

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 May 2024

DOCKET NUMBER: AR20230010995

APPLICANT REQUESTS: His uncharacterized service be changed to honorable. Additionally, he requests personal appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Department of Veterans Affairs (VA) decision letter

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 his record should be corrected because he started receiving benefits due to asthma and plantar fasciitis.
3. The applicant enlisted in the Regular Army on 9 January 1996 for a period of 3 years. He was assigned to Fort McClellan, AL for basic training. However, his service record shows he neither completed training nor was awarded a military occupational specialty.
4. A DA Form 4707 (Entrance Physical Standards Board (EPSBD) Proceedings), dated 29 February 1996, notes the applicant was an 18-year-old male who complained of chest tightness, shortness of breath (SOB), and wheezing. Known triggering factors included exercise, strenuous activities and symptoms occurring occasionally at rest. Added exercise history included symptoms within minutes of beginning an exercise period and lasting 10-15 minutes after cessation. Nocturnal symptoms included SOB, chest tightness, coughing spells and wheezing. He was diagnosed with seasonal asthma. He was placed on temporary profile to remove him from training.

5. The EPSBD recommended the applicant be discharged from service, in accordance with Army Regulation 40-501 (Standards of Medical Fitness), Chapter 2-23d, for asthma.
6. On 21 March 1996, the applicant acknowledged the EPSBD findings and further acknowledged that he had been advised that legal counsel from an Army attorney was available to him or he could consult civilian counsel at his own expense. He could request discharge from the Army without delay or request retention on active duty. He concurred with the proceedings and requested discharge from the Army without delay.
7. The applicant's commander recommended his separation from the Army. The separation authority approved the recommendation on 22 March 1996.
8. On 28 March 1996, the applicant received non-judicial punishment under Article 15 of the Uniform Code of Military Justice, for absenting himself from his place of duty on or about 16 March 1996; and being disrespectful in deportment toward a noncommissioned officer on or about 16 March 1996. His punishment included forfeiture of \$188.00 and 14 days of restriction and extra duty.
9. The applicant was discharged on 5 April 1996. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-11, for failure to meet procurement medical fitness standards. His service was uncharacterized. He was assigned Separation Code JFW and Reentry Code 3. He was credited with 2 months and 27 days of net active service this period.
10. The applicant provides a VA rating decision letter that shows service connection for asthma was granted with an evaluation of 30 percent, and service connection for plantar fasciitis was granted with an evaluation of 10 percent. This letter is provided in its entirety for the Board's review within the supporting documents.
11. Soldiers are considered to be in an entry-level status when they are within their first 180 days of active-duty service. The evidence of record shows the applicant was in an entry-level status at the time of his separation. As a result, his service was appropriately described as "uncharacterized" in accordance with governing regulations.
12. The Board should consider the applicant's statement in accordance with the published guidance.
13. 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 essentially requesting a referral to the Disability Evaluation System and for an upgrade of his uncharacterized discharge. He states: "I started receiving benefits due to asthma and plantar fasciitis."

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 9 January 1996 and received an uncharacterized discharge on 5 April 1996 under the separation authority provided by paragraph 5-11 of AR 635-200, Personnel Separations – Enlisted Personnel (30 August 1995): Separation of personnel who did not meet procurement medical fitness standards.

d. Paragraph 5-11a 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, 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 AD for RA [regular Army], or during ADT for initial entry training for ARNGUS [Army National Guard of the United States] and USAR [United States Army Reserve], which—

(1) Would have permanently or temporarily disqualified him or her 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 him or her for retention in the military service under the provisions of AR 40–501, chapter 3.

e. There are no encounters in AHLTA.

f. The applicant was referred to an Entrance Physical Standards Board (EPSBD) for shortness of breath IAW paragraph 5-11 of AR 635-200. 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 (1 December 1983), 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 aggravated by their military service.

g. From the applicant's Entrance Physical Standards Board (EPSBD) Proceedings (DA Form 4707) dated 29 February 1996:

"Chief Complaint: Shortness of breath and SOB on exertion.

History of Present Illness: This 18-year-old black male arrived at Ft. Leonard Wood in Jan 96. The trainee has been complaining of chest tightness, SOB and wheezing since his arrival at this military facility and for approximately 7 days prior to his evaluation at the CTMC.

