

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 April 2025

DOCKET NUMBER: AR20230014323

APPLICANT REQUESTS: correction of his records to show he was separated due to a medical disability.

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) in lieu of DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge)
- DD Form 215 (Correction to DD Form 214)

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. His commanding officer at the time decided it was in his best interest that he be discharged because of the problems he was having with his right knee. The reason for his decision was that he could not do what was required of him, like long range marches, carrying material of approximately 50 pounds, and other such tasks. His understanding at the time of his discharge was that it was a medical discharge because of his knee. Because he was only 19 years old, he did not think to file for disability for the knee injury.

b. He does not have any paperwork from that time frame to support his statement. He lost everything in a hurricane in September of 2018. He tried to be a good Soldier, but because of his knee pain, he was unable to do everything required of him. Because of the pain, he did try to get outside help from a doctor not associated with the military and that was why he was away so much without approval. He can get documentation

now, if necessary. He was being treated by an orthopedic specialist for his right knee problem. He had x-rays taken in 2022 and his doctor found that his knee is bone on bone, and he treated it with three injections of gel, but because of a mini stroke, he had a few weeks after the third injection, he has become bedridden, and he has not been able to follow up with his doctor about his knee. He is now under the care of another doctor, and she had an x-ray taken of his right knee a few months ago and found that there is a lot of arthritis in it now, causing him a lot of pain.

3. The applicant enlisted in the Regular Army on 23 July 1968.

4. A Standard Form 513 (Clinical Record – Consultation Sheet), dated 25 July 1968, shows the applicant underwent a medical examination which was requested by the Medical Section, U.S. Army Reception Station, Fort Benning, GA, for the purpose of induction and retention under the provisions of Army Regulation 40-501 (Standards of Medical Fitness). The Consultation Report section of the form states:

19-year-old basic trainee has history of injury to left knee approximately 2 years ago when he fell and "broke his left leg." He says he was treated in cast for 3 weeks and was unable to bend knee for additional 4 weeks. He states that he fell at the Reception Center when his knee gave away and he has had pain and swelling in his knee since that time.

Physical examination patient is hyperreactive and jumps when any attempt is made to palpate or manipulate his knee. There is no effusion present and no apparent ligamentous laxity. X-rays are negative.

Recommendation: Patient to have PT [physical therapy] for range of motion and be put to full duty as soon as possible. Return to Orthopedic Clinic only if locking or effusion occurs.

5. The applicant's disciplinary record shows:

- He received nonjudicial punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ) on 2 December 1968 for two specifications of being absent from his unit without authority
- He was found guilty by a special court-martial on 7 April 1969 of two specifications of being absent from his unit without authority and breaking restriction
- He received NJP under Article 15, UCMJ, on 9 June 1969 for violating a lawful general regulation
- He received NJP under Article 15, UCMJ, on 20 November 1969 for being absent from his unit without authority

- He was found guilty by a special court-martial on 2 February 1970 for being absent from his unit without authority
6. The applicant underwent physical and behavioral health evaluations for the purpose of separation on 30 January and 2 February 1970, respectively. No medical disqualifications were noted.
 7. On 21 February 1970, the applicant's commander informed him he was being recommended for discharge from the service under the provisions of Army Regulation 635-212 (Personnel Separations - Discharge - Unfitness and Unsuitability) by reason of unfitness with an undesirable type of discharge (i.e. under other than honorable conditions).
 8. On 4 March 1970, the separation authority approved the applicant's separation for unfitness under the provisions of Army Regulation 635-212 and directed the issuance of an Undesirable Discharge Certificate.
 9. The applicant's DD Form 214 shows he was discharged on 11 March 1970 with an under other than honorable conditions character of service.
 10. The Army Discharge Review Board denied the applicant's requests for an upgrade of his discharge on 31 July 1972, 10 November 1980, and on 12 April 1984.

11. 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 passed away on 14 December 2024. He had applied to the ABCMR requesting an upgrade of his under other than honorable conditions discharge. He stated a knee injury was the case of his separation.
 - c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 for the period of Service under consideration shows he entered the regular Army on 23 July 1968 and received an under other than honorable conditions discharge on 11 March 1970 under the

provisions provided in AR 635-212, Discharge – Unfitness and Unsuitability (21 January 1970). The separation program number 28B denotes the reason for separation as “Unfitness, frequent involvement in incidents of a discreditable nature with civil or military authorities.”

d. His DD 214 list 276 days lost under 10 USC 972 thru what appear to be approximately 12 periods of absence without leave.

e. A 25 July 1968 orthopedic evaluation states he broke his left knee 2 years prior to entering the Army. Nothing was found on examination and the applicant was referred to physical therapy with the directive he be returned to duty as soon as possible, and he was directed to return for locking or swelling.

f. No abnormalities were noted on his 30 January 1970 chapter physical and he was psychiatrically cleared for separation

g. On 3 April 1970, his company commander recommended the applicant be separated for unfitness of AR 635-212:

“EM [enlisted member] has received trial and conviction by two Special Courts-Martials for three specifications of violation of Article 86, UCMJ and one specification of Article 134, UCMJ. EM has in excess of 198 days bad time.

It is not considered feasible or appropriate to effect other disposition because attitude, conduct and disciplinary records clearly indicate elimination due to unfitness as most appropriate disposition.”

h. The acting commander of the U.S. Army School / Training Center and Fort Gordon approved his separation with an undesirable discharge certificate 16 April 1970.

i. The applicant has no records in JLV.

j. There is no evidence the applicant had a mental health or other medical condition which would have then contributed to or would now mitigate his multiple UCMJ violations.

k. It is the opinion of the ARBA medical advisor that a discharge upgrade based upon a medical condition is not warranted.

I. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? NO

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A

BOARD DISCUSSION:

1. 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 record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant's petition, available military records, and the medical review, the Board concurred with the advising official finding that there is no evidence the applicant had a mental health or other medical condition which would have then contributed to or would now mitigate his multiple UCMJ violations, and that a discharge upgrade based upon a medical condition is not warranted. Therefore, the Board denied relief.

2. Based upon the misconduct leading to the applicant's separation and the following recommendation found in the medical review related to the liberal consideration:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? NO

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A

The Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's discharge.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	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.

X //SIGNED//

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 635-212 (Personnel Separations - Discharge - Unfitness and Unsuitability), in effect at the time, set forth the basic authority for the elimination of enlisted personnel for unfitness and unsuitability. The regulation provided that an individual was subject to separation for unfitness when among other reasons, frequent incidents of a discreditable nature with civil or military authorities an established pattern of shirking existed. When separation for unfitness was warranted, an undesirable discharge was normally considered appropriate.

3. 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.

4. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), in effect at the time, states no enlisted member may be referred for physical disability processing when the record indicates the basis for separation is unfitness, except when the officer exercising general court-martial jurisdiction determines that the disability was the cause or substantial contributing cause of the misconduct, or that circumstances warrant physical disability processing in lieu of administrative processing.

5. 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 ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//