service (24 months if his enlistment is for less than 36 months) before he is entitled to the current rate of monthly benefits. The MGIB provides benefits for a period of 36 months
- he must receive an honorable discharge for service establishing entitlement to the MGIB; this does not include under honorable conditions

8. The applicant's DD Form 2808 shows two additional medical inspections. A medical provider found him airborne qualified on 12 March 2009, and a medical inspection on 10 August 2009, also shows he was found qualified for enlistment.

9. The applicant's DD Form 4 shows he enlisted in the Regular Army on 10 August 2009, for a period of 5 years and 17 weeks.

10. The applicant signed a second DD Form 2366 on 12 August 2009, indicating he understood:

- he was automatically enrolled in the MGIB unless he exercised the option to disenroll
- he must complete 36 months of active duty service (24 months if his enlistment is for less than 36 months) before he is entitled to the current rate of monthly benefits. The MGIB provides benefits for a period of 36 months
- he must receive an honorable discharge for service establishing entitlement to the MGIB; this does not include under honorable conditions

11. The applicant was assigned to Fort Benning, GA for one station unit training. At some point, he was assigned to Company F, RHU (Recovery Holding Unit) awaiting discharge. [RHU is the holding unit of a basic combat training location].

13. The applicant's DA Form 4707 (Entrance Physical Standards Board (EPSBD) Proceedings) shows:

a. The applicant was in basic combat training and was identified as having an EPTS (existed prior to service) condition on 3 February 2010. His paperwork was received at WTMC for processing on 05 February 2010. Patient with chronic bilateral foot and ankle pain. Congenital foot deformity Pes Planus- mild to moderately severe in nature and most likely cause of joint instability in the ankle and foot. Based on service member's (SM) complaint of chronic pain, there is difficulty in completing basic combat and advanced individual training. Member had joint pain in foot and ankle that started after his twelfth week of training here at Fort Benning.

b. Diagnosis/Disposition: Pes Planus, is recommended that he be separated from the military service.

d. The medical approving authority approved the findings and sent to the applicant's commander. The commander counseled the Soldier.

e. The applicant indicated he had been informed of the medical findings. Additionally, the applicant understood that legal advice of an attorney employed by the Army is available to him or that he may consult civilian counsel at his own expense. He also understands that he may request to be discharged from the US Army without delay or to request retention on active duty. If retained, he may be involuntarily reclassified into another military occupational specialty based upon his medical condition. He

concurrent with these proceedings and request to be discharged from the Army without delay.

f. The company commander recommended approval. The separation authority approved the applicant's discharge from the Army.

13. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows on 25 February 2010, he was discharged under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 5-11, due to failed medical/physical procurement standards, with corresponding separation code JFW and Reentry (RE) Code 3. He was credited with 6 months and 16 days of net active service this period, he did not complete training, was not awarded a Military Occupational Specialty (MOS), and his service was uncharacterized.

13. On 15 November 2023, the applicant was requested via email to provide the ABCMR with a copy of any medical documents that support his request, but he did not respond or provide any additional documents.

14. 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/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 uncharacterized discharge and in essence, a referral to the Disability Evaluating System (DES). Failing that, he is requesting to be allowed to reenlist. He states:

"I was misinformed that upon agreeing to separate from service due to injury acquired during OSUT/AIT, that I would be permitted to reenlist approximately one year after discharge.

I learned that I was denied any disability, Montgomery/Post 9/11 GI Bills, and am not permitted to submit for medical waiver/review to attempt reenlistment. As such, I wish to either be granted disability due to injury and mental health issues directly caused by separation, or be granted GI Bill or Post 9/11 benefits, or, failing either option, be permitted the chance to reenlist after medical review and earn benefits after a period of service to be decided by the Board or other such authority."

