

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 October 2024

DOCKET NUMBER: AR20230015278

APPLICANT REQUESTS:

- retirement due to service-incurred physical disability
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Standard Form (SF) 88 (Report of Medical Examination), 21 February 1996
- SF 93 (Report of Medical History), 26 February 1996
- Naval Medical Center Report of Medical Board, 7 April 1999
- memorandum dated 13 April 1999, subject: Commander's Evaluation (for applicant)
- SF 88, 19 April 1999
- SF 93, 19 April 1999
- Physical Evaluation Board (PEB) Referral Transmittal Document
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- DD Form 215 (Correction to DD Form 214)
- Department of Veterans Affairs (VA) Rating Decision

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 she was medically evaluated for plantar fascial fibromatosis. During the medical board process, she was given ineffective counsel and she was rushed through the process. She was diagnosed with chronic plantar fasciitis, did not exist prior to entry (EPTE), secondary to an EPTE foot type of pes planus, subtalar joint pronation, #72871. When she enlisted in the military, there was nothing wrong with her feet. She developed problems after she enlisted. Her Military Entrance Processing Station physical examination states she had normal foot type. Her injury caused her to

be unfit for duty and she should have been offered a military retirement and/or severance pay. She neither had pes planus before she entered the military nor was she diagnosed with it before she enlisted. Her pes planus developed during military service along with plantar fasciitis. She would like to request a second look at the information provided. Her condition was not pre-existing, and she does not understand why she was not offered military retirement.

3. On 21 February 1996, the applicant underwent a medical examination for the purpose of enlistment in the Army. The Report of Medical Examination shows her feet were found to be normal. The report also shows she was found qualified for enlistment.

4. The applicant enlisted in the Regular Army on 3 April 1996.

5. A Naval Medical Center Report of Medical Board, dated 7 April 1999, shows the applicant was diagnosed with chronic plantar fasciitis, did not EPTE, secondary to an EPTE foot type of pes planus, subtalar joint pronation, #72871. The evaluating physician indicated the following:

The history of the patient, the review of systems, and the social history were non-contributory. She was on profile for quite a while. The history of the chief complaint is as follows: The patient has been complaining over the last year and a half of pain and discomfort in two areas of her great toenails and the insteps of both feet. She was seen and treated conservatively for a period of time, and then in October of 1998, she was given an appointment with a podiatrist, who related a history of several excisions of the great toenail borders secondary to ingrown toenails, five on the right and three on the left. She had definitive treatment for her nail beds, Phenol and cold steel excision of the matrix on the medial borders of both halluces. She now has no problems with those areas of her foot. The second problem the patient was having was chronic instep pain and plantar fascial pain secondary to a pes planus foot type. Again, she was treated conservatively and then given an appointment with a podiatrist. The consultant noted the history and thorough exam of both lower extremities, and it was discovered that she had a pes planus foot type, rearfoot valgus/subtalar joint pronation, causing chronic plantar fasciitis. There was tenderness to the medial band of the plantar aspect of both feet upon first metatarsophalangeal dorsiflexion and weight-bearing activities.

X-ray examination again today revealed a pes planus foot type, decreased calcaneal inclination angle, anterior break in cyma line, navicular-cuneiform fault, and a met-primus elevatus, all consistent with a pes planus foot type, causing the plantar fasciitis.

The disposition of the patient is she cannot return to full duty because of the discomfort she is having. A trial of light duty has been appropriate. She is precluded

from shipboard activities, Army type activities, no Physical Readiness Testing or lifting or standing until discharge. It is the opinion of the Medical Board that the member's condition interferes with the reasonable performance of her assigned duties. On that basis, this case is referred to the U. S. Army Reviewing Authority for fitness for duty determination.

6. The applicant provided a memorandum from her unit commander, dated 13 April 199, indicting the applicant was unable to perform the duties required by her military occupational specialty (MOS) 77F (Fuel Handler). The commander recommended her retention in the service if at all possible and reclassification into an MOS she physically qualified for.

7. A PEB Referral Transmittal Document, dated 7 June 1999, shows the applicant was referred to a PEB by her medical treatment facility at Fort Gregg-Adams, VA (formerly Fort Lee).

8. The applicant's PEB proceedings are not available. Her DD Form 214 shows she was discharged 20 October 1999 under the provisions of Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation), paragraph 4-24b(4) (Separation for physical disability without severance pay), by reason of disability, existed prior to service (EPTS), PEB. The DD Form 214 also shows she was credited with 3 years, 6 months, and 18 days of active service.

9. The applicant provided a VA rating decision showing she was granted service-connected disability compensation for various conditions that include bilateral pes planus with plantar fasciitis.

10. 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.

#### 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, the Army Aeromedical Resource Office (AERO), 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 requesting a referral to the Disability Evaluation System (DES). She claims that though she was found to have pes planus (aka flat feet) in the Army, the chronic plantar fasciitis she developed while in the Army and for which she was separated without benefits had not existed prior to service and so she should have been compensated.

