

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 June 2024

DOCKET NUMBER: AR20230012981

APPLICANT REQUESTS:

- reconsideration of his previous request for correction of his records to show he was separated due to a service-incurred medical disability
- correction of his records to show he was separated in the rank and grade of sergeant (SGT)/E-5
- eligibility for 100% of educational benefits under the Post-9/11 GI Bill
- correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show he contributed to the Post-Vietnam Era Veterans' Educational Assistance Program (VEAP)

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214
- medical records (15 pages)

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 AR20190012050 on 24 February 2022.

2. The applicant is requesting 100% eligibility for educational benefits under the Post-9-11 GI Bill, however, determination of eligibility for the Post-911 GI Bill benefits is a function of the Department of Veterans Affairs (VA) and therefore, it is not within the purview of the ABCMR. This portion of the applicant's request will not be discussed further in this Record of Proceedings.

3. The applicant states he is requesting the corrections in the interest of justice because he was discriminated against due to his disability. He was awarded a 50% service-connected disability rating for his feet by the VA. He was demoted as a result of failing the run portion of the Army Physical Fitness Test (APFT) and he was passed over for promotions because the doctor determined he was undeployable, which was

unethical and illegal. His service was outstanding, but nobody had the integrity to look into this and correct it.

4. The applicant enlisted in the U.S. Army Reserve Delayed Entry Program on 7 February 2002 and in the Regular Army on 20 March 2002. His Enlisted Record Brief (ERB) shows he was promoted to the rank and grade of private first class (PFC)/E-3 with a date of rank of 1 October 2003.

5. The applicant's record shows he was counseled for failing the APFT on 9 January 2004, 3 February 2004, and 7 May 2004.

6. The applicant was again counseled for failing the APFT on 19 July 2004. He was also informed that he was being recommended for administrative reduction in rank for inefficiency per Army Regulation 600-8-19 (Enlisted Promotions and Reductions).

7. The applicant's ERB shows he was reduced in rank to private/E-2 on 19 July 2004.

8. On 26 July 2004, the applicant underwent a medical examination for the purpose of separation. The DD Form 2808 (Report of Medical Examination) shows his feet were found to be "normal arch and asymptomatic."

9. On 7 September 2004, the applicant's commander informed him that he was initiating action to separate him from the Army under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), chapter 13, for unsatisfactory performance, with a general under honorable conditions character of service. The commander stated the reason for the proposed separation action was the applicant's three consecutive APFT failures. The applicant was also advised of his rights to consult with legal counsel and to submit statements in his own behalf.

10. On 7 September 2004, the applicant provided a statement requesting an honorable character of service. He stated the following:

This request is being made for the following reasons. My job performance has always been above average. Despite the fact that I have failed the run on three record APFT test. Fort Stewart is my second duty assignment. I have served fifteen months in Korea and have earned an AAM [Army Achievement Medal], a battalion commanders coin, and have learned the importance of teamwork. Besides serving my time as an enlisted Soldier one of my long term goals is to continue my education and return as an officer. If I am separated under a general discharge I will forfeit my Montgomery G.I. Bill and educational assistance benefits.

My failure to complete the two mile run in the allotted time for my age group is the only reason my chain of command is seeking my separation from the military. The complaints made about the pain in my feet and frequent trips to sick call fell on deaf ears. Consulting with my chain of command didn't produce any results so I turned to IG [inspector general]. It took the Inspector General's attention to get me an appointment with the podiatrist. Previous to that, a call was made to the PA [interpreted to mean physician assistant] from my First Sergeant, stating that he should be informed if nothing is wrong with my feet. I returned with a thirty day profile. The problem with my feet is legitimate and should be treated as such.

Again I ask that all the information disclosed in my chapter packet be carefully reviewed. Throughout my military career I have always gone above and beyond the call of duty. I take great pride in being a member of the United States Army. Even though my injury prevents me from performing engineer task. I am still an American Soldier and hope that my good conduct is a direct reflection of the type of chapter I will receive.

11. On 16 September 2004, the applicant consulted with legal counsel, and he was advised of the basis for the contemplated action to separated him for unsatisfactory performance under the provisions of Army Regulation 635-200, chapter 13, of its effects and of the rights available to him.

12. On 28 September 2004, the separation authority approved the recommendation for separation under the provisions of Army Regulation 635-200, chapter 13, with an honorable character of service.

13. The applicant's DD Form 214 shows he was discharged 27 October 2004 under the provisions of Army Regulation 635-200, chapter 13, for unsatisfactory performance, with an honorable character of service. His DD Form 214 also shows he completed 2 years, 7 months, and 8 days of active service, and in:

- Blocks 4a (Grade, Rate or Rank) and 4b (Pay Grade) PVT/E-2
- Block 12h (Effective Date of Pay Grade) 19 July 2004
- Block 15a (Member contributed to Post-Vietnam Era VEAP), an "X" was placed in the "No" block.