Added known triggering factors include exercise, strenuous activities and symptoms occurring occasionally at rest. Added exercise history includes symptoms within minutes of beginning an exercise period and lasting 10-15 minutes after cessation. Nocturnal symptoms include SOB, chest tightness, coughing spells and wheezing.

Past Medical History: Symptoms prior to induction into the military which were self-treated with over-the-counter Primatene mist. He has had no previous diagnosis, evaluation or hospital admissions for the above problem ...

Physical Exam: ... Lungs are scattered wheezes without rales.

Diagnosis: Asthma, EPTS [existed prior to service].

Recommendations: This soldier should be discharged from the military IAW AR 40-501, chapter 2-23d. He will not be able to train due to his EPTS condition and is given a temporary profile to remove him from training. A prescription for Proventil MDI [metered dose inhaler] was given and he is to use 2 puffs for times a day or on an as needed basis for episodes of SOB."

h. The applicant's asthma failed the medical induction standard in paragraph 2-23d of AR 40-501, Standards of Medical Fitness (30 August 1995). Asthma as a cause for rejection:

"Asthma, including reactive airway disease, exercise induced bronchospasm or asthmatic bronchitis, reliably diagnosed at any age."

i. On 12 March 1996, the EPSBD determined the condition had existed prior to service (EPTS), failed the enlistment standard of paragraph 2-23d of AR 40-501, had not been permanently aggravated by his military service, and was not compatible with continued service.

j. On 21 March 1996, the applicant concurred with the board's findings, selecting an initialing the option "I concur with these proceedings and request to be discharged from the US Army without delay."

k. JLV shows he has been awarded multiple VA service-connected disability ratings, including asthma (10%) and flat foot condition (10%) both of which were originally effective 9 March 2023. 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; or which did not cause or contribute to the termination of their military career. These roles and authorities are granted by Congress to the Department of Veterans Affairs and 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 Agency Medical Advisor that neither an upgrade of his discharge nor 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, available military records and the medical review, the Board concurred with the advising official finding that neither an upgrade of his discharge nor referral of his case to the DES is warranted.

2. The Board found insufficient evidence to support the applicant's contentions for his uncharacterized service be changed to honorable. The applicant served 2 months and 27 days of net active service this period., did not complete training and was released

from active duty for failure to meet procurement medical fitness standards. The Board noted, Soldiers are authorized an honorable discharge while in entry-level status only if they complete their active-duty schooling and earn their MOS. An uncharacterized discharge is not derogatory; it is recorded when a Soldier has not completed more than 180 days of creditable continuous active duty prior to initiation of separation. It merely means the Soldier has not served on active duty long enough for his or her character of service to be rated as honorable or otherwise. As such, his DD Form 214 properly shows the appropriate characterization of service as uncharacterized, there is no basis for granting the applicant's request. Therefore, relief was denied.

3. 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.



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. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.
3. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.
 - a. Paragraph 2-9 states 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.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

4. Army Regulation 635-200 sets policies, standards, and procedures to insure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. Chapter 3 provides that a separation will be described as entry level with uncharacterized service if the Soldier has less than 180 days of continuous active duty service at the time separation action is initiated.

b. Paragraph 3-7a provides that an honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

c. Paragraph 3-9 provides that a separation would be described as entry level with uncharacterized service if processing was initiated while a Soldier was in an entry-level status, except when:

(1) a discharge under other than honorable conditions was authorized, due to the reason for separation and was warranted by the circumstances of the case; or

(2) the Secretary of the Army, on a case-by-case basis, determined a characterization of service as honorable was clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty. This characterization was authorized when the Soldier was separated by reason of selected changes in service obligation, for convenience of the government, and under Secretarial plenary authority.

d. Paragraph 5-11 provided that 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 entrance on active duty, active duty for training, or initial entry training would be separated. Medical proceeding, regardless of the date completed, must establish that a medical condition was identified by appropriate medical authority within 6 months of the Soldier's initial entrance on active duty, that the condition would have permanently or temporarily disqualified the Soldier for entry into military service had it been detected at that time, and the medical condition did not disqualify the Soldier from retention in the service under the provisions of Army Regulation 40-501.

e. The character of service for Soldiers separated under this provision would normally be honorable but would be uncharacterized if the Soldier was in an entry-level status. An uncharacterized discharge is neither favorable nor unfavorable; in the case of Soldiers issued this characterization of service, an insufficient amount of time would have passed to evaluate the Soldier's conduct and performance.

//NOTHING FOLLOWS//