

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 July 2024

DOCKET NUMBER: AR20230013173

APPLICANT REQUESTS: in effect, physical disability separation in lieu of administrative separation due to not meeting procurement medical fitness standards, no disability

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

- DD Form 149 (Application for Correction of Military Record)
- self-authored statement
- Standard Form 88 (Report of Medical Examination), 29 January 1990
- DA Form 5181-R (Screening Note of Acute Medical Care), 24 November 1990
- Standard Form 600 (Chronological Record of Medical Care), 26 November 1990
- DA Form 5181-R, 1 December 1990
- Reverse of DA Form 5181-r (Record of Acute Medical Care), 3 December 1990
- Standard Form 600, 5 December 1990
- partial DA Form 4707 (Entrance Physical Standards Board (EPSBD) Proceedings), 5 December 1990
- DD Form 214 (Certificate of Release or Discharge from Active Duty), covering the period ending 19 December 1990
- chiropractor's letter, 27 February 2023
- Department of Veterans Affairs (VA) Rating Decision, 31 May 2023
- VA letter, 1 June 2023
- chiropractor's email, 19 September 2023

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:

a. He is requesting the narrative reason on his DD Form 214 be corrected to show foot and back pain injury and service-connected disability, because in June 2023, the VA granted him a service-connected disability for injuries that he incurred in Basic Combat Training (BCT).

b. While he was in the military, he began experiencing a lot of pain on the bottom of his feet and his lower back. As noted in the medical evaluation he received at Reynolds Hospital at Fort Sill, OK, there was swelling on his feet that he nurtured back to health over the years. He experienced constant lower back pain from the time he left the Army until now. He just didn't understand how to deal with it other than Tylenol and rest.

c. When he realized chiropractic care was an option, he began to use that. Chiropractic care unfortunately did not cure his pain, but it did make it manageable. He definitely cannot have a job that requires heavy lifting due to this injury that happened in the Army. On quite a few different occasions, he has been "stuck," not able to move because of his injury.

d. Below is a list of the chiropractic care he's received due to this injury:

(1) From 1991 – 1998, for the first few years he used pain medication and rest and in 1994 he received chiropractic care from [REDACTED] but his computer records only go back to 1998, so previous records are available upon request.

(2) From 1998 – 2016, he received regular chiropractic care from [REDACTED] during these 18 years, as referenced by his letter.

(3) From 2018 – 2019, he had a total of 3 visits to Total Care Chiropractic, on 9 October 2018, 29 November 2018, and 15 January 2019, as evidenced by bank statements.

(4) From 2020 – 2022, he had 4 visits to Tier Wellness for lower back pain; proof available upon request.

(5) He visited Clarizio Chiropractic on 20 January 2023.

e. As of now, unfortunately, the back pain has gotten worse to the point where he gets "stuck" and can't even bend over or pick up things when it's really bad. He's resolved that he will have to have consistent chiropractic care for the rest of his life.

3. A physical profile is used to classify a Soldier's physical disabilities in terms of six factors, as follows: "P" (Physical capacity or stamina), "U" (Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric) and is abbreviated as PULHES. Each factor has a numerical designation: 1 indicates a high level of fitness, 2 indicates some activity limitations are warranted, 3 reflects significant limitations, and 4 reflects one or more medical conditions of such a severity that performance of military duties must be drastically limited. Physical profile ratings can be either permanent (P) or temporary (T).

4. A Standard Form 88 (Report of Medical Examination) shows on 29 January 1990, the applicant underwent medical examination for the purpose of enlistment in the Regular Army. He was found to have mild pes planus (flat feet) and was found qualified for service in the Army with a PULHES of 111211. The 2 rating was in factor H for hearing.

5. The applicant enlisted in the Regular Army on 8 November 1990.

6. The applicant provided multiple service medical documents, which show:

a. A DA Form 5181-R, dated 24 November 1990, shows the applicant was seen at the Troop Medical Clinic (TMC) for chronic lower back pain and a history of pes planus. His history included a motor vehicle accident (MVA) with lower back injury 7 months ago.

b. A Standard Form 600, dated 26 November 1990, shows the applicant was seen in the Physical Therapy Clinic with a an existed prior to service (EPTS) lower back pain after a motor vehicle accident. He now had increased lower back pain for 2 weeks. He was to undergo x-rays and engage in no physical training (PT).

c. A DA Form 5181-R, dated 1 December 1990, shows he was seen at the TMC for back pain he had for 3 weeks.

d. A Reverse of DA Form 5151-R, dated 3 December 1990, shows he was again seen at the Physical Therapy Clinic. He had tried arch supports for his history of lower back pain and hurting feet. His x-rays were within normal limits. He was assessed with pes planus. His records were to be obtained and provided to the doctor for EPTS evaluation.

e. A Standard Form 600, dated 5 December 1990, shows the applicant was in his third week of BCT with complaints of foot pain and lower back pain since induction. His pain was exacerbated by boots, prolonged standing, marching, etc. and not improving with standard care. He was assessed with symptomatic pes planes and plantar fasciitis. EPTS determination was recommended.

