

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 May 2024

DOCKET NUMBER: AR20230011836

APPLICANT REQUESTS: physical disability discharge in lieu of administrative discharge under the Trainee Discharge Program (TDP).

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:
 - a. He is requesting an update to his records to reflect a medical discharge. He was unable to be "recycled" back into Basic Combat Training (BCT), due to an injury preventing his restart. An upgraded discharge to medical will allow him to receive the proper medical treatment needed for injuries that were aggravated by his time in the Army.
 - b. The Army deemed him flat footed and to have scoliosis, but they still found him fit enough to join the Army. His time in the Army and work agitated his neck. Due to these injuries, he does not have the proper range of motion in his neck.
3. The applicant enlisted in the Regular Army on 3 September 1976.
5. Multiple Training and Doctrine Command (TRADOC) Forms 871-R (TDP Counseling) reflect the applicant was counseled on the following dates:
 - a. On 21 September 1976, the applicant was counseled by his drill/platoon sergeant regarding his immaturity, lack of self-discipline, and inability to grasp military instruction. He is a 17-year-old overgrown baby, displaying this by playing in formation, not being in proper uniform, and by not showing any mature, responsible actions during scheduled

training. He shows no respect for authority and has not responded to counseling. He is a borderline case for disciplinary action and knows just how far he can go, having to be corrected several times daily for his actions.

b. On 29 September 1976, the applicant was counseled by his company commander. The applicant stated he liked the Army and was trying his best, but knew he was not learning as fast as everyone else. He failed to answer several simple questions correctly and was told he would have to do a lot of work and study in order to make it. He was returned to his platoon for further observation.

c. On 30 September 1976, he was counseled by his drill/platoon sergeant, who indicated the applicant did not possess the ability to pass BCT. He was very slow in grasping and training basic subjects. He also did not display any respect for rules and regulations. He was very immature and did not have the self-discipline needed to become a productive Soldier.

d. On 4 October 1976, the applicant was counseled by his platoon sergeant on his immaturity and self-discipline. He was horseplaying in the dining facility again today after being counseled on almost a daily basis. His platoon sergeant believed due to this lack of self-discipline and his inability to retain knowledge; he should be discharged at the earliest possible date.

e. On 7 October 1976, the applicant's company commander counseled him regarding the fact he displayed no intention of trying to improve. He did not want to develop the self-discipline necessary to become a Soldier and his discharge was recommended.

6. On 7 October 1976, the applicant was notified by his immediate commander of his initiation of action to honorably discharge him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-39, the Trainee Discharge Program. The reasons for the proposed action were his inability to grasp and retain instruction coupled with his lack of self-discipline and lackadaisical attitude, all indications that he would not become a productive Soldier. He had been counseled and provided time to improve, but no improvement was noted. He was advised of his right to present statements in his own behalf and request a separation physical if he felt his physical status had changed since his last examination.

7. On 7 October 1976, the applicant acknowledged notification of his proposed honorable discharge under the provisions of Army Regulation 635-200, the Trainee Discharge Program. He acknowledged understanding benefits normally associated with completion of honorable active duty service would be affected, due to his non-completion of requisite active duty time. He indicated he did not desire to make

statements or submit a rebuttal in his own behalf and he did not desire to have a separation medical examination.

8. On 7 October 1976, the applicant's battalion commander endorsed the discharge packet, recommending approval of his honorable discharge under the provisions of Army Regulation 635-200, the Trainee Discharge Program.

9. A final TRADOC Form 871-R shows the applicant was counseled by his battalion commander on 12 October 1976, who indicated on the form the applicant was a likeable young man without the intelligence to complete the training. Even if he could get through BCT, he'd never make it through his Military Occupational Specialty (MOS) training. He had trouble forming sentences and expressing himself and claimed he was doing poorly because nobody liked him. He was probably right; he was slowing his platoon down.

