

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 September 2024

DOCKET NUMBER: AR20230013940

APPLICANT REQUESTS:

- his uncharacterized service be changed to under honorable conditions (general)
- personal appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge)
- Army Service Records (5 pages), dated 11 May 2001 to 14 June 2001

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 that upon swearing in, it was determined his enlistment criteria was met despite his diagnosis of pes planus. His enlistment never should have been authorized knowing his condition and the ramifications of further progression of the condition. During his period of service, the condition became intolerable. He would like a general character of service to request housing and medical assistance.
3. The applicant's service record is not available for review in this case. However, the applicant provides five pages of service records, to include a fully constituted DD Form 214 (Certificate of Release or Discharge from Active Duty), for the Board to conduct a fair and impartial review of the applicant's petition.
4. The applicant enlisted in the Michigan Army National Guard (MIARNG) on 10 January 2001. He entered active duty on 23 March 2001 for the purpose of completing his initial entry training. His records indicate he did not complete initial entry training and was not awarded a military occupational specialty.

5. A DA Form 4707 (Entrance Physical Standards Board [EPSBD] Proceedings), dated 11 May 2001, shows the following:

a. In his sixth week of training, the applicant was diagnosed with chronic, symptomatic pes planus (third degree) with plantar fasciitis. It was determined that the condition existed prior to service.

b. The board further determined the applicant did not meet medical fitness standards for enlistment or retention and recommended he be separated from service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), paragraph 5-11.

6. On 14 June 2001, the applicant was released from active duty, and returned to the control of the MIARNG, under the provisions of AR 635-200, paragraph 5-11, by reason of failure to meet procurement medical fitness standards. His DD Form 214 confirms his service was uncharacterized, with separation code JFW. He was credited with 2 months and 22 days of net active service this period.

7. On that same date, the applicant was discharged from the MIARNG, as a result of his discharge from the Reserve of the Army. His National Guard Bureau (NGB) Form 22 (NGB – Report of Separation and Record of Service) shows his service was uncharacterized, with reenlistment eligibility code RE-1. He was credited with 5 months and 5 days of net service this period.

8. The applicant provides five pages of service records, dated 11 May to 14 June 2001, which are summarized, in pertinent part, in the Record of Proceedings (ROP) above.

9. 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.

10. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

11. MEDICAL REVIEW:

1. 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:

2. The applicant is applying to the ABCMR requesting an upgrade of his 14 June 1991 uncharacterized discharge.

3. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 shows the former Army National Guard Soldier entered active duty for training on 23 March 1991 and was discharged on 14 June 1991 under authority provided by paragraph 5-11 of AR 635-200, Personnel Separations – Enlisted Personnel (1 November 2000): Separation of personnel who did not meet procurement medical fitness standards.

4. Paragraph 5-11a of 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 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. This board must also be convened within the soldier's first 6 months of AD.”

5. The applicant was referred to an Entrance Physical Standards Board (EPSBD) for persistent bilateral foot pain unresponsive to conservative treatment 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.

6. From his Entrance Physical Standards Board (EPSBD) Proceedings (DA Form 4707):

a. This 20-year-old male, 6th week of his initial enlistment training of BCT [basic combat training] was identified as having an EPTS condition on 11 May 2001.

b. SUBJECTIVE FINDINGS: Service member with chronic, symptomatic pes planus [flat feet]. Unresponsive to orthotics, NSAID's, rest, boot arch supports.

c. OBJECTIVE FINDING: Third degree pes planus with moderate medial border eversion, 4+ tenderness to palpation over plantar fascia

d. LABORATORY/X-RAYRESULTS: NOT REQUIRED.

e. DIAGNOSIS: Chronic, symptomatic pes planus (third degree) with Plantar Fasciitis.

f. DISPOSITION: This soldier does not meet medical fitness standards for enlistment UP of paragraph 2-10b(5) Chapter 2 AR 40-501 [Standards of Medical Fitness].

EPTS: Yes.

Service aggravated: No.

Soldier does meet retention standards UP Chapter 3, AR 40-501. It is recommended that he be separated from the military service UP Paragraph 5-11, AR 635:200.

7. Paragraph 2-10b(5) of AR 40-501 (1 July 1987) states this condition is a cause for rejection for appointment, enlistment, and induction for:

“(5) 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.”

8. The second page of his 4707 is unavailable for review. Given the separation authority on his DD 214, it must be assumed the Board determined the condition had existed prior to service, 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.

9. An uncharacterized discharge is given to individuals on active duty who separate prior to completing 180 days of military service, or when the discharge action was initiated prior to 180 days of service. For the reserve components, it also includes discharges prior to completing initial entry training (IET). There are two phases - Basic Combat Training (BCT) and Advanced Individual Training (AIT). Because the applicant did not complete BCT, he was in an entry level status at the time of his discharge and

so received and uncharacterized discharge. 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.

10. It is the opinion of the ARBA Medical Advisor that an upgrade of his discharge is unwarranted.

BOARD DISCUSSION:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. 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. 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 neither incurred on active duty nor permanently aggravated by service. As a result, he was separated for not meeting medical fitness standards for enlistment or retention. He completed 2 months and 22 days of net 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. Also, 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 that an upgrade of his discharge is not warranted.

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, USC, 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. Section 1556 of Title 10, USC, 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 Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.
3. 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 regulation provides:
 - a. 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 the evidence.
 - b. 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. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.
 - 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 3-7b provides that a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. Paragraph 3-9, in effect at the time of the applicant's separation, provided that a separation would be described as entry level with uncharacterized service if processing were 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.

e. Paragraph 5-11 provides that Soldiers who are not medically qualified under procurement medical fitness standards when accepted for enlistment or who become medically disqualified under these standards prior to entrance on active duty, active duty for training, or initial entry training will be separated. A 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. 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.

5. On 25 July 2018, 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) 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 type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

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, BCM/NRs 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//