

IN THE CASE OF: ██████████

BOARD DATE: 24 April 2024

DOCKET NUMBER: AR20230010461

APPLICANT REQUESTS:

- honorable physical disability separation in lieu of uncharacterized administrative discharge due to failure to meet medical procurement standards
- personal appearance before the Board

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

- two DD Forms 149 (Application for Correction of Military Record)
- State of ██████████, Office of the Adjutant General Orders 240-40, dated 10 November 1993
- National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service), effective 15 November 1993
- Department of Veterans Affairs (VA) letter, dated 12 June 2023

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 had an accident in Basic Combat Training (BCT) where his left shoulder was partially dislocated after falling while rappelling. Afterward, his left shoulder would drop before the right shoulder while doing pushups, causing him to fail the Army Physical Fitness Test (APFT). The doctors at BCT said the Army National Guard (ARNG) would fix his shoulder and it would be fine.

b. They sent him to a doctor in ██████████, who sent the ARNG records as requested. After every APFT his shoulder would swell up like crazy and he was in extreme pain. They never even told him he was being discharged; they just mailed him a copy of his discharge. He is confused because they said they would fix his shoulder,

but they lied and never did. They just kicked him out with these issues and never helped him. If they would have fixed his shoulder, he could have done the pushups without pain and had them count on his APFT score, but the ARNG was downsizing at the time, so it was cheaper for them to not fix it and just get rid of him.

c. He wants his discharge changed to honorable medical. He later had his shoulder repaired twice now and has a VA disability rating of 80 percent, paid at the 100 percent rate. He is a shell of his former self, and his wife helps him, so he is trying to get coverage on her insurance. He has a tough time going out in public, so his wife takes him where he needs to go if he has to appear in public.

d. His service was uncharacterized because he was in the Delayed Entry Program (DEP) and never went to Advanced Individual Training (AIT), but he did go to BCT and did more than enough pushups on the APFT, yet only every fourth pushup counted because he was not breaking the plain evenly due to his shoulder injury.

3. An NGB Form 594-4 (Annex C to DD Form 4 (Enlistment/Reenlistment Document) – Split Training Option), signed and dated by the applicant on 18 December 1991, shows the Split Training Option policy applied to the applicant upon ARNG enlistment. He acknowledged:

- he must enter Initial Active Duty for Training (IADT) to undergo BCT at an active military installation
- if he failed to successfully complete BCT, he would be discharged from the ARNG and Reserve of the Army
- upon successful completion of BCT, he would be released from IADT and permitted to return to a civilian status, immediately commencing training with his assigned ARNG unit in a drilling status
- within 1 year of the last day of his separation from IADT (after successful completion of BCT) he would be required to again enter IADT to successfully complete Advanced Individual Training (AIT)
- if he were unable to successfully complete AIT during the period for which he was ordered to IADT, he agreed to remain on IADT for such additional period require to become qualified in his Military Occupational Specialty (MOS) and would accept training in an alternate MOS, if offered and remain on IADT

4. The applicant's Standard Form 88 (Report of Medical Examination) from the time of his enlistment in the ARNG is not in his available records for review.

