

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 June 2024

DOCKET NUMBER: AR20230011997

APPLICANT REQUESTS: correction of his character of service to show an honorable discharge, based on incurring post-traumatic stress disorder (PTSD) and experiencing sexual assault/harassment while on active duty.

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

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

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10 (Armed Forces), United States Code (USC), section 1552 (b) (Correction of Military Records: Claims Incident Thereto). 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, there was an upgrade of his character of service, and he would like his DD Form 214 to reflect that change.

a. On his DD Form 149, in item 14 (Are Any of the Following Issues/Conditions Related to Your Request), the applicant has checked "PTSD" and "Sexual Assault/Harassment."

b. In support of his request, the applicant provides two VA letters, both dated in August 2022. The first characterizes his service as honorable; the second announces the Board of Veterans Appeals' decision to grant the applicant a disability rating increase from 30 to 50 percent for his service-connected medical condition, identified as unspecified depressive disorder with anxious distress. The applicant offers no further details as to the causes of his medical condition.

3. A review of the applicant's service record reveals the following:

a. On 18 February 1994, the applicant enlisted into the Regular Army for 3 years and immediately transferred to Fort Benning, GA (now renamed Fort Moore) for initial entry training.

b. On 25 April 1994, an Entrance Physical Standards Board (EPSBD) convened at Fort Benning to address the applicant's foot pain; the board's results and subsequent personnel actions were detailed on a DA Form 4707 (EPSBD Proceedings).

(1) The EPSBD determined the applicant had "symptomatic pes planus"; opined the medical condition would prevent the applicant from completing training; and recommended the applicant's separation, based on a failure to meet the procurement medical fitness standards outlined in Army Regulation (AR) 40-501 (Standards of Medical Fitness).

(2) On 3 May 1994, the applicant recorded his elections in the section titled, "Action by Service Member."

(a) After acknowledging the medical findings, the applicant had four options from which to choose:

- "I concur with these proceedings and request to be discharged from the U.S. Army without delay"
- "I concur with these proceedings and request that I be retained on active duty"
- "I disagree with these proceedings because my condition did not exist prior to service (specific medical evidence is attached) and request my case be returned to the medical approving authority for reconsideration"
- "I disagree with these proceedings because my condition was not disqualifying on entry and was aggravated by service (specific medical evidence is attached) and request my case be returned to the medical approving authority for reconsideration"

(b) The applicant concurred with the EPSBD proceedings and requested discharge without delay.

c. On 18 May 1994, orders discharged the applicant with an uncharacterized character of service. His DD Form 214 shows he completed 3 months and 1 day of his 3-year enlistment contract; the form additionally reflects the following:

- Item 25 (Separation Authority) – paragraph 5-11 (Separation of Personnel Who Did Not Meet Procurement Medical Fitness Standards), AR 635-200 (Personnel Separations – Enlisted Personnel)
- Item 26 (Separation Code (SPD)) – "JFW"

- Item 27 (Reentry (RE) Code) – RE-3
- Item 28 (Narrative Reason for Separation) – Did Not Meet Procurement Medical Fitness Standards – No Disability

d. On 16 August 1994, the applicant petitioned the ABCMR.

(1) Although the applicant did not identify a specific correction, he submitted a medical evaluation performed by a civilian podiatrist, which found him fit for Army service. In the evaluation, the doctor wrote, "[Applicant] requested a complete lower extremity examination in order to determine his ability to function in the infantry division of the U.S. Army. He stated that he has had no symptoms in his lower extremities."

(2) On 5 March 1997, the Board considered the applicant's request, his evidence, and his service record and voted to deny relief.

(a) After observing that the applicant's DD Form 149 was missing a request, the Board stated it presumed the applicant wanted to be reinstated on active duty and noted that, after complaining that both feet hurt, competent medical authority determined the applicant had flat feet and would not be able to complete military training. The Board added that, despite being offered other options, to include retention on active duty, the applicant opted for discharge without delay.

(b) The Board concluded, "Apparently, absent the rigors of military service, the applicant's painful foot condition had improved at the time he told his civilian physician that he had no symptoms in his lower extremities. Such improvement could reasonably be anticipated and does not provide a basis to return him to active duty, which would be neither reasonable nor logical."

4. 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 an upgrade of his 18 May 1994 uncharacterized discharge. On his DD 149, he has indicated that PTSD and sexual assault/harassment are related to his request.

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 shows he entered the Regular Army on 18 February 1994 and was discharged on 18 May 1994 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 standards.

d. The applicant's pre-entrance Report of Medical History and Report of Medical Examination show the applicant to have been in good health, without any significant medical history or conditions.

e. Paragraph 5-11a 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, 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.

f. The applicant was referred to an Entrance Physical Standards Board (EPSBD) for persistent bilateral foot pain 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, 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. The applicant's EPSBD Proceedings (DA Form 4707) show he had been determined to have pre-service pes planus (flat feet) which had failed to adequately respond to conservative treatment, prevented his ability to continue training, and the

condition failed the enlistment standard in paragraph 2-10b(5) of AR 40-501 (1 July 1987):

“Flatfoot, pronounced cases, with decided eversion of the foot and marked bulging of the inner border, due to inward rotation of the astragalus, regardless of the presence or absence of symptoms.”

