

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 September 2024

DOCKET NUMBER: AR20230013693

APPLICANT REQUESTS: an upgrade of his uncharacterized discharged to honorable

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Self-Authored Letter
- DD Form 2808 (Report of Medical Examination)
- DD Form 2807-2 (Medical Prescreen of Medical History Report)
- DA Form 4707 (Entrance Physical Standards Board (EPSBD) Proceedings)
- Medical Progress Notes
- X-ray Image
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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 he would like a change in his discharge due to the improper diagnosis that was given to him while in Basic Combat Training (BCT). Upon swearing into the United States Army, during the initial examination it was documented that he had no prior injuries to the foot he injured in BCT. After going through Military Entrance Processing Station (MEPS) there was nothing that disqualified him, and he was permitted to swear in and proceed to BCT. During the prescreening on 19 February 2013, he was given a thorough examination to include his feet and was again, qualified to enter the service. During the examination in effect, it was documented his feet were asymptomatic and that my feet were not a disqualifier.

a. Upon entering BCT and completing the red and white phase, and making it to blue phase, there were no problems associated with his foot. He was on track to graduate BCT with his platoon. His injury occurred during one of the final marches, when he

stepped into a pothole and heard a loud pop. Instantly the pain in his foot became too unbearable to continue marching. The following day he signed up to go to sick call and he believes he was given an improper diagnosis. The examining doctor asked what happened, he explained that he stepped in a pothole, and he heard a loud pop and that the pain was too severe to keep marching. The doctor then asked him if he had ever had any problems with his feet, and he explained that he did not and that he had previously played sports without any problems.

b. The applicant notes according to AR 40-501c, a Soldier will not be referred to the Disability Evaluation System (DES) because of impairments that were known to exist at the time of acceptance into the Army, after appropriate waiver was obtained, that have remained essentially the same in degree of severity, and do not meet the definition of a disqualifying medical condition or physical defect as in paragraph 3-1. His physical at the time of entrance indicated he did not have problems with his feet and the impairments only began after his time in the Army. Only after he began training and stepped in the pothole did the injury become symptomatic.

c. After being processed out he relocated to Columbia, SC and began looking for a doctor. On 19 September 2013, he had his first visit with a physician and informed the doctor that his injury caused him to depart the military and was given a date for surgery, 27 September 2013. A staple and screw were placed in his right foot, and he now experiences severe pain in his foot during the cold months. He believes he was given the wrong discharge due to improper diagnosis and was not given an opportunity to ask questions about the documents he was signing. If he had been given an explanation on what he was signing and what it meant, he would have elected a different discharge and would have requested an attorney to provide an explanation and elevate his request to a higher authority.

3. The applicant provides:

a. The below listed documents to be referenced in the service record:

- DD Form 2808, 19 February 2013
- DD Form 2807-2, 24 January 2013
- DA Form 4707, 18 June 2013
- DD Form 214 effective 2 July 2013

b. Medical records for treatment received for his bunions include:

- Two Progress Notes, 9 September 2013 and 3 October 2013
- X-ray image of foot

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

a. He enlisted in the Regular Army on 29 April 2013.

b. The applicant underwent a medical examination for the purpose of enlistment which indicated he was generally in good health with the exception of moderate pes planus, asymptomatic. The applicant also noted he broke his right middle finger, he received stitches in his left knee, and had a visit in the Emergency Room due to a head injury in 2005. The applicant returned for multiple follow-up visits and was subsequently marked qualified for service.

- DD Form 2807-2, 24 January 2013
- DD Form 2808, 19 February 2013
- DD Form 2807-1, 19 February 2013

c. A DA Form 4707, dated 13 June 2013, shows after careful consideration of medical records, laboratory, findings, and medical examinations, the board found that the service member was medically unfit for appointment or enlistment in accordance with current medical fitness standards and in the opinion of the evaluating physicians, the condition(s) existed prior to service. The findings included the applicant's diagnosis of congenital hallux valgus of the right foot. The findings were approved by the medical approving authority on 18 June 2013

d. On 21 June 2013, the applicant indicated he had been informed of the medical findings. Additionally, he understands that legal advice of an attorney employed by the Army is available to him or that he may consult civilian counsel at his own expense. He also understood that he may request to be discharged from the US Army without delay or to request retention on active duty. If retained, he may be involuntarily reclassified into another military occupational specialty based upon my medical condition. He concurred with these proceedings and requested to be discharged from the US Army without delay. .