5. A DD Form 4 shows the applicant enlisted into the ARNG on 27 March 1992, for a period of 8 years.

6. Military Entrance Processing Station (MEPS) Orders 59-8 ordered the applicant to IADT at Fort Jackson, SC, with a reporting date of 9 June 1992, for 9 weeks of BCT under the alternate (split) training program.
7. A memorandum from the Charlotte MEPS Counselor for the applicant's ARNG unit, dated 10 June 1992, informed his unit that he failed to ship for IADT, Phase I, on his 9 June 1992 ship date due to a temporary disqualification for being overweight. He was rescheduled to return on or after 16 June 1992.
8. MEPS Orders 115-7, dated 18 June 1992, amended the applicant's prior IADT order report date to Fort Jackson, SC, from 9 June 1992 to 18 June 1992.
9. A memorandum for the Chief, Troop Medical Clinic (TMC), Fort Jackson, SC, signed by the applicant on 29 July 1992, shows the applicant understood he had the option to receive a physical examination prior to his release from active duty and he declined a release from active duty physical examination, which cleared him for out processing with no further medical examination required.
10. A U.S. Army Reserve (USAR) and National Guard Liaison Counseling Form, shows:
 - a. The applicant was counseled by the ARNG Liaison on 18 August 1992, concerning his BCT incompleteness for APFT failure. He understood that upon reporting for AIT/MOS training that he must be administered an APFT and must pass it to BCT standards in order to ship to his MOS school. If he did not pass, he would be separated from the military.
 - b. The recommendation shows the applicant should have the opportunity to take another APFT upon shipping to AIT/MOS training and he understood he must pass the test before continuing his training.
11. A memorandum from the applicant's BCT unit commander to his ARNG gaining unit, dated 18 August 1992, shows:
 - a. The applicant, a split training Soldier was released from BCT as "incomplete" due to his inability to meet end of cycle APFT standards. He satisfactorily met all other requirements and was highly motivated, but he could not be "new started" due to his mandatory release date.
 - b. To receive a graduation certificate, he must be administered and successfully pass an APFT at his AIT location. BCT requirements are that a Soldier earn at least 50 points in each of the three APFT events. APFTs administered by ARNG or USAR units will not be accepted. Trainees will ship to AIT as soon as they are tested; however,

a soldier who fails to pass the BCT APFT requirements at AIT will receive an entry level discharge.

12. A Headquarters, U.S. Army Training Center and Fort Jackson Transition Point memorandum to the State [REDACTED], Adjutant General, dated 21 August 1992, shows:

- the applicant entered active duty on 18 June 1992
- he was released from active duty on 21 August 1992
- he completed BCT
- this memorandum was furnished in lieu of a DD Form 220 (Active Duty Report)

13. MEPS Orders 95-27, dated 18 May 1993, ordered the applicant to IADT for AIT with at Fort Sam Houston, TX, with a reporting date of 20 July 1993.

14. MEPS Orders 139-9, dated 22 July 1993, amended the applicant's above 18 May 1993 IADT orders to AIT, to reflect his reporting date to Fort Sam Houston, TX, as 10 August 1993, in lieu of 20 July 1993.

15. The complete facts and circumstances surrounding the applicant's discharge from the ARNG are unknown as his discharge packet is not in his available records for review.

16. State [REDACTED], Office of the Adjutant General Orders 240-40, dated 10 November 1993 discharged the applicant from the ARNG and as a Reserve of the Army effective 15 November 1993, with an assignment loss reason code of MG (Physical or mental condition failing to meet medical retention standards). His service was uncharacterized.

17. The applicant's NGB Form 22 shows he was discharged from the ARNG on 15 November 1993, under the provisions of National Guard Regulation 600-200 (Enlisted Personnel Management) paragraph 8-26f (Failure to meet medical procurement standards), with an assignment loss reason code of MG. He was credited with 1 year, 7 months, and 19 days of net service this period and his service was uncharacterized.

18. The applicant's available service records do not contain a DA Form 3349 (Physical Profile) detailing an injury incurred in BCT nor do they show:

- he was issued a permanent physical profile rating
- he suffered from a medical condition, physical or mental, that affected his ability to perform the duties required by his MOS and/or grade or rendered him unfit for military service

- he was diagnosed with a medical condition that warranted his entry into the Army Physical Disability Evaluation System (PDES)
- he was diagnosed with a condition that failed retention standards and/or was unfitting

19. The applicant provided a VA letter, dated 12 June 2023, which shows he has one or more service-connected disabilities with a combined evaluation of 80 percent. The effective date of when he became totally and permanently disabled due to his service-connected disabilities is 20 October 2022 and he is being paid at the 100 percent rate because he is unemployable due to his permanent service-connected disability.

20. The Army rates only conditions determined to be physically unfitting at the time of discharge, which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career. The VA does not have authority or responsibility for determining physical fitness for military service. The VA may compensate the individual for loss of civilian employability.

