

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 June 2024

DOCKET NUMBER: AR20230012116

APPLICANT REQUESTS:

- reconsideration of his prior request for a change in his separation code to allow him to reenter military service
- in effect, a change in his reentry code
- as a new request, an upgrade of his uncharacterized discharge to honorable
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20130008813 on 11 February 2014.

2. The applicant states he is requesting a correction to his discharge status and reentry code. The injustice he is experiencing is evidenced by the Board's refusal to read. The medical information is false, it was founded to be false, and the evidence is available in his record. The applicant provides a self-authored statement, which states in part:

a. The board's failure to read basic evidence and investigate the given documents has resulted in contradictions and bad faith conduct by the Army Discharge Review Board (ADRB). He has attempted to submit a request for changes to his DD Form 214 (Certificate of Release or Discharge from Active Duty) based on facts and evidence presented by the Department of Veterans Affairs (VA). The VA found that the medical records "previously dictated from several points of nitpicked interest," were used to deny the case and were based on false medical records. The records simply do not exist. The ADRB had been provided the evidence from the VA to identify the facts but failed to do so subsequently violating the veteran's right to due process.

b. The full statement is available for review by the board, as the applicant references Army Regulation and policies. His four primary issues are noted below:

(1) There are no medical records throughout his history that proves or shows evidence of such diagnosis/symptoms throughout the time prior to his enlistment. He believes the records are false and/or fabricated and if they existed, they should have been uploaded.

(2) The separation code and reentry code must be changed to reflect current evidence. If not but for the false medical documentation, the applicant could have rejoined the service.

(3) The VA has his entire childhood medical records and ADRB failed to read and investigate those documents. The board indicated there was no evidence submitted yet claimed they were in receipt of the rating decision documentation which he asserts, specifically outlined evidence in relation to the false medical documentation.

(4) The ADRB, did not in good faith, act upon their oath to review the complete file of evidence that was placed before them and rejected/refused evidence received contradicting themselves while acknowledging receipt of such evidence. They did not consider all the information presented by the applicant. The applicant was also "refused" legal counsel at the time of the discharge.

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

a. He enlisted in the Regular Army on 21 April 2006.

b. The service record includes the applicant's medical evaluations, dated 10 March 2006, for the purpose of enlistment which indicated he was generally in good health. The applicant was marked qualified for service.

- DA Form 2807-1 (Report of Medical History)
- DA Form 2808 (Report of Medical Examination)

c. The available service record is void of the facts and circumstances surrounding the applicant's discharge.

d. On 6 July 2006, he was discharged from active duty with an uncharacterized characterization of service, in accordance with chapter 5-11 of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations). His DD Form 214 shows he completed 2 months and 15 days of active service. He was assigned separation code JFW and the narrative reason for separation listed as "Failed Medical/Physical Procurement Standards," with reentry (RE) code 3.

4. On 11 February 2014, the ABCMR rendered a decision in Docket Number AR20130008813. The Board noted the service record contained little documentation related to his service on active duty or the circumstances that led to his separation. Additionally, his service medical records were not available for review and the applicant did not provide documentation that showed the medical condition that resulted in his discharge was caused by military service and did not exist prior to military service. The Board determined the applicant was discharged in accordance with applicable regulations and his rights were fully protected throughout the separation process.

5. On 25 July 2018 and 1 June 2023, the ADRB reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his requests for a change in the character and/or reason for his discharge.

6. By regulation (AR 15-185): The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. An applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

7. By regulation (AR 635-8), the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

8. By regulation (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 active duty (AD) or active duty training (ADT) for initial entry training may be separated. Such findings will result in an entrance physical standards board which must be convened within the Soldier's first 6 months of AD.

10. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

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, 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 requesting an upgrade of his 6 July 2006 uncharacterized discharge. He states: "The medical record IS FALSE!!"

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 for the period of service under consideration shows he entered the regular Army for basic combat training on 21 April 2006 and was discharged on 6 July 2006 under provisions provided by paragraph 5-11 of AR 635-200, Active Duty Enlisted Administrative Separations (6 June 2005): 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, may be separated. Such conditions must be discovered during the first 6 months of AD. Such findings will result in an entrance physical standards board [EPSBD]. This board, which must be convened within the soldier's first 6 months of AD, takes the place of the notification procedure (para 2-2) required for separation under this chapter."

e. The applicant's pre-entrance Report of Medical History and Report of Medical Examination show he was in good health, without significant medical history or conditions, and was Airborne qualified.

f. The EMR shows the applicant was seen by behavioral health on 8 May 2006 and had mental health issues prior to entering the Army: SM [service member] reports having "mental breakdowns"; SM complaining of anxiety and crying spells; SM reports feeling homesick x 2weeks, on a daily basis more often than not; SM reports WOOTS [???] SM reports diagnosed with manic depressant and anxiety disorder x 2years ago; SM reports treated with Concerta, Strattara for condition noted; SM states taking meds noted and other meds for entire period of treatment; SM reports discontinued treatment in JAN 06 after enlisting into the Army."

g. His next behavioral health encounter was on 9 May 2006 and shows that he was in the process of undergoing a separation for a condition which existed prior to service

h. A 19 May 2006 clinical encounter shows he had a four-year history of asthma and was now having frequent attacks. His methacholine challenge test, done a day earlier, was positive for asthma.

i. Neither condition meets medical enlistment standards. Paragraphs 2-23d and 2-28b of AR 40-501, Standards of Medical Fitness (29 August 2003):.

