

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 May 2024

DOCKET NUMBER: AR20230011912

APPLICANT REQUESTS: a discharge due to disability.

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

- DD Form 294, Application for the Review of Discharge
- MyHealtheVet Records

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, in effect, he was injured during his period of service. He contends that neither his command nor medical team would help him find out what was wrong. The Department of Veterans Affairs (VA) is trying to help him.
3. The applicant completed an Accessions Medical Prescreen Report on 14 January 2016 wherein, he reported a head injury. He stated that he hit himself in the head with a T-Post pounder which resulted in a lump on the head. He did not need stitches and there had been no issues since the injury.
4. On 21 January 2016, he underwent a physical examination for the purpose of enlisting in the Regular Army (RA). The DD Form 2808, Report of Medical Examination, shows the examining medical provider found the applicant was found qualified for service; however, noted the applicant was overweight (height 70.25/weight 198 pounds). Item 80, Medical Inspection Date, of the DD Form 2808 lists the applicant's weight as 188 pounds with a maximum weight of 197 pounds as of 23 May 2016.
5. On 23 May 2016, he enlisted in the RA. He was awarded military occupational specialty 91B, wheeled vehicle mechanic.

6. His Enlisted Record Brief shows he completed foreign service in Kuwait from 21 February 2017 to 7 October 2017.

7. The applicant's separation packet is void of the complete facts and circumstances of his discharge. However, his record shows that on 18 September 2017, the Commander, Headquarters, 3rd Armored Brigade Combat Team, 1st Cavalry Division, Kuwait approved the recommendation to discharge the applicant under the provisions of Army Regulation 635-200, Personnel Separations-Active Duty Enlisted Administrative Separations, chapter 13, unsatisfactory performance.

8. His DD Form 214, Certificate of Release or Discharge from Active Duty confirms the applicant was discharged in accordance with AR 635-200, chapter 13-2(e), physical standards on 14 November 2017. He completed 1 year, 5 months, and 14 days of net active service for the period. His service was characterized as honorable.

9. The applicant provided his VA health records for the period 2 May 2023 to 3 November 2023. His problem list shows that during this period the applicant was treated for migraines, hypertriglyceridemia, low back pain, pain in both knees, and pain in left ankle joint.

10. AR 635-200, paragraph 13-2(e) states initiation of separation proceedings is required for Soldiers without medical limitations who have two consecutive failures of the Army physical fitness test.

11. 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, the Army Aeromedical Resource Office (AERO), 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 System (DES).

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 23 May 2016 and honorably discharged on 14 November 2017 under the provisions of paragraph 13-2e of AR 635-200, Active Duty Enlisted Administrative Separations (19 December 2016).

## d. Paragraph 13-2e of AR 635-200:

“Initiation of separation proceedings is required for Soldiers without medical limitations who have two consecutive failures of the Army physical fitness test per AR 350–1 or who are eliminated for cause from Noncommissioned Officer Education System courses, unless the responsible commander chooses to impose a bar to re-enlistment per AR 601–280 (RA Soldiers) or AR 140–111 (USAR AGR Soldiers).”

e. Noted on the applicant’s pre-entrance Report of Medical History is prior concussion for which he did not seek treatment and left no sequelae. On the accompanying Report of Medical Examination, the provider documented a normal examination, that the applicant was overweight (70.25 inches with a weight 198 lbs., max weight 189 lbs.), and found him qualified for service.

f. Review of the applicant’s records in AHLTA show multiple visits for the evaluation and treatment of lower extremity pains which were treated conservatively.

g. The applicant underwent mental health evaluations on 10 November 2016 and 4 August 2017. The first evaluation was pre-deployment and the provider documented a normal evaluation and no mental health conditions. The second evaluation was for his pending chapter separation for failures of the Army Physical Fitness Test (APFT). This provider also documented a normal evaluation and found the applicant to be without mental health conditions.

h. On 18 September 2017, the brigade commander directed he be separated for unsatisfactory performance. The remainder of the applicant’s separation packet or additional documentation addressing his involuntary administrative separation was neither submitted with the application nor uploaded into iPERMS.

i. It is the opinion of the Agency Medical Advisor that given the current documentation, a referral of this case to the Disability Evaluation System 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 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. Upon review of

the applicant's petition, available military records and medical review, the Board concurred with the advising official finding a referral of this case to the Disability Evaluation System is not warranted. The Board determined there is insufficient evidence to support the applicant's contentions for a discharge due to disability.

2. The Board found the applicant underwent two (2) separate evaluations the first being pre-deployment and the provider documented a normal evaluation and no mental health conditions. The second evaluation was for the applicant's pending chapter separation for failures of the Army Physical Fitness Test (APFT). This provider also documented a normal evaluation and found the applicant to be without mental health conditions. Based on the advising opine and preponderance of evidence the Board determined the applicant's contentions are without merit. Therefore, the Board denied relief.

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.

[Redacted Signature]

[Redacted Title]

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[Redacted Name]

[Redacted Title]

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 (AR) 635-200, Personnel Separations-Active Duty Enlisted Administrative Separations, sets forth the requirements and procedures for the separation of enlisted personnel.

a. Chapter 13 provides for separation due to unsatisfactory performance when in the commander's judgment the individual will not become a satisfactory Soldier; retention will have an adverse impact on military discipline, good order and morale; the service member will be a disruptive influence in the future; the basis for separation will continue or recur; and/or the ability of the service member to perform effectively in the future, including potential for advancement or leadership, is unlikely. Service of Soldiers separated because of unsatisfactory performance under this regulation will be characterized as honorable or under honorable conditions.

b. Paragraph 13-2e states initiation of separation proceedings is required for Soldiers without medical limitations who have two consecutive failures of the Army physical fitness test or who are eliminated for case from Noncommissioned Officer Education system courses, unless the responsible commander chooses to impose a bar to re-enlistment.

3. AR 635-40, Personnel Separations-Physical Evaluation for Retention, Retirement, or Separation, establishes the Disability Evaluation System (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 or her office, grade, rank, or rating. It states -

a. 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.

b. 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 38, U.S. Code section 1110, General - Basic Entitlement: For disability resulting from personal injury suffered or disease contracted in line of duty, or for

aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

5. Title 38, U.S. Code, section 1131, Peacetime Disability Compensation - Basic Entitlement: For disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

6. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

7. 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 Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

8. AR 15-185, ABCMR, prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The ABCMR will decide cases on the evidence of record. It is not an investigative body. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

//NOTHING FOLLOWS//