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 10 August 2009 and received an uncharacterized discharged on 25 February 2010 under the separation authority provided by paragraph 5-11 of AR 635-200, Active Duty Enlisted Administrative Separations (17 December 2009): Separation of personnel who did not meet procurement medical fitness standards. The applicant's reentry code of 3 indicates he is eligible to reenlist with a waiver.

d. Paragraphs 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 applicant's pre-entrance Report of Medical History and report of Medical Examination show the applicant to have been in good health, without significant medical history or conditions. The examiner did annotate the applicant normal asymptomatic feet.

f. AHLTA shows the applicant was thought to have developed a stress fracture in his left foot but the bone scan was negative. He was subsequently diagnosed with "Congenital Foo Deformity – Pes Planus" on 13 November 2009. with bilateral thigh pain on 19 May 2016 and left knee pain on 25 May 2016. Despite conservative treatment, he was unable to return to full duty/training was referred to an Entry Physical Standards Board (EPSBD) IAW paragraph 5-11 of AR 635-200.

g. 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.

h. From the Entrance Physical Standards Board (EPSBD) Proceedings (DA form 4707) dated 4 February 2010:

“This 18-year-old male in his 26 week of his enlistment training of BCT [Basic Combat Training] was identified as having an EPTS condition on 3 February 2010. His paperwork was received at WTMC for processing on 05 Feb 10.

b. SUBJECTIVE FINDINGS: Patient with chronic bilateral foot and ankle pain. Congenital foot deformity - Pes Planus - mild to moderately severe in nature and most likely cause of joint instability in the ankle and foot. Based on service member's (SM) complaint of chronic pain, there is difficulty in in completing BCT/AIT [Advanced Individual Training]. Continuously rolls ankles during marching with or without ruck sack.

SM had joint pain in foot and ankle that started after his twelfth week of training here at Ft. Benning. Treated with profiles, NSAIDS, and physical therapy without improvement. Did not disclose at MEPS.

Diagnosis: Pes Planus

Disposition: It is recommended that he be separated from the military service.

i. The Board concluded the applicant's medical condition had existed prior to service, failed medical enlistment standards, was not permanently aggravated by his service, and was not compatible with continued service. On 16 February 2010, the applicant concurred with the board's findings, both marking and initialing the option “I concur with these proceedings and request to be discharged from the US Army without delay.”

j. There are no mental health encounters in the EMR or mental health conditions listed on his medical problem list. JLV shows he is not registered with the VA.

k. The DES compensates an individual only for service incurred condition(s) which have been determined to disqualify him or her from further military service. 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. These roles and authority were

granted by Congress to the Department of Veterans Affairs and are executed under a different set of laws.

l. 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. 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.

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:

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.

a. The applicant's separation packet is not available for review. However, other evidence shows the applicant was separated under chapter 5-11 of AR 635-200, due to failing medical/physical/ procurement standards (pre-existing condition). He was credited with 6 months and 16 days of active service. He did not complete initial entry training and was not awarded an MOS. His service was uncharacterized. The Board found no error or injustice in his available separation processing. 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. Additionally, the Board reviewed and agreed with the medical reviewer's finding insufficient evidence to support the applicant had a condition or experience that mitigates his discharge. Therefore, the Board determined that a change to his uncharacterized discharge to a medical discharge is unwarranted.

b. The evidence shows the applicant signed a DD Form 2366 (Montgomery GI Bill Act of 1984 (MGIB) – Basic Enrollment) indicating he understood: he must complete 36 months of active duty service (24 months if his enlistment is for less than 36 months) and he must receive an honorable discharge for service establishing entitlement to the MGIB; this does not include under honorable conditions. In any case, GI Bill benefits are administered by the Department of Veterans Affairs (VA). The applicant is advised to contact the VA regarding GI Bill benefits.

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.

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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. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRBs) and Boards for Correction of Military/Naval Records (BCM/NRs) when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress



disorder (PTSD), traumatic brain injury (TBI), sexual assault, or sexual harassment. Boards are to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based, in whole or in part, on those conditions or experiences.