“The causes for rejection for appointment, enlistment, and induction are:

2-23d: Asthma, including reactive airway disease, exercise induced bronchospasm or asthmatic bronchitis, reliably diagnosed at any age.

2-28b: Care by a physician or other mental health professional for more than 6 months.”

j. Neither the applicant’s separation packet nor documentation addressing his involuntary admirative separation was submitted with the application nor uploaded into iPERMS.

k. It appears the applicant was referred to an entry physical standards boards (EPTSB) for his preexisting mental health issues and/or asthma under provisions in paragraph 5-11a of AR 635-200. EPTSBs 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 or develop a 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.

l. Given his discharge under paragraph 5-11 of AR 635-200 as the separation authority, it must be concluded the board found his mental health issues and/or asthma failed enlistment standards, had existed prior to service, was not permanently aggravated by his service, and was not compatible with continued service.

m. 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 or conditions which was/were, unfortunately, not within enlistment standards.

n. It is the opinion of the ARBA Medical Advisor that neither a discharge upgrade nor a referral of his case to the DES is warranted.

#### BOARD DISCUSSION:

1. The Board determined 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.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. Discharge Upgrade: Deny. The evidence shows the applicant was separated under chapter 5-11 of AR 635-200, due to failing medical/physical/ procurement standards (pre-existing condition). He was credited with 2 months and 15 days of active service. He did not complete initial entry training and was not awarded an MOS. His service was uncharacterized. The Board found no error or injustice in her separation processing. 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. The Board reviewed and agreed with the medical reviewer's finding insufficient evidence to support the applicant had a condition or experience that mitigates his discharge. Therefore, the Board determined that a change to his uncharacterized discharge to an honorable or a medical discharge is unwarranted.

b. Separation Code/RE Code: Deny. Enlisted Soldiers separated under the provisions of chapter 5-11 (Failing Medical/Physical Procurement Standards) of AR 635-200 are assigned Separation Code JFW, which is correctly shown on his DD Form 214. Also, the corresponding RE Code for Separation Code JFW is RE-3, which is also correctly shown on his DD Form 214. The Board found no error or injustice.

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:

1. Regarding the Separation Code and RE Code, 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 to amend the decision of the ABCMR set forth in Docket Number AR20130008813 on 11 February 2014.

2. Regarding the character of service/reason for separation, 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. 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. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. 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.

2. Army Regulation 635-5 (Separations Documents) in effect at the time, states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation. Block 28 (Narrative Reason) is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designator (SPD) Codes).

3. Army Regulation 635-5-1 (Separation Program Designator Codes), in effect at the time, provides separation program designator (SPD) codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The narrative reason for the separation will be entered in Block 28 of the DD Form 214 exactly as listed in the regulation. The separation code JFW lists the narrative reason for separation as "Failed Medical/Physical Procurement Standards," under the provisions of AR 635-200, chapter 5-11.

4. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) states an honorable discharge is a separation with honor. 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.



b. Paragraph 3-9 (Uncharacterized Discharge) states a separation will be described as entry-level with service uncharacterized if processing is initiated while a Soldier is in entry-level status.

c. Chapter 5-11 of the regulation 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 (AD) or active duty training (ADT) for initial entry training may 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, or during ADT for initial entry training. Unless the reason for separation requires a specific characterization, a Soldier being separated for the convenience of the Government will be awarded a character of service of honorable, under honorable conditions, or an uncharacterized description of service if in entry-level status.

5. Army Regulation 601-210 (Active and Reserve Components Enlistment Program), governs eligibility criteria, policies and procedures for enlistment and processing of persons, with or without prior service, into the Regular Army and the U.S. Army Reserve. Reentry eligibility (RE) codes are used for administrative purposes only and are not to be considered derogatory in nature. They are codes used for identification of an enlistment processing procedure. Table 3-1 lists the following:

- RE-1 applies to persons immediately eligible for reenlistment at time of separation.
- RE-3 applies to persons who may be eligible with waiver-check reason for separation.
- RE-4 applies to persons ineligible for enlistment.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (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 based on 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.

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.

//NOTHING FOLLOWS//