

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 June 2024

DOCKET NUMBER: AR20230012615

APPLICANT REQUESTS: Reconsideration of his request for change to his separation code, and a different, presumably more favorable, narrative reason for separation.

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

- DD Form 293 (Application for the Review of Discharge)
- National Personnel Record Center letter
- Self-authored letter

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 AR20220010267 on 27 June 2023.

2. The applicant states his recruiter knew he had a dislocated left shoulder prior to joining the Army. The Army was made aware of his injury on different occasions; his recruiter ignored protocols, and knowingly accepted him. While at Fort Sill, OK, a bunch of military guys broke into the barracks and injured him and other Soldiers. He was kicked in his left shoulder and sustained severe damage to his left shoulder. A master sergeant denied his request to seek medical attention. He continued to serve despite the injury. He was ordered to continue his duties to the break point. He was instructed to report to the administration building, and he was notified the attackers were captured. He was told to identify the perpetrators in front of a military high ranking panel. He asked, "will this incident be recorded into my military record?" A captain replied, "Yes." He was again instructed to report to the administration building where he was handed a document to sign without clarification or the right to review. He received his discharge papers and noticed inaccuracies and missing information. He seeks military benefits.

3. The applicant enlisted in the Regular Army on 8 October 1991 for 3 years. He was assigned to Fort Sill, OK, for basic training. However, his service record shows he neither completed training nor was awarded a military occupational specialty.

4. Screening notes of acute medical care show the applicant received treatment for left shoulder pain on numerous occasions from 8 October 1991 through 4 November 1991.
5. A DA Form 4707 (Entrance Physical Standards Board (EPSBD) Proceedings) dated 4 November 1991, notes the applicant was a 21-year-old male who complained of left shoulder pain with frequent dislocation. Physical examination noted positive popping sounds in his shoulder. He was diagnosed with a decreased range of motion and deformity with pain in left shoulder. He was placed on a permanent profile and limited to light indoor duty.
6. The EPSBD recommended the applicant be discharged from service, in accordance with Army Regulation 40-501 (Standards of Medical Fitness), paragraph 2-9a(1).
7. On 8 November 1991, the applicant acknowledged the EPSBD findings. Additionally, he understood that legal advice of an attorney was available to him, or he could consult civilian counsel at his own expense. He understood he could request discharge from the Army without delay or to request retention on active duty. He concurred with the proceedings and requested discharge from the Army without delay.
8. The applicant's commander recommended his separation from the Army. The discharge authority approved the applicant's separation on 13 November 1991.
9. The applicant was discharged on 15 November 1991. His DD Form 214 (Certificate of Release or Discharge) 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 JFT and Reentry Code 3. He was credited with 1 month and 8 days of net active service this period.
10. The applicant petitioned the ABCMR requesting correction of his separation code. On 27 June 2023, the Board voted to deny relief and determined the overall merits of the case were insufficient as a basis for correction of his records.
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. An uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It simply means the Soldier was not in the Army long enough for his or her character of service to be rated as honorable or otherwise.

12. 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 a change in the narrative reason for his separation.

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 8 November 1991 and received an uncharacterized discharge on 15 November 1991 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.

d. This similar request was previously denied by the ABCMR on (AR20220010267). Rather than repeat their findings here, the board is referred to the record of proceedings and medical advisory opinion for that case. This review will concentrate on the new evidence submitted by the applicant.

e. No new evidence was submitted with this application.

f. From the previous medical advisory opinion:

g. The applicant wrote on his pre-enlistment Report of Medical History "Broken left shoulder, about 12 or 13, fell out of tree." The accompanying Report of Medical Examination notes a left shoulder deformity, that an orthopedic consult was obtained, and that the applicant was determined qualified for enlistment.

h. The applicant was first seen for left shoulder pain on 15 October 1991. The medic wrote:

"21-year-old white male complaining of left shoulder deformity. SM [service member] states that he cannot do push-ups because of an injury when he was a kid. SM states that he broke his arm twice. Both times in the same spot. SM broke his arm inferior to the acromion of his left shoulder."

i. The physician assistant then added: "Has obvious deformity of left shoulder/upper arm. Poor musculature, active range of motion OK. Impression: Old shoulder injury."

Solider wants to train. Will give him a chance. Return to clinic in 1-2 weeks as needed and will EPTS [existed prior to service]." The applicant was subsequently referred to an entry physical standards board (EPSBD) IAW paragraph 5-11 of AR 635-200.

j. These boards 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 service aggravated.

k. From his 4 November Entrance Physical Standard Board (EPSBD) Proceedings (DA Form 4707):

HISTORY PRESENT ILLNESS: This 21-year-old trainee presents with left shoulder pain with frequent dislocation. History of left shoulder deformity and pain with decreased range of motion and frequent dislocation

PHYSICAL EXAMINATION: Positive deformity and decreased range of motion in left shoulder. Positive popping sounds.

DIAGNOSIS: Range of motion and deformity with pain in left shoulder.

DISPOSITION: It is recommended that the patient be separated. The soldier does not meet medical fitness standards for enlistment UP Paragraph 2-9a(1), Chapter 2, AR 40-501 [Standards of Medical Fitness.]

EPTS: YES. Service aggravated: NO

l. Paragraph 2-9a(1) of AR 40-501 (1 July 1987) states a cause for rejection for enlistment is shoulder forward flexion or abduction of less than 90 degrees:

m. The EPSBD determined the condition had existed prior to service (EPTS), failed the enlistment standard of AR 40-501, had not been permanently aggravated by his military service, and was not compatible with continued service. The applicant concurred with the findings on 8 November 1991 when he marked the box: "I concur with these proceedings and request to be discharged from the US Army without delay.

n. 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.

o. JLV shows the applicant is not registered with the VA.

p. It remains the opinion of the ARBA medical advisor that neither a change in his separation authority nor a referral of his case to the Disability Evaluation System is warranted.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted.
2. The Board concurred with the conclusion of the ARBA Medical Advisor that the evidence does not indicate the applicant incurred or exacerbated a medical condition during his period of military service that would have been a basis for a different reason for separation. Based on a preponderance of the evidence, the Board determined the reason for the applicant's discharge and the associated codes are 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 that the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20220010267 on 27 June 2023.

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. Army Regulation 15-185 (ABCMR) sets forth procedures for processing requests for the correction of military records. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR. The applicant must provide new relevant evidence or argument that was not considered at the time of the ABCMR's prior consideration.
2. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. At the time, this regulation prescribed the separation code "JFT" is the appropriate code to assign Soldiers separated under the provisions of Army Regulation 635-200, for not meeting procurement medical fitness stands – no standards.
3. 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.

4. 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/NR), on 25 July 2018, 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 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.

//NOTHING FOLLOWS//