3. Title 10, U.S. Code, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system (DES) and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 (Discharge Review Board (DRB) Procedures and Standards) and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in a Medical Evaluation Board (MEB); when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an Military Occupational Specialty (MOS) Medical Retention Board (MMRB); and/or they are command-referred for a fitness-for-duty medical examination.

b. The disability evaluation assessment process involves two distinct stages: the MEB and Physical Evaluation Board (PEB). The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the severity of the disability and length of military service. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

c. The mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of his or her office, grade, rank, or rating. Reasonable performance of the preponderance of duties will invariably result in a finding of fitness for continued duty. A Soldier is physically unfit when a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

4. Army Regulation 635-40 establishes the Army Disability Evaluation System and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

a. Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in military service.

b. Soldiers who sustain or aggravate physically-unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

(1) The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

(2) The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

c. The percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Ratings are assigned from the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD). The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting, or ratable condition, is one which renders the Soldier unable to perform the duties of their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

5. Title 10, U.S. Code, section 1201, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30 percent. Title 10, U.S. Code, section 1203, provides for the physical disability separation of a

member who has less than 20 years of service and a disability rating of less than 30 percent.

6. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), sets 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 states a separation will be described as entry level with uncharacterized service if the Soldier is in an entry-level status at the time separation action is initiated.

b. Paragraph 5-11 (Separation of personnel who did not meet procurement medical fitness standards) shows 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 entrance physical standards board. This board, which must be convened within the Soldier's first 6 months of active duty, takes the place of the notification procedure required for separation.

c. 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 of active duty for Regular Army or active duty training for Army National Guard of the United States and U.S. Army Reserve that:

(1) 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 the time

(2) does not disqualify the Soldier for retention in the military service per Army Regulation 40-501, chapter 3. As an exception, Soldiers with existed prior to service conditions of pregnancy or HIV infection will be separated.

d. Section II (Terms) of the Glossary defines entry-level status for Regular Army Soldiers as the first 180 days of continuous active duty or the first 180 days of continuous active duty following a break of more than 92 days of active military service. For ARNG and USAR Soldiers, entry-level status begins upon enlistment in the ARNG or USAR. For Soldiers ordered to IADT for one continuous period, it terminates 180 days after beginning training. For Soldiers ordered to IADT for the split or alternate training option, it terminates 90 days after beginning Phase II of Advanced Individual Training.

7. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities and reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214 (Certificate of Release or Discharge from Active Duty). The SPD code JFW is to be used for Soldiers discharged under the provisions of Army Regulation 635-200, paragraph 5-11, due to failed medical/physical procurement standards.

8. The SPD/RE Code Cross Reference Table provides instructions for determining the RE Code for Active Army Soldiers and Reserve Component Soldiers. This cross reference table shows the SPD code and a corresponding RE Code. The table in effect at the time of the applicant's discharge shows SPD code JFW has a corresponding RE Code of "3"

9. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army and the Reserve Components.

a. Chapter 3 prescribes basic eligibility for prior service applicants for enlistment and includes a list of Armed Forces Reentry (RE) Codes, including Regular Army RE Codes.

- Re Code of "1" (RE-1) applies to persons qualified for enlistment if all other criteria are met
- RE-3 applies to persons ineligible for reentry unless a waiver is granted
- RE-4 applies to persons who have a nonwaiverable disqualification and are ineligible for enlistment

b. Chapter 4 states recruiting personnel have the responsibility for initially determining whether an individual meets current enlistment criteria and are responsible for processing waivers.

10. Title 38, U.S. Code, Chapter 30, The Montgomery GI Bill (MGIB), provides the eligibility requirements of the MGIB. It shows individuals must have first enlisted on or after 1 July 1985, to use the MGIB, paid the \$1,200.00 contribution, and served on active duty for a period equal to or greater than the initial enlistment period.

11. The Post-9/11 Veterans Educational Assistance Act of 2008 is described under Title V of the Supplemental Appropriations Act of 2008, Public Law 110-252, House of Representatives, 2642. In July of 2008, Congress passed a law for the Post-9/11 GI Bill that went into effect on 1 August 2009. Individuals with qualifying active duty service after 10 September 2001, those who served an aggregate period of 90 days to 36 months on active duty or served at least 30 continuous days and were discharged from active duty due to a service-connected disability, were deemed eligible for the

Post-9/11 GI Bill. The Department of Veterans Affairs (VA) is responsible for final determination of eligibility for educational benefits under this program.

12. Title 10, U.S. Code, section 1556 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.

13. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. 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.

//NOTHING FOLLOWS//