e. On 21 June 2013, the unit commander recommended approval of the applicant's discharge, and on 22 June 2013, the separation authority approved the applicant's discharge.

f. On 2 July 2013, the applicant was discharged from active duty in accordance with chapter 5-11 of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) with an uncharacterized characterization of service. His DD Form 214 shows he completed 2 months and 4 days of active service with no lost time. He was assigned separation code JFW, Reentry Code 3, and the narrative reason for separation is listed as "Failed Medical/Physical/ Procurement Standards."

5. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

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.

7. By regulation (AR 635-5), 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.

9. 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 2 July 2013 uncharacterized discharge and, in essence, a referral to the Disability Evaluation System (DES).

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 shows he entered the Regular Army on 29 April 2013 and was discharged on 2 July 2013 under provisions provided by paragraph 5-11 of AR 635-200, Active Duty Enlisted Administrative Separations (6 September 2011): Separation of personnel who did not meet procurement medical fitness standards.

d. Paragraphs 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. On the applicant’s pre-entrance Report of Medical Examination, the examining provider noted he had moderate pes planus (flat feet) which was asymptomatic at that time.

f. The EMR shows the applicant was first seen for right great toe pain on 1 June 2013. He was started on conservative management to include oral mediations and a limited duty physical profile. Subsequent encounters show that though he has some initial improvement and was motivated to train, he was referred to an entry physical standards boards (EPSBD) on 10 June 2013 for chronic right foot pain due to a pre-existing congenital hallux valgus IAW paragraph 5-11 of AR 635-200.

g. 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.

h. From the narrative summary on his 13 June 2013 Entrance Physical Standards Board (EPSBD) Proceedings (DA Form 4707):

“HISTORY OF EPTS CONDITION: The Patient is a 19-year-old male in BCT [basic combat training] and he has chronic right foot pain. He is unable to march or run due to pain and has fallen behind in training. He will not be able to complete BCT. Musculoskeletal symptoms.

PHYSICAL FINDINGS: ... Musculoskeletal System: ... Right Foot: Hallux valgus Tenderness of right great toe. Neurological: Balance: Normal. Gait And Stance: Abnormal.

LAB AND X-RAY RESULTS: NONE

DIAGNOSIS: Congenital hallux valgus of the right foot

RECOMMENDATIONS: It is recommended that this Soldier be separated from the US Army for failure to meet medical procurement standard 11rds JAW AR 40-501, chapter 2-10b(2).”

i. Paragraph 2-10b(2) of AR 40-501 (4 August 2011) states:

“Current or history of deformities of the toes (acquired or congenital) including, but not limited to conditions such as hallux valgus, hallux varus, hallux rigidus, hammer toe(s), claw toe(s), overriding toe(s), that prevents the proper wearing of military footwear or impairs walking, marching, running, or jumping, do not meet the standard.”

j. On 18 June 2013, the board determined that his condition had existed prior to service, had not been permanently aggravated by his brief service, and failed the enlistment standards in chapter 2 of AR 40-501. The applicant concurred with the Board’s findings and recommendation on 19 March 2013 by selecting and initialing the elections box “I concur with these proceedings and request to be discharged from the US Army without delay.”

k. 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.

I. It is the opinion of the Agency Medical Advisor that neither 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 Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests.

a. The available evidence shows the applicant was found to have a preexisting condition which does not meet the enlistment standard in chapter 2 of AR 40-501, Standards of Medical Fitness, that was identified by medical authorities shortly after his entry on active duty. As a result, he was separated for not meeting medical fitness standards for enlistment or retention. He completed 2 months and 4 days of active service. He did not complete initial entry training and was not awarded an MOS. His service was uncharacterized. 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 found no error or injustice in his separation processing.

b. The Board considered the applicant's argument but did not find it supported by the evidence. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official, and agreed with the medical reviewer's determination that there is insufficient evidence of any mitigating behavioral health condition. The Board also found insufficient evidence to support a referral to the disability evaluation system process. Therefore, based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was 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 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 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. 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.

3. 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.

4. Army Regulation 635-5 (Separation 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.

5. 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//