

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 April 2024

DOCKET NUMBER: AR20230010765

APPLICANT REQUESTS: in effect, honorable physical disability discharge in lieu of uncharacterized administrative discharge due to failed medical procurement standards.

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

DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)

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 was badly beaten at the order of the drill sergeants after being labeled and his life has not been the same since. He has been disabled ever since his discharge. He has checked off on his application form that post-traumatic stress disorder (PTSD) and other mental health issues as well as reprisal are conditions related to his request.
3. 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).
4. A DD Form 2807-1 (Report of Medical History), shows the applicant provided his medical history in conjunction with a medical examination conducted on 29 September

2008, for the purpose of Regular Army enlistment. He indicated he was not taking any current medications and did not specify any conditions.

5. A DD Form 2808 (Report of Medical Examination) shows the applicant underwent medical examination on 29 September 2008, for the purpose of Regular Army enlistment. It is noted on the form he failed the color vision test but was found qualified for enlistment with a PULHES of 111111.

6. The applicant enlisted in the Regular Army on 8 October 2008.

7. A DA Form 3349 (Physical Profile) shows the applicant was given a temporary physical profile PULHES of 311113 for urinary incontinence, with an expiration date of 24 February 2009. The reason for the physical profile rating of "3" in factor "S" for psychiatric is not specified on the form. He was limited in some functional activities as well as Army Physical Fitness Test (APFT) events.

8. A DA Form 4707 (Entrance Physical Standards Board (EPSBD) Proceedings) shows:

a. An EPSBD convened on 28 November 2008, where the board considered the applicant's condition of incontinence.

b. His medical history shows the applicant arrived at Fort Knox, KY on 9 October 2008. He had a history of enuresis since the age of 6 and has been under the care of a urologist and family care physician since that time. He was on DDAVP for years but stopped that 1 or 2 years ago. Even at the Reception Station, he had problems with urination, but it got worse when he started Basic Combat Training (BCT). He has wet his uniform at least five times in the last few weeks. He states that he has no trigger; it just comes on. He was started on Ditropan with no help, then was sent to Urology for further evaluation, who started him on two other medications, which seem to be helping some, but not completely. He cannot train secondary to frequent urination and leakage through his military gear. He has missed several mandatory trainings to include combatives, ruck, obstacle course, and classroom work secondary to the frequent urination.

c. His functional status shows the applicant's incontinence refractory to medications. He cannot train secondary to frequent urination and leakage through his military gear. He cannot control his frequent urination even with medications and has wet his uniform at least five times. He has missed several mandatory trainings secondary to this problem.

d. His diagnosis is bladder incontinence, uncontrolled.

e. His disposition shows a recommendation that the applicant meet a medical board for separation. He does not meet the medical fitness standards for enlistment or induction in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 2. This condition is considered to have existed prior to service (EPTS) and is service aggravated. A waiver is not recommended.

f. The findings were approved by the medical approving authority on 1 December 2008.

g. On 5 December 2008, the applicant signed the form indicating he disagreed with the proceedings because his condition was not disqualifying on entry and was aggravated by service, and he requested his case be returned to the medical approving authority for reconsideration.

h. On 11 December 2008, the discharge approval authority approved the recommendations and directed the applicant's discharge under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 5-11, for failure to meet procurement medical fitness standards. The applicant has not completed the requirements to be awarded a Military Occupational Specialty (MOS).

9. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged on 16 December 2008 under the provisions of Army Regulation 635-200, paragraph 5-11, due to failed medical/physical procurement standards, with a corresponding separation code of JFW. He was credited with 2 months and 9 days of net active service, was not awarded an MOS, and his service was uncharacterized.

MEDICAL REVIEW:

1. 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:

2. The applicant is applying to the ABCMR requesting an upgrade of his 16 December 2008 uncharacterized and, in essence, a referral to the Disability Evaluation System (DES).

3. 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 8 October 2008 and was discharged on 16 December 2008 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.

4. 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.

5. The applicant's pre-entrance Report of Medical History and Report of Medical Examination show he had no significant medical history or conditions other than being color blind.

6. The EMR shows the applicant was seen in follow-up on 12 November 2008 "for being unable to control bladder and bowel movements." The Detrol was not effective and he was urinating in his pants 2-4 times per day. It was noted the applicant had a

history of enuresis since the age of six and had been under the care of a urologist and family care physician since that time. He was subsequently referred to an Entry Physical Standards Board (EPSBD) under provisions provided in paragraph 5-11 of AR 635-200 for preexisting enuresis.

7. 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.

7. From the applicant's 28 November 2008 Entry Physical Standards Board (EPSBD) Proceedings (DA Form 4707):

CHIEF COMPLAINT: Incontinence

PAST MEDICAL HISTORY: 21-year-old male arrived to FT Knox on Oct 9, 2008, for 68W. He has a history of enuresis since the age of 6 and has been under the care of a urologist and Family care Physician since that time. He was on DDAVP for years but stopped that a year or two ago.

Even in Reception he had problems with the urination but did get worse when starting BCT. He has to go to the latrine several times a day and when he gets the urge, he has only a limited time to make it to the latrine. He has wet his uniform at least 5 times in the last few weeks. He states that he has no trigger it just comes on. He was started on Ditropan with no help then was sent to Urology for further evaluation who started him on two other medications for this which seem to be helping some but not completely.

Cannot train secondary to frequent urinations and leakage through his Military gear.

FUNCTIONAL STATUS: Patient with incontinence refractory to meds. He cannot train secondary to frequent urination and leakage through his Military gear. Cannot control his frequent urinations even with medications and has wet his uniform at least five times. Has missed several mandatory trainings secondary to this problem.

DIAGNOSIS: 1. Bladder incontinence - uncontrolled

DISPOSITION: It is recommended that the Trainee meet a Medical Board for Separation. He does not meet medical fitness standards for enlistment or

induction IAW AR 40-501, Chapter 2-15c. EPTS: yes. Service aggravated: yes. Waiver is NOT recommended.

8. Paragraph 2-33a of AR 40-501, Standards of Medical Fitness (14 December 2007), states "History of enuresis (788.30) or incontinence of urine after 13th birthday is disqualifying."

9. 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 5 March 2009, the applicant non-concurred and requested review of his case. The case was reviewed and the discharge authority stated:

APPROVED UNDER THE PROVISIONS OF CHAPTER 5-11, AR 635-200 (FAILURE TO MEET PROCUREMENTS OF MEDICAL FITNESS STANDARDS). SOLDIER HAS NOT COMPLETED THE REQUIREMENTS TO BE AW AWARDED AN MOS.

10. 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.

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

BOARD DISCUSSION:

1. The applicant's contentions, the military record, and regulatory guidance were carefully considered. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted.

2. The Board concurs with the opinion of the ARBA medical advisor; neither discharge upgrade nor a referral of his case to the DES is warranted. 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.

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. 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. 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. 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.

c. Paragraph 5-11 (Separation of personnel who did not meet procurement medical fitness standards) 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 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.

d. 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 (EPTS) conditions of pregnancy or HIV infection will be separated.

4. 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.

5. 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.

6. 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.

7. 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.

//NOTHING FOLLOWS//