h. His completed EPSBD Proceedings (DA Form 4707) was not available for review. However, his company and battalion commanders agreed with the EPSBD recommendation he be discharged for this pre-existing medical condition under authority provided by paragraph 5-11 of AR 635-200. His brigade commander directed the applicant be so discharge on 27 November 1991.

i. The Board determined the condition had existed prior to service, had not been permanently aggravated by his military service, did not meet one or more medical enlistment/induction standards, and was not compatible with continued military service. On 3 May 1994, the applicant concurred with the Board and marked the election “I concur with these proceedings and request to be discharged from the US Army without delay.”

j. JLV shows the applicant has just two encounters consisted of a mental health compensation and pension examination. He has no other encounters and no diagnoses on his medical problem list. He does have a 50% VA service-connected disability rating for “Mood Disorder.”

k. 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.

l. It is the opinion of the ARBA Medical Advisor that neither an upgrade of his discharge nor a referral of his case to the Disability Evaluation System is warranted. The applicant asserts PTSD and sexual assault/harassment. However, neither issue would have affected his uncharacterized discharge for pre-service pes planus.

BOARD DISCUSSION:

The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of requests for changes to discharges. The Board considered the applicant's statement, his record of service, and the reason for his

separation. The Board considered the applicant's PTSD and sexual assault/harassment claim and the review and conclusions of the ARBA Medical Advisor. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding the evidence fully supporting the decision to discharge the applicant based on his preexisting medical condition. The Board noted the evidence confirms the applicant was in an entry-level status when he was discharged, and his service was uncharacterized in accordance with the governing regulation. Based on a preponderance of the evidence, the Board determined the applicant's uncharacterized service is not in error or unjust.

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.

12/19/2024

X

CHAIRPERSON

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, USC, 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, USC, section 1556 (Ex Parte Communications Prohibited) 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 applicant's (and/or their counsel) prior to adjudication.

3. AR 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge). An honorable discharge was a separation with honor. The honorable characterization was appropriate when the quality of the member's service generally had met the standards of acceptable conduct and performance of duty for Army personnel or was otherwise so meritorious that any other characterization would be clearly inappropriate.

b. Paragraph 3-7b (General Discharge) stated a general discharge was a separation from the Army under honorable conditions. The regulation authorized separation authorities to issue a general discharge to Soldiers whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 3-9 (Uncharacterized Separations). Separation authorities were to describe a separation as entry-level, with service uncharacterized, if commanders initiated separation processing while a Soldier was in entry-level status.

d. Paragraph 5-11 (Separation of Personnel who did not Meet Procurement Medical Fitness Standards) stated:

a. Medical proceedings had to establish the following:

- that proper medical authority had identified the Soldier's medical condition within 6 months of the Soldier's initial entrance on active duty;
- the Soldier's medical conditions would have permanently or temporarily disqualified him or her from entry into military service, had it been detected
- the Soldier's condition did not disqualify him or her for retention in military service, per chapter 3 (Medical Fitness Standards for Retention and Separation, including Retirement), AR 40-501

b. Soldiers in an entry-level status (i.e. the first 180 days months of continuous active duty service) were required to receive an uncharacterized character of service. On a case-by-case basis, the Secretary of the Army could issue an honorable character of service when clearly warranted by unusual circumstances involving personal conduct or duty performance.

4. AR 40-501, in effect at the time, prescribed policies and procedures for medical fitness standards. Chapter 2, paragraph 2-10 (Lower Extremities) stated potential enlistees with pronounced cases of flatfeet failed procurement standards.

5. Department of Defense (DOD) established "entry-level status" in DOD Directive 1332.14 (Enlisted Administrative Separations), effective 28 January 1982.

a. For active duty service members, entry-level status began on the member's enlistment and continued until either he/she had served 180 days of continuous active duty.

b. Effective 1 October 1982, AR 635-200 implemented the policies of DODD 1332.14 and added both "entry-level status" and the requirement for separation authorities to issue Soldiers uncharacterized characters of service when commanders had initiated separation action during the Soldier's entry-level status.

6. AR 635-5 (Separation Documents), in effect at the time, prescribed policies and procedures for DD Form 214 preparation. The regulation stated the narrative reason for separation was tied to the Soldier's regulatory separation authority and directed DD Form 214 preparers to AR 635-5-1 (Separation Program Designators (SPD)) for the appropriate entries in item 28 (Narrative Reason for Separation). For the RE code, preparers were to use the code associated with the SPD, as listed on the SPD/RE Code Cross Reference Table.

7. AR 635-5-1, in effect at the time, stated Soldiers separated in accordance with paragraph 5-11, AR 635-200 were to receive an SPD of "JFW" and have, "Failure to Meet Procurement Medical Fitness Standards" entered in item 28 of their DD Form 214.

8. The SPD/RE Code Cross Reference Table, in effect at the time, provided instructions for determining the RE code for Active Army Soldiers; the table shows the SPD code and its corresponding RE code. The SPD code of "JFW" has a corresponding RE code of "3."

9. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

10. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; Traumatic Brain Injury; sexual assault; or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

11. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

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, BCM/NRs 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.

12. AR 15-185, currently in effect, states:

a. The ABCMR decides cases on the evidence of record; it is not an investigative body. Additionally, the ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary).

b. The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

//NOTHING FOLLOWS//