10. On 13 October 1976, the approval authority directed the applicant's honorable discharge under the provisions of Army Regulation 635-200, paragraph 5-39, the Trainee Discharge Program, Evaluation and Discharge of Enlistees before 180 active duty days.

11. A DA Form 2496 (Disposition Form), dated 18 October 1976, informed the applicant the reason for his discharge from active duty on 18 October 1976 was Army Regulation 635-200, paragraph 5-39, Marginal or Non-Productive Performance (Trainee Discharge Program).

12. The applicant's DD Form 214 (Report of Separation from Active Duty) shows he was honorably discharged on 18 October 1976, under the provisions of Army Regulation 635-200, paragraph 5-39, with corresponding separation code JEM (Marginal or Non-productive Performance (Trainee Discharge Program)). He was credited with 1 month and 16 days of active service and he was not awarded an MOS.

13. The applicant's available service records do not 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

14. The Trainee Discharge Program provided for the expeditious separation of service members who lacked the necessary motivation, discipline, ability, or aptitude to become productive Soldiers or who failed to respond to formal counseling.

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 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 Agency (DES). He states:

“Requesting to update discharge to medical discharge because I couldn't recycle back to basic training, injury prevented it. An upgraded discharge will allow me to receive proper medical treatment needed for injuries that were aggravated by my time in the Army.”

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 shows he entered the Regular Army on 3 September 1976 and was honorably discharged on 18 October 1976 under provision provided in paragraph 5-39 of AR 635-200, Personnel Separations – Enlisted Personnel (25 July 1973): Trainee Discharge Program (TDP), Marginal or Non-productive Performance. The separation program designator (SPD) JEM which denotes “Army Trainee Discharge.”

d. No medical documentation was submitted with the application. His service predates AHLTA and iPERMS.

e. On 7 October 1976, his company commander informed him to his initiation of action to separate the applicant under paragraph 5-59 of AR 635-200:

“The specific reasons for my proposed action are: Your inability to grasp and retain instruction coupled with your lack of self-discipline and lackadaisical attitude are indications that you will not become a productive soldier. You have been counselled and provided time to improve, but no improvement has been noted.”

f. That same day, the applicant acknowledged the notification while declining the opportunity to make a statement/rebuttal on his own behalf and a separation medical examination.

g. JLV shows the applicant receive care as a post-Vietnam non-service-connected veteran and has no VA service-connected disabilities.

h. It is the opinion of the ARBA medical advisor that a referral of his case to the DES is unwarranted.

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 the applicant's record contains and the applicant provided no medical documentation to support an injury or illness that would have warranted processing through medical channels vice discharge under the Trainee Discharge Program. Based on this, the Board determined referral of his case to the Disability Evaluation System (DES) is not warranted.

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.

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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 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.

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.

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.

4. 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.

5. Army Regulation 635-200 (Personnel Separations Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel from the Army. The version of the change regulation dated 1 December 1975, incorporated the policy promulgated in Department of the Army Message DAPE MPE 011510Z (Evaluation and Discharge of Enlistees before 180 Active Duty Days), dated August 1973, pertaining to the Army Trainee Discharge Program. The Trainee Discharge Program provided for the expeditious separation of service members who lacked the necessary motivation, discipline, ability, or aptitude to become productive Soldiers or who failed to respond to formal counseling.

a. For discharge under the Trainee Discharge Program, the service member must have the following:

- voluntarily enlisted
- were in basic, advanced individual, on-the-job, or service school training prior to award of a military occupational specialty
- had not completed more than 179 days of active duty on their current enlistment by the date of separation

b. Soldiers could be separated under this provision when they demonstrated that they:

- were not qualified for retention due to failure to adapt socially or emotionally to military life
- could not meet minimum standards prescribed for successful completion of training because of lack of aptitude, ability, motivation, or self-discipline,
- demonstrated character and behavior characteristics not compatible with satisfactory continued service

6. 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//