

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 17 May 2024

DOCKET NUMBER: AR20230010985

APPLICANT REQUESTS: amendment of his characterization of service from uncharacterized to medical.

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

- DD Form 149 (Application for Correction of Military Record)
- Identification Cards
- DA Form 4707 (Entrance Physical Standings Board (EPSBD) Proceedings, 19 March 1996)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 24 April 1996

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 released as uncharacterized. He broke both feet in active training and served over 90 days. He did not get to go to Bosnia or serve because he was injured. He needs medical assistance. He was young and in survival mode.
3. The applicant enlisted in the Regular Army on 3 January 1996.
4. His DA Form 2-1 (Enlisted Qualification Record – Part II) shows:
  - he was assigned to basic reconnaissance training at Fort Knox, KY from 12 January 1996 to 13 February 1996
  - he was assigned as a member of the fitness training unit from 14 February 1996 to 24 April 1996 (date of separation)

5. On 13 February 1996, his immediate commander identified the applicant for transfer to the fitness training unit for expanded fitness training due to the applicant being on extended profile. The commander noted the applicant was motivated and has the ability to complete training if given the opportunity to improve his physical condition. His intermediate commander approved the transfer.

6. Also on 13 February 1996, the applicant was counseled by his immediate commander. The relevant DA Form 4856 (General Counseling Form) states the applicant's profile renders him incapable of continuing to train at the intense pace required to complete 19D (Cavalry Scout) One Station Unit Training (OSUT) on time. He was being referred to the fitness training unit so the applicant could recover from his injuries and get back into training as early as possible. While at the fitness training unit, he will be able to do physical training within the limits of his profile. Maintain motivation and a positive attitude throughout his recovery and re-entry into training.

7. On 15 March 1996, a DA Form 3349 (Physical Profile) shows a temporary profile was issued to the applicant for stress fractures 2nd metatarsal both feet with an expiration date of 15 May 1996. His PULHES reflects 1-1-T3-1-1-1.

8. 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).

9. Also on 15 March 1996, the applicant's commander was notified the applicant was pending an Entrance Physical Standards Board. All physical activities were to be suspended that would interfere with the medical condition as stated on the DA Form 3349.

10. On 19 March 1996, an Entrance Physical Standards Board convened finding the applicant medically unfit for enlistment in accordance with current medical fitness standards and in the opinion of the evaluating physicians, the condition existed prior to service. A waiver was not recommended.

11. On 3 April 1996, the applicant, having been informed of the medical findings, concurred with the proceedings and requested to be discharged from the U.S. Army without delay. He authenticated the DA Form 4707 with his signature.

12. On 19 April 1996, the separation authority approved the applicant's discharge from the Army under the provisions of paragraph 5-11 of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) for failure to meet procurement medical fitness standards. Soldier has not completed requirements to be awarded a military occupational specialty.

13. On 24 April 1996, the applicant was discharged accordingly. His DD Form 214 shows he completed 3 months and 22 days. It also shows in:

- item 11 (Primary Specialty): none
- item 24 (Character of Service): uncharacterized
- item 25 (Separation Authority): Army Regulation 635-200, paragraph 5-11
- item 26 (Separation Code): JFW
- item 27 (Reentry Code): 3
- item 28 (Narrative Reason for Separation): failure to meet procurement medical fitness standards

14. By regulation, 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, will be separated. Medical proceedings, regardless of the date completed, must establish that a medical condition was identified by appropriate military medical authority within 6 months of the Soldier's initial entrance on active duty for Regular Army, or during active duty training for initial entry training for Army National Guard of U.S. Army Reserve, which would have permanently or temporarily disqualified him or her 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.

15. 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 a referral to the Disability Evaluation System. He states:

“I was released as uncharacterized. I broke both my feet in active training, served over 90 days. I did not get to Bosnia or serve because I was injured. Need to change from uncharacterized to medical discharge.”

c. The Record of Proceedings outlines the applicant’s military service and the circumstances of the case. His DD 214 shows he entered the regular Army on 3 January 1996 and received an uncharacterized discharge on 24 April 1996 under authority provided by paragraph 5-11 of AR 635-200, Personnel Separations – Enlisted Personnel (17 September 1990): Separation of personnel who did not meet procurement medical fitness.

d. The applicant’s pre-enlistment Report of Medical History and Report of Medical Examination are not available for review.

e. On 15 March 1996, the applicant was placed on a duty limiting temporary physical profile which was determined to be incompatible with continued training and the applicant was referred to an entry physical standards board (EPSBD) IAW paragraph 5-11 of AR 635-200 for a pre-existing history of recurrent stress fractures in his feet.

f. These boards 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.

g. From the 15 March 1996 narrative summary:

Chief Complaint: Recurrent stress fractures of bilateral feet.

History of Present Illness: The Service member states he has had a history of stress fractures in the bilateral feet since elementary school with four occurrences prior to enlistment to active duty ...

The Service Member suffered bilateral stress fractures to the second metatarsals approximately nine weeks ago, and he has been on convalescent leave for the last three weeks. He states the pain has not decreased since his last visit prior to leaving on convalescent leave. He states the swelling has not decreased as well ...

Disability Limitations: Disability limitations include an inability to walk, run, jump, prolonged standing, or going up and down stairs without significant pain in bilateral feet.

Physical Examination: The Service Member has severe tenderness to palpation over the dorsal aspect of the mid-diaphysis of the second metatarsals bilaterally with the left foot being greater than the right foot. There is mild to moderate edema over the forefoot area of bilateral feet ...

EPTS [Existed prior to service]: YES. [Permanently] Service aggravated: NO ...

Diagnosis: Recurrent stress fractures of bilateral feet, secondary to pes cavus deformity of bilateral feet.

Prognosis: Prognosis is poor with continued weight-bearing activities needed to complete Basic Training.

Recommendations: Recommendation is for a Medical 200 Board in accordance with AR 40-501, Chapter 2-10b(9).

h. Paragraph 2-10b(9) of AR 40-501 (1 July 1987) states a cause for rejection for enlistment is:

“Effects of disease, injury, or deformity including hyperdactyly that prelude running, are accompanied by disabling pain, or prohibit the wearing of appropriate military footwear.”

i. His Entrance Physical Standard Board (EPSBD) Proceedings (DA Form 4707) show the EPSBD determined the condition had existed prior to service (EPTS), failed the enlistment standard of AR 40-501, had not been permanently aggravated by his military service, and was not compatible with continued service. The applicant concurred with the findings on 10 February 1995 when he marked the box: “I concur with these proceedings and request to be discharged from the US Army without delay.”

j. 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.

k. It is the opinion of the ARBA medical advisor that neither a discharge upgrade nor a referral of his case to the Disability Evaluation System 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 Board carefully considered the applicant's record of service, documents submitted in support of the

petition, and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant's petition, available military records, and the medical review, the Board concurred with the advising official finding that his Entrance Physical Standard Board Proceedings show the condition existed prior to service and had not been permanently aggravated by his military service. The Board concurred with the determined the separation was appropriate and referral of his case to the Disability Evaluation System (DES) is not warranted.

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. 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 Department of Defense 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 a 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.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel. 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, will be separated. Medical proceedings, regardless of the date completed, must establish that a medical condition was identified by appropriate military medical authority within 6 months of the Soldier's initial entrance on active duty for Regular Army, or during active duty training for initial entry training for Army National Guard of U.S. Army Reserve, which would have permanently or temporarily disqualified him or her 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.

4. Army Regulation 635-40 establishes the Army DES 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 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//