14. There is no evidence in the applicant's available records indicating he attained the rank and grade of SGT/E-5.

15. During the processing of the applicant's previous case, the Army Review Boards Agency (ARBA) medical staff provided a medical review of this case. The medical advisory stated the following, in part:

a. 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).

b. Without the actual profile available for review of the applicant's restriction of his "work/duty limitations" for his congenital bilateral severe pes planus, there is no way to determine whether his diagnosis was a career termination or not.

c. Given the current documentation, it is the opinion of the ARBA Medical Advisor that a referral to the Army Disability Evaluation System (DES) is not warranted. Additional information that may help support the applicant's request are as follows:

(1) The profile form for his congenital bilateral severe pes planus restriction.

(2) The result of applicant's IG complaint for not being able to get appointment to podiatry evaluation in a timely manner prior to beginning of chapter process.

d. If the Applicant submits additional documentations to support his request, the Agency will certainly reevaluate his request. (*Note: The complete medical advisory opinion was provided to the Board for their review and consideration*).

16. The Post-Vietnam Era VEAP (Title 38, U.S. Code, Chapter 32) was an educational benefit program offered to service members who entered active duty between 1 January 1977 and 30 June 1985. For an enlisted Soldier who enlisted after 1985, the entry in Block 15a is No.

17. The Army rates only conditions determined to be physically unfitting at the time of discharge, which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career. The VA does not have authority or responsibility for determining physical fitness for military service. The VA may compensate the individual for loss of civilian employability.

18. 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 again applying to the ABCMR requesting a restoration of his rank to Sergeant (E05) and a change in his separation authority. an upgrade of his 19 July 2010 discharge characterized as under honorable conditions (general).

c. The Record of Proceedings and the prior denial outline the applicant's military service and the circumstances of the case. The applicant's DD 214 shows he entered the regular Army on 20 March 2002 and was honorably discharged on 27 October 2004 under the provisions in paragraph 13-2 of AR 635-200, Active Duty Enlisted Administrative Separations (17 December 2009): Unsatisfactory Performance.

d. This request was previously denied by the ABCMR on 24 February 2022 (AR201900120250). 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. The only new evidence submitted with this case is a 10 September 2004 AHLTA encounter showing the applicant was on a profile (likely temporary) and he was not happy that his command was making him run. The provider informed the applicant this was a command issue/choice and directed him to keep his podiatry appointment in four days. This does not affect the previous medical advisory opinion.

f. It remains the opinion of the ARBA medical advisor that neither a restoration of his rank nor a change in his separation authority 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 demonstrate that the applicant had a condition that did not meet retention standards and warranted his referral to the Disability Evaluation System. The Board also found insufficient evidence indicating the rank/grade he held at the time of his discharge was unjust. The Board found he was properly reduced in grade based on his poor APFT performance and found no evidence, such as a physical profile limiting his APFT participation, that would indicate otherwise. Based on a preponderance of the evidence, the Board determined the reason the applicant's discharge and his final rank/grade were not in error or unjust.

3. Regarding the entry in block 15a on his DD Form 214, the program referenced in that block was not applicable to the applicant and the only correct entry is "no." The Board determined this entry is not an error.

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 AR20190012050 on 24 February 2022.

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 635-200 sets forth the requirements and procedures for administrative discharge of enlisted personnel. Chapter 13 of the regulation in effect at the time provides that a Soldier may be separated per this chapter when it is determined that he/she is unqualified for further military service because of unsatisfactory performance. Commanders will separate a Soldier for unsatisfactory performance when it is clearly established that in the commander's judgment, the Soldier will not develop sufficiently to

participate satisfactorily in further training and/or become a satisfactory Soldier. Initiation of separation proceedings is required for Soldiers without medical limitations who have two consecutive failures of the APFT.

2. Army Regulation 40-501 (Standards of Medical Fitness) provides that for an individual to be found unfit by reason of physical disability, he or she must be unable to perform the duties of his or her office, grade, rank, or rating. Performance of duty despite impairment would be considered presumptive evidence of physical fitness.

3. Army Regulation 635-5 (Separation Documents), in effect at the time, prescribed the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It established standardized policy for the preparation of the DD Form 214. It states the DD Form 214 is a synopsis of the Soldier's most recent period of continuous active service. It provides a brief, clear-cut record of active Army service at the time of release from active duty, retirement, or discharge. The regulation states that in block 15a, for any Soldier who enlisted after 1985 mark "NO."

4. Army Regulation 600-8-19 prescribes policies and procedures governing promotion and reduction of Army enlisted personnel. Paragraphs 7-5 and 7-6 (Policy/Criteria on reduction for inefficiency), of the regulation in effect at the time, states inefficiency is a demonstration of characteristics that shows that the person cannot perform duties and responsibilities of the grade and military occupational specialty. Inefficiency may also include any act or conduct that clearly shows that the Soldier lacks those abilities and qualities normally required and expected of an individual of that grade and experience. The commander starting the reduction action will present documents showing the Soldier's inefficiency to the reduction authority. This may include statements of counseling and documented attempts at rehabilitation by chain of command or supervisors. Documents should establish a pattern of inefficiency rather than identify a specific incident.

5. Title 38, U.S. Code, Sections 1110 and 1131, permit the VA to award compensation for disabilities which were incurred in or aggravated by active military service. However, an award of a VA rating does not establish an error or injustice on the part of the Army.

6. Title 38, Code of Federal Regulations, Part IV is the VA Schedule for rating Disabilities. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge. As a result, the VA, operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform his duties. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

7. Title 10, U.S. Code, section 1556 requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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 ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//