

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 September 2024

DOCKET NUMBER: AR20230014942

APPLICANT REQUESTS:

- an upgrade of his uncharacterized discharged to honorable
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Blank Standard Form (SF) 180 (Request pertaining to Military Records)
- DA Form 4856 (General Counseling Form)
- DA Form 4707 (Entrance Physical Standards Board (EPSBD) Proceedings)
- NGB Form 22 (National Guard Bureau Report of Separation and Record of Service)
- Orders 197-104
- Orders 252-0124
- 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 is requesting an upgrade of his uncharacterized discharge to honorable. An injury/illness occurred during Basic Combat Training that caused his breathing to become restricted for a significant amount of time. The condition resulted in an uncharacterized discharge. He did not receive legal counsel as an option during his briefing on the reason for being discharged. He was told to recall prior medical history that dated back to when he was five or six years of age as a condition of his discharge. He was not able to recall it then or to date. There was no prior medical record produced and he was never diagnosed with breathing issues until the incident that occurred

during his active service in the military. He really wanted to serve his country as a Soldier in the Army National Guard. This has weighed on his heart and mind since the discharge occurred.

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

a. He enlisted in [REDACTED] Army National Guard ([REDACTED] ARNG) and entered active duty on 4 August 1998.

b. The available service record is void of a medical examination documentation for the purpose of enlistment and qualification for service.

c. A DA Form 4707, dated 25 August 1998, 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 asthma. The findings were approved by the medical approving authority on 27 August 1998 and the applicant concurred with the proceedings on 1 September 1998.

d. On 14 September 1998, he was discharged from active duty with an uncharacterized discharge. His DD Form 214 shows he completed 1 month and 11 days of active service with no lost time. The narrative reason for separation was listed as "Failure to Meet Procurement Medical Fitness Standards".

5. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

6. 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.

7. 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 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 essentially requesting a referral to the Disability Evaluation System and an upgrade of his uncharacterized discharge. He states:

“An injury/illness occurred doing Basic Training that cause my breathing to be restricted for a significant amount of time. It resulted in me being discharged Uncharacterized. I did not receive legal counsel regarding my options during my briefing on the reasoning I was being discharge.

I was told by an individual to recall prior medical history that dated back to when I was five (5) or six (6) years of age as a condition of my discharge. I really wasn't able to recall the information that was requested then and I don't recall it now.

There was no prior medical recorder produced. I was never diagnosed with breathing issues until the incident that occurred during my active service in the military.”

c. The Record of Proceedings outlines the applicant's military service and the circumstances of the case. His signed DD 214 shows the former Army National Guard Soldier entered active duty for basic combat training (BCT) on 4 August 1998 and received an uncharacterized discharged on 14 September 1998 under the separation authority provided by paragraph 5-11 of AR 635-200, Personnel Separations – Enlisted Personnel (30 August 1995): 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. No medical documentation was submitted with the application and his period of service predates the EMR.

f. During his first week of basic combat training, the applicant was referred to an Entrance Physical Standards Board (EPSBD) for shortness of breath (dyspnea) 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 (1 December 1983), 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 history and exam as noted on his Entrance Physical Standards Board (EPSBD) Proceedings (DA Form 4707) dated 25 August 1998:

“MILITARY HISTORY: This 22-year-old male entered on active duty from Davenport, Iowa. He is in his first week of BCT training.

CHIEF COMPLAINT: Dyspnea

HISTORY OF PRESENT ILLNESS: Two-week history of dyspnea/wheeze/chest-tightness exacerbated by heat/exercise rendering patient unable to fulfill the physical requirements of military training. Seen in TMC [Troop Medical Clinic] twice for chief complaint, once with severe symptoms relieved by nebulizer treatment.

PAST HISTORY & REVIEW OF SYSTEMS: Patient admits history of exercise-induced dyspnea/wheeze/chest-tightness since age 6, and a family history of asthma, though he denies diagnosed/treated personal medical history of asthma.

PHYSICAL EXAMINATION: Entirely within normal limits except as noted below.

HEENT: Tympanic membranes clear, nasal mucosa moist without discharge, no sinus tenderness, throat clear

Lungs: Clear to auscultation bilaterally without wheeze/rhonchi/rales

LABORATORY & X-RAY RESULTS:

Chest Xray (13Aug98): Normal

Pulmonary Function Test (14Aug98):

- 1) Normal baseline spirometry
- 2) Positive [i.e., abnormal] exercise challenge with severe decrease in FEV1 [forced expiratory volume in 1 second]

DIAGNOSIS: Asthma.

DISPOSITION: It is recommended that the patient meet a Medical Board for consideration of separation. Member does not meet medical fitness standards for enlistment or induction under the provisions of Paragraph 2-23(d)2, Chapter 2, AR 40-501.

EPTS [Existed Prior to Service]: Yes.

Service aggravated: No. Approximate date of origin 1982.

h. The applicant's asthma failed the medical induction standard in paragraph 2-23d of AR 40-501, Standards of Medical Fitness (30 August 1995). Asthma as a cause for rejection:

"d. Asthma, including reactive airway disease, exercise induced bronchospasm or asthmatic bronchitis, reliably diagnosed at any age. Note: Reliable diagnostic criteria should consist of the following elements:

(1) Substantiated history of cough, wheeze, and or dyspnea which persists over a prolonged period of time (generally more than 6 months), or

(2) If the diagnosis is in doubt, a test for reversible airflow obstruction (greater than 15 percent increase in forced expiratory volume in 1 second (FEV1) following administration of an inhaled bronchodilator), or airway hyperactivity (exaggerated

decrease in airflow induced by standard bronchoprovocation challenge such as methacholine inhalation or a demonstration of exercise induced bronchospasm) must be performed. Bronchoprovocation or exercise testing should be performed by a board-certified pulmonologist or allergist.”

i. The applicant met both criteria d1 and d2.

j. The EPSBD determined the condition had existed prior to service (EPTS), failed the enlistment standard of paragraph 2-23d of AR 40-501, had not been permanently aggravated by his military service, and was not compatible with continued service.

k. A General Counseling Form shows that on 1 September 1998 the applicant was counseled on the EPSBD’s findings and recommendation, his options, and he concurred with the board’s recommendation for entry level separation with an uncharacterized discharge.

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 Agency Medical Advisor that neither an upgrade of his discharge nor referral of his case to the DES is warranted.

BOARD DISCUSSION:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of requests for changes to discharges. The Board concurred with the conclusion of the ARBA Medical Advisor that the evidence confirms the applicant was properly discharged in accordance with the regulatory guidance related to entry-level Soldiers with preexisting conditions. Based on a preponderance of the evidence, the Board determined the applicant’s uncharacterized service is 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.

X

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 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 (Personnel Separations – Enlisted Personnel), 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//