21. 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 requesting an upgrade of his uncharacterized discharge and, in essence, a referral to the Disability Evaluation System (DES). He states:

"I was released with these issues and never helped. Now I'm 80% of 100% and shell of my former self. My wife helps me so I'm trying to get her insurance. DEERS [Defense Enrollment Eligibility Reporting System] explained it in February 2023.

... My left shoulder was partially dislocated after falling while repelling. Afterwards, my left shoulder would drop before the right doing pushups causing me to fail PT tests [Army Physical Fitness Test]. The Drs at Ft Jackson said the National Guard will fix my shoulder and it will be fine. They sent me to a Dr. in [REDACTED] who sent them records as requested after every PT test my shoulder swelled up like crazy and was in extreme pain.

They never even told me I was being discharged. They mailed it to me which I never remember receiving but I have it now and I'm confused they said they would fix my shoulder and never did, they just kicked me out. Yes, I do get VA disability now at 80% paid at 100%."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His Report of Separation and Record of Service (NGB 22) for the period of service under consideration shows he entered the [REDACTED] Army National Guard ([REDACTED] ARNG) on 27 March 1992 and was discharged 15 November 1993 under authority provided by paragraph 8-26f of NGR 600-200, Personnel General – Enlisted Personnel (17 April 1989): Failure to meet medical procurement standards, AR 40-501 [Standards of Medical Fitness], chapter 2, prior to entry on IADT [Initial Active Duty for Training].

d. No medical documentation was submitted with application and his period of service predates AHLTA.

e. A 10 June 1992 memorandum states the applicant failed to ship for IADT as scheduled because he was temporarily disqualified for being overweight.

f. The applicant appears to have eventually shipped to Ft. Jackson, SC, for IADT. A memorandum shows the applicant declined "a release from active-duty physical examination" on 29 July 1992. An 18 August 1992 memorandum shows the applicant was to be released from active duty:

"The following split training soldier from your company has been released as "incomplete" from basic training due to his inability to meet End of Cycle Army Physical Fitness Test (APFT) standards:

The soldier has satisfactorily met all other requirements and is highly motivated, but he could not be newstarted due to his mandatory release date.

To receive a graduation certificate, the soldier must be administered, and successfully pass, an APFT at his Advanced Individual Training location."

g. Neither the applicant's separation packet nor documentation addressing his involuntary administrative separation was submitted with the application or uploaded into iPERMS.

h. There is no evidence the applicant had any duty incurred medical condition(s) which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System.

i. JLV shows he has a total of four VA service-connected disability ratings: PTSD (70%), Limited motion of left arm (20%), Tinnitus (10%), and 2nd degree burns (0%). However, the DES only compensates an individual for service incurred medical condition(s) which have been determined to disqualify him or her from further military service and consequently prematurely ends their career. 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 authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

j. 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. For the reserve components, it also includes discharges prior to completing initial entry training (IET). There are two phases - Basic Combat Training (BCT) and Advanced Individual Training (AIT). Because the applicant did even enter BCT, he was in an entry level status at the time of his discharge and so received an uncharacterized discharge. 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.

k. 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:

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. The governing regulation provides that a separation will be described as an entry-level separation, with service uncharacterized, if the separation action is initiated while a Soldier is in entry-level status. Upon review of the applicant's petition and available military records and medical review, the Board concurred with the advising official finding that neither a discharge upgrade nor a referral of his case to the DES is warranted.

2. The Board noted, there is no evidence the applicant had any duty incurred medical condition(s) which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge. This board is not an investigative body. The Board determined despite the absence of the applicant's

separation records, they agreed the burden of proof rest on the applicant, however, he did not provide any supporting documentation and his service record has insufficient evidence to support the applicant contentions for a honorable physical disability separation in lieu of uncharacterized administrative discharge due to failure to meet medical procurement standards.

3. The Board found the applicant credited with 1 year, 7 months, and 19 days of net service this period and did not complete his advanced individual training and was discharged from the ARNG on 15 November 1993, under the provisions of National Guard Regulation 600-200 (Enlisted Personnel Management) paragraph 8-26f (Failure to meet medical procurement standards). An uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It merely means the Soldier has not been in the Army long enough for his or her character of service to be rated as honorable or otherwise. As a result, there is no basis for granting the applicant's request for a honorable physical disability separation in lieu of uncharacterized administrative discharge due to failure to meet medical procurement standards or referral of his case to the DES. Therefore, the Board denied relief.

4. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.


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.

5/6/2024


XCHAIRPERSON


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. 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 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 (Disability 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; 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 their 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 their 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.

3. 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.

4. Army Regulation 40-501 provides information on medical fitness standards for induction, enlistment, appointment, retention, and related policies and procedures. Soldiers with conditions listed in chapter 3 who do not meet the required medical standards will be evaluated by an MEB and will be referred to a PEB as defined in Army Regulation 635–40 with the following caveats:

a. U.S. Army Reserve (USAR) or Army National Guard (ARNG) Soldiers not on active duty, whose medical condition was not incurred or aggravated during an active duty period, will be processed in accordance with chapter 9 and chapter 10 of this regulation.

b. Reserve Component Soldiers pending separation for In the Line of Duty injuries or illnesses will be processed in accordance with Army Regulation 40-400 (Patient Administration) and Army Regulation 635-40.

c. Normally, Reserve Component Soldiers who do not meet the fitness standards set by chapter 3 will be transferred to the Retired Reserve per Army Regulation 140–10 (USAR Assignments, Attachments, Details, and Transfers) or discharged from the Reserve Component per Army Regulation 135–175 (Separation of Officers), Army Regulation 135–178 (ARNG and Reserve Enlisted Administrative Separations), or other applicable Reserve Component regulation. They will be transferred to the Retired Reserve only if eligible and if they apply for it.

d. Reserve Component Soldiers who do not meet medical retention standards may request continuance in an active USAR status. In such cases, a medical impairment incurred in either military or civilian status will be acceptable; it need not have been incurred only in the line of duty. Reserve Component Soldiers with non-duty related medical conditions who are pending separation for not meeting the medical retention standards of chapter 3 may request referral to a PEB for a determination of fitness in accordance with paragraph 9–12.

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. National Guard Regulation 600-200 (Enlisted Personnel Management) prescribes the criteria, policies, processes, procedures, and responsibilities to classify, assign utilize,

transfer within and between States, provides special duty assignment pay, separate, and appoint to and from Command Sergeant Major ARNG and Army National Guard of the United States enlisted Soldiers. Paragraph 8-26f, in effect at the time, provides for the separation of Soldier found to have failed to meet the medical procurement standards of chapter 2, Army Regulation 40-501, prior to entry on Initial Active Duty Training (IADT). If in an entry level status at the time of discharge per Army Regulation 135-178, service is uncharacterized.

7. Army Regulation 135-178 establishes policies, standards, and procedures governing the administrative separation of certain enlisted Soldiers of the Army National Guard of the United States, ARNG, and USAR. The regulation, in effect at the time, states service will be described as uncharacterized if separation processing is initiated while a Soldier is in an entry level status (see glossary for definition of entry level status).

a. The glossary states upon enlistment, a Soldier qualifies for entry level status during:

(1) The first 180 days of continuous active military service; or

(2) The first 180 days of continuous active service after a service break of more than 92 days of active service.

b. A member of a Reserve component who is not on active duty or who is serving under a call or order to active duty for 180 days or less begins entry level status upon enlistment in a Reserve component. Entry level status for such a member of a Reserve component terminates as follows:

(1) 180 days after beginning training if the Soldier is ordered to ADT for one continuous period of 180 days or more: or

(2) 90 days after the beginning of the second period of ADT if the Soldier is ordered to ADT under a program that splits the training into two or more separate periods of active duty.

c. For the purposes of characterization of service, the Soldier's status is determined by the date of notification as to the initiation of separation proceedings.

8. Title 38, U.S. Code, section 1110 (General – Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was

incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

9. Title 38, U.S. Code, section 1131 (Peacetime Disability Compensation – Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

10. 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.

11. 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.

a. Paragraph 2-11 states applicants do not have a right to a formal hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

b. 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//