

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 June 2024

DOCKET NUMBER: AR20230013044

APPLICANT REQUESTS:

- correction of his records to show he was discharged due to a service-incurred medical disability
- personal appearance before the Board

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

DD Form 149 (Application for Correction of Military Record)

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 is requesting the correction of his records because he was told by Army medical professionals that he would receive a full medical discharge. The reason for his discharge was not documented properly and as a result, he is not receiving benefits. He has been suffering from the injury that he incurred while in the service. He is not able to sit or stand for long periods, which disqualifies him from working.
3. A DD Form 2808 (Report of Medical Examination) shows the applicant underwent a medical examination on 14 April 2007 for the purpose of enlistment. Section 74a of the form shows he was found qualified for service.
4. The applicant enlisted in the Regular Army on 26 April 2007.
5. The applicant's separation proceedings are not available. His DD Form 214 shows he was discharged on 27 July 2007 under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 5-11, by reason of "failed

medical/physical/procurement standards." The DD Form 214 also shows he completed 3 months, and 2 days of active service and a character of service of uncharacterized.

6. 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 (EMR – AHLTA and/or MHS Genesis), 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 14 November 2006 uncharacterized discharge and, in essence, a referral to the Disability Evaluation System (DES). In is documentary evidence in support of claim, the applicant has listed six medical conditions: Back pain, Left leg pain, Pelvic pain, Tinnitus, PTSD, and Ear ringing. He states:

"I have suffered pain from my injury while hurt in service. I've suffered not being able to sit or stand long, which disqualifies me to work."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 for the period of service under consideration shows he entered the Regular Army on 26 April 2007 and received an uncharacterized discharge on 27 July 2007 under the separation authority 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. His separation code JFW denotes "Failed Medical/Physical Procurement Standards."

d. Paragraph 5-11a and 5-11b 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.

b. Medical proceedings, regardless of the date completed, must establish that a medical condition was identified by an appropriate military medical authority within 6 months of the soldier's initial entrance on AD for RA or during ADT for initial entry training for ARNGUS and USAR that—

(1) Would have permanently or temporarily disqualified the soldier 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 the soldier for retention in the military service per AR 40–501 [Standards of Medical Fitness], chapter 3. As an exception, soldiers with existed prior to service (EPTS) conditions of pregnancy or HIV infection (AR 600–110) will be separated.”

e. There is no significant medical history documented on his pre-entrance Report of Medical History. There are no medical conditions, defects, or diagnoses on his pre-entrance Report of Medical Examination on which he was found qualified for enlistment.

f. Review of his records in AHLTA shows he was evaluated and treated for low back pain on multiple occasions. Lumbar spine radiographs obtained on 15 May 2007 revealed mild congenital abnormalities “Transitional lumbosacral anatomy with partial lumbarization of S1 and a narrow transverse diameter of the sacrum. No acute findings”

g. From his 18 June 2007 AHLTA encounter:

“Seen multiple times with multiple tests for LBP [low back pain]. PT [physical therapy] and Chiro [chiropractor] states he has maxed their care. Chiro recommends PTRP [physical training and rehabilitation program] and patient declines. Will order MRI of LS spine (only hips done on previous MRI). If findings present will treat / EPTS [existed prior to service]. If not will return to unit for disposition.”

h. The PTRP, now known as the Warrior Training and Rehabilitation Program, or WTRP, provides a modified basic combat training (BCT) and/or one station unit training (OSUT) environment designed to return Soldiers to regular initial military training programs with higher levels of motivation, fitness, training, and education than when they entered, while providing them the quality health care they need to rehabilitate their injuries. Given her continued symptoms and abnormally low bone density, she would not have been a good candidate for this program.

i. Neither the applicant's separation packet or documentation addressing his administrative separation were submitted with the application nor uploaded into iPERMS.

j. Given his separation authority, it is assumed the applicant was referred to an Entry Physical Standards Board (EPSBD) for this condition under provisions provided in 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 service aggravated.

k. While the board's findings and recommendation are not available for review, it must be assumed the board determined this condition had existed prior to service, had not been permanently service aggravated, failed the medical procurement standards in chapter 2 of AR 40-501, and so recommended he be discharge due to this preexisting condition.

l. 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.

m. 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:

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. The evidence shows the applicant was separated under chapter 5 of AR 635-200, due to failing medical/physical/ procurement standards (pre-existing condition). He was credited with 3 months and 2 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 a medical discharge is unwarranted.

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.

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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 635-200 sets forth the basic authority for the separation of enlisted personnel. Paragraph 5-11 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 or active duty

training for initial entry training, may be separated. Such conditions must be discovered during the first 6 months of active duty. Such findings will result in an Entrance Physical Standards Board. This board must be convened within the Soldier's first 6 months of active duty. Medical proceedings, regardless of the date completed, must establish that a medical condition was identified by an appropriate military medical authority within 6 months of the Soldier's initial entrance on active duty for Regular Army Soldiers that:

a. Would have permanently or temporarily disqualified the Soldier for entry into the military service or entry on active duty or active duty training for initial entry training had it been detected at that time.

b. Does not disqualify the Soldier for retention in the military service per Army Regulation 40-501 (Standards of Medical Fitness), chapter 3.

3. Army Regulation 15-185 (ABCMR) provides Department of the Army policy, criteria, and administrative instructions regarding an applicant's request for the correction of a military record.

a. Paragraph 2-9 states the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of evidence.

b. Paragraph 2-11 states 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.

4. Section 1556 of Title 10, U.S. 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 ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//