

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 March 2024

DOCKET NUMBER: AR20230010770

APPLICANT REQUESTS: correction of his records to show he was discharged due to a service-incurred medical disability.

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:
  - he was discharged due to injuries he sustained while in the service
  - he was signing anything at the time so he could get medical care
  - he was not hurt prior to service
  - the Department of Veterans Affairs determined the injuries that prompted his discharge are service-related
3. The applicant enlisted in the Regular Army on 7 January 2009.
4. A DA Form 4856 (Developmental Counseling Form) shows the applicant's training commenced on 16 January 2009. The form also shows he missed training during the following periods:
  - 21-24, 26 January 2009 due to sick call
  - 7-21 February 2009 due to profile
  - 21 February – 21 March due to Consolidated Troop Medical Clinic or convalescent leave

5. On 16 April 2009, an Entrance Physical Standards Board (EPSBD) found the applicant medically unfit for enlistment per Army Regulation 40-501 (Standards of Medical Fitness) due spondylolisthesis, L5-S-1, chronic, existed prior to service (EPTS). The evaluating physician recommended the applicant's separation from the military for not meeting entrance standards.

(Note: Only page 1 of the applicant's DA Form 4707 (EPSBD Proceedings) is available. The form consists of 2 pages. Page 2 contains the Soldier's concurrence/disagreement with the medical findings and recommendations and actions taken by unit commander and discharge authority).

6. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged on 5 May 2009 under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 5-11, by reason of "failed medical/physical/procurement standards." The DD Form 214 also shows he was credited with 3 months and 29 days of active service.

#### 7. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR in essence requesting a referral to the Disability Evaluation System (DES). He states:

"I was discharged due to injuries that happened while in the service. At the time I signed anything so I could get medical help. I wasn't hurt prior to service. I already have the VA connect all the injuries that got me discharged."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 for the period of service under consideration he entered the regular Army on 7 January 2009 and was discharged on 5 May 2009 under provisions provided by paragraph 5-11 of AR 635-200, Active Duty Enlisted Administrative Separations (6 June 2005): Separation of personnel who did not meet procurement medical fitness standards.

d. Paragraph 5-11a and 5-11b of AR 635-200:

“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.

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 he was in good health, without significant medical history or conditions.

f. The EMR shows the applicant was injured in a fall on 7 February 2009. Evaluation included radiographs of the sacrum and lumbar spine which reviewed preexisting abnormal anatomy: “Posterior fusion defect at L5 with mild anterolisthesis of L5 on S1. A pars defect may exist.” A follow-up bone scan obtained on 10 February 2009 found no pars defects in the lumbar spine but did reveal a “probable early stress fracture of the right sacrum.”

Spondylolysis is the term for the isolated pars interarticularis defects/fractures responsible for this condition and are present in up to 6% of the population. They are most often either congenital or acquired from repetitive overuse in activities requiring hyperextension of the lumbar spine, e.g., gymnastics or a down lineman in football. They are almost never secondary to acute trauma.



While reports of trauma are often associated with an onset or increase in lumbar pain associated with spondylolysis, isolated pars fractures are very rarely caused by trauma: The substantial energy required to yield these fractures through acute trauma would also lead to the fracturing of nearby associated boney structures.

g. The applicant was treated conservatively but because he remained symptomatic, he was referred by orthopedics to an Entry Physical Standards Board (EPSBD) under provisions provided in paragraph 5-11 of AR 635-200 for two chronic conditions which had existed prior to service (EPTS): Congenital spinal anomaly spondylolisthesis and congenital spinal anomaly lumbosacral spondylolysis.

h. 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.

i. The applicant's 16 April 2009 Entry Physical Standards Board (EPSBD) Proceedings (DA Form 4707) is in the supporting documents and is rather lengthy so will not be will not need to fully be repeated here. The board concluded:

“PRESENT CONDITION: Because of the pain in his back and structural abnormalities of his lumbosacral spine, it cannot be expected that this individual will be successful in any phase of military training. There is no surgical

procedure that would change the structural abnormalities and he has already failed in physical therapy rehabilitation.

There is no reason to expect that continuing his rehabilitation would make any significant change in his ability to complete training. To continue his training only increases his pain and potential disability.

DIAGNOSIS: Spondylolisthesis, LS-SI, chronic, existing prior to service.

RECOMMENDATION: The Servicemember should be separated from the military for not meeting entrance standards in accordance with Army Regulation 40-501, chapter 2-29i.”

j. Paragraph 2-29i of AR 40-501, Standards of Medical Fitness (17 December 2007) states:

“Current or history of spondylolysis (congenital or acquired) and spondylolisthesis (congenital or acquired) are disqualifying.”

k. The board determined his medical 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.

l. JLV shows he has been awarded multiple VA service-connected disability ratings, several associated with the lumbar spine. 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.

m. It is the opinion of the Agency Medical Advisor that a referral of his case to the DES is not 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 applicant's contentions, the military record, and regulatory guidance were carefully considered. The Board concurs with the medical opinion, that the applicant had a preexisting medical condition which did not warrant disposition through.

2. The applicant's request for a personal appearance hearing was carefully considered. However, in this case, the evidence of record and independent evidence provided by the applicant 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:

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.

6/6/2024

X [Redacted Signature]

CHAIRPERSON

[Redacted Name]

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:

a. 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.

b. Does not disqualify the Soldier for retention in the military service per Army Regulation 40-501, chapter 3.

3. 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//