7. A DA Form 4707, shows:

a. An EPSBD convened on 5 December 1990, and found the applicant was medically unfit for enlistment in accordance with current medical fitness standards and in the opinion of the evaluation physicians, the applicant's condition of bilateral foot pain and cramps was EPTS.

b. He had foot pain since induction, exacerbated by wearing boots, prolonged standing, marching, and running. This condition is not resolving with standard care. He had symptomatic (painful) flat feet as a civilian. Physical examination showed bilateral marked pes planus of the feet with eversion, bulging of the inner boarder and tender soles.

c. His diagnosis was symptomatic, marked pes planus with plantar fasciitis preventing training. The onset of the condition was in childhood and it the standards for enlistment under the provisions of Army Regulation 40-501 (Standards of Medical Fitness) chapter 2.

d. The findings were approved by the medical approving authority on 6 December 1990.

e. On 11 December 1990, the applicant signed the form indicating he had been informed of the medical findings, concurred with the proceedings, and requested to be discharged from the Army without delay.

f. On 11 December 1990, his unit commander recommended the applicant's discharge and on 12 December 1990, his battalion commander recommended approval of his discharge.

g. On 14 December 1990, the approval authority directed the applicant's uncharacterized, entry-level discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-11.

8. The applicant's DD Form 214 shows on 19 December 1990, he was discharged under the provisions of Army Regulation 635-200, paragraph 5-11, due to not meeting procurement medical fitness standards, no disability, with corresponding separation code JFT. He was credited with 1 month and 12 days of net active service and his service was uncharacterized.

9. A letter from the applicant's chiropractor, [REDACTED] dated 27 February 2023, shows he treated the applicant for lower back pain in his office from 1998 through 2016.

10. A VA Rating Decision, dated 31 May 2023, shows the applicant was granted a service-connected disability rating for the following conditions effective 23 February 2023:

- thoracolumbar back pain, 40 percent
- left lower extremity radiculopathy, femoral, 20 percent
- left lower extremity radiculopathy, sciatic, 20 percent
- right lower extremity radiculopathy, femoral, 20 percent
- right lower extremity radiculopathy, sciatic, 20 percent

11. A VA letter, dated xxx, shows the applicant's combined service-connected disability rating for the above listed conditions is 80 percent, effective 23 February 2023.

12. An email from Clarizio Chiropractic, dated 19 September 2023, shows the applicant was treated in that office 5 times during the year of 2023.

13. 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.

14. 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 in essence a referral to the Disability Evaluation System (DES). He states: "I was approved for service-connected disability in June 2023 for injuries that happened in basic training."

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 8 September 1990 and was discharged on 19 December 1990 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. 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, 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.

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

f. During his third week of training, 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 Entrance Physical Standards Board (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 and prevented his ability to continue training,

HISTORY OF PRESENT CONDITION: Foot pain since induction, exacerbated by wearing boots, prolonged standing, marching, and running. This condition is not resolving with standard care.

Symptomatic (painful) flat feet as a civilian.

PHYSICAL EXAMINATION: Bilateral, marked pes planus with eversion, bulging of the inner border and tender soles.

DIAGNOSIS: Symptomatic, marked pes planus with plantar fasciitis

h. The provider noted the applicant's condition had existed since childhood, i.e. existed prior to service, 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."

i. On 7 December 1990, the Board determined the condition had existed prior to service (EPTS), 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 11 December 1990, the applicant concurred with the Board, both marking and initialing the election "I concur with these proceedings and request to be discharged from the US Army without delay."

j. A 26 November 1990 clinic encounter shows the applicant was evaluated and treated for low back pain (LBP) from a previous motor vehicle accident. This appears to have occurred prior to his entrance into the Army as the provider wrote "LBP EPTS." JLV shows the applicant has a total of 5 VA service-connected disability ratings and they are all related to his lumbar spine.

k. The DES only compensates an individual for service incurred medical condition(s) which have been determined to disqualify him or her from further military service and consequently prematurely ends their career. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

l. It is the opinion of the ARBA Medical Advisor that referral of his case to the Disability Evaluation System is not warranted.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation and the findings and recommendation of the medical review, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's narrative reason for separation.

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.

1/7/2025



 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, 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 (Personnel Separations – Enlisted Personnel), in effect at the time, sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. Paragraph 5-11 (Separation of personnel who did not meet procurement medical fitness standards) shows 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, which must be convened within the Soldier's first 6 months of active duty, takes the place of the notification procedure required for separation.

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 of active duty for Regular Army or active duty training for Army National Guard of the United States and U.S. Army Reserve that:

(1) 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 the time

(2) does not disqualify the Soldier for retention in the military service per Army Regulation 40-501, chapter 3.

3. Title 10, U.S. Code, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system (DES) and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 (Discharge Review Board (DRB) Procedures and Standards) and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in a Medical Evaluation Board (MEB); when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an

Military Occupational Specialty (MOS) Medical Retention Board (MMRB); and/or they are command-referred for a fitness-for-duty medical examination.

b. The disability evaluation assessment process involves two distinct stages: the MEB and Physical Evaluation Board (PEB). The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the severity of the disability and length of military service. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

c. The mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of his or her office, grade, rank, or rating. Reasonable performance of the preponderance of duties will invariably result in a finding of fitness for continued duty. A Soldier is physically unfit when a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

4. Army Regulation 635-40 establishes the Army Disability Evaluation System and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

a. Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in military service.

b. Soldiers who sustain or aggravate physically-unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

(1) The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

(2) The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

c. The percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Ratings are assigned from the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD). The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting, or ratable condition, is one which renders the Soldier unable to perform the duties of their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

5. Title 10, U.S. Code, section 1201, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30 percent. Title 10, U.S. Code, section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating of less than 30 percent.

6. Title 38, U.S. Code, section 1110 (General – Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

7. Title 38, U.S. Code, section 1131 (Peacetime Disability Compensation – Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was

discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

8. Title 10, U.S. Code, section 1556 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//