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The DD 214 for the period of Service under consideration shows the applicant entered the regular Army on 3 April 1996 and was separated with benefits on 20 October 1999 under paragraph 4-24b(4) of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (1 September 1990): Separation for physical disability without severance pay.

d. The medical documentation in the case supports the applicant's claim. She was noted to have normal, asymptomatic feet on her pre-entrance Report of Medical Examination. The provider's noting her feet were normal was very likely to have been an error given the natural history of pes planus as typically a congenital/developmental abnormality. However, the key piece of information here is that she was asymptomatic.

e. Her DD 214 shows she had been awarded the military occupational specialty of 77F – Petroleum Supply Specialist, indicating she had graduated both basic combat training and advanced individual training.

f. The applicant's Medical Evaluation Board narrative summary shows she was starting her 4th year of Service at that time and had been on limited duty for the past 18 months. Excerpts from this narrative summary:

"The patient has been complaining over the last year and a half of pain and discomfort in two areas of her great toenails and the insteps of both feet. She was seen and treated conservatively for a period of time, and then in October of 1998, she was given an appointment with a podiatrist, who related a history of several excisions of the great toenail borders secondary to ingrown toenails, five on the right and three on the left. She had definitive treatment for her nail beds; Phenol and cold steel excision of the matrix on the medial borders of both halluces.

She now has no problems with those areas of her foot. The second problem the patient was having was chronic instep pain and plantar fascial pain secondary to a pes planus foot type. Again, she was treated conservatively and then given an appointment with a podiatrist.

The consultant noted the history and thorough exam of both lower extremities and it was discovered that she had a pes planus foot type, rearfoot valgus/subtalar joint pronation, causing chronic plantar fasciitis. There was tenderness to the medial band of the plantar aspect of both feet upon first MPJ dorsiflexion and weight-bearing activities.

X-ray examination again today revealed a pes planus foot type, decreased calcaneal inclination angle, anterior break in cyma line, navicular-cuneiform fault, and a met-primus elevatus, all consistent with a pes planus foot type, causing the plantar fasciitis.

DIAGNOSIS:

(1) CHRONIC PLANTR FASCIITIS, DID NOT EXIST PRIOR TO ENTRY, SECONDARY TO AN EPTE [sic, should read EPTS] FOOT TYPE OF PES PLANUS, SUBTALAR JOINT PRONATION.

The disposition of the patient is she cannot return to full duty because of the discomfort she is having. A trial of light duty has been appropriate. She is precluded from shipboard activities, Army type activities, no Physical Readiness Testing or lifting or standing until discharge.

It is the opinion of the Medical Board that the member's condition interferes with the reasonable performance of his assigned duties. On that basis, this case is referred to the U. S. Army Reviewing Authority for fitness for duty determination."

g. In his Commander's Evaluation of the Applicant, her company commander was quite laudatory:

"Under the current profile submitted 7 April 1999 by LCDR P.S., SPC [Applicant] is unable to perform the duties required by MOS 77F, Fuel Handler.

SPC [Applicant] is an outstanding soldier and performs extremely well in her current job in the company orderly room. I recommend that she be retained if at all possible and reclassified into an MOS she is physically qualified for."

h. The applicant's Informal Physical Evaluation Board (PEB) Proceedings (DA Form 199) are not available for review. However, her DD 214 shows she was errantly separated without benefits.

i. While the applicant's pes planus had existed prior to service, her plantar fasciitis, the condition for which she was separated had not, and the physician who did her narrative summary made that clear in all capital letters.

j. Her military Service with this preexisting led to a condition which should be seen as having been permanently aggravated by her military service. Service aggravation is defined in the glossary of AR 600-8-4, Line of Duty Policy, Procedures, and Investigations (1 September 1990)

#### Service aggravation

a. Medical treatment facilities frequently list a medical condition as "service aggravated" based on the fact that the condition becomes symptomatic under certain conditions found in the military. Symptoms arising when limits imposed by a condition have been exceeded are poor criteria of service aggravation of the condition, itself.

b. When an EPTS condition becomes symptomatic under the stress of active duty it may be unfitting but it has not been aggravated by AD (active duty) unless it has been permanently worsened over and above natural progression.

k. The applicant's pes planus clearly existed prior to his enlistment and only became symptomatic 18 months later "under certain conditions found in the military."

l. Paragraph 3-2a(3) of AR 600-8-4, Line of Duty Policy, Procedures, and Investigations (1 September 1990) states:

"Only specific findings of "natural progression" of the preexisting disease or injury, based upon well-established medical principles are enough to overcome the presumption of military service aggravation."

m. The applicant's development of chronic plantar fasciitis due to the rigors of military service in not "natural progression."

n. This is also addressed in paragraph E2.1.3.2 of Enclosure 2 of Department of Defense Instruction 1332.38, SUBJECT: Physical Disability Evaluation, 14 November 1996, defines service aggravation:

"The permanent worsening of a pre-Service medical condition over and above the natural progression of the condition caused by trauma or the nature of Military Service."

o. Finally, paragraph E3.P4.5.2.3 of Department of Defense Instruction 1332.38, SUBJECT: Physical Disability Evaluation, 14 November 1996, addresses the presumption of service aggravation of a medical condition. It states in part:

“The presumption that a disease is incurred or aggravated in the line of duty may only be overcome by competent medical evidence establishing by a preponderance of evidence that the disease was clearly neither incurred nor aggravated while serving on active duty or authorized training.”

p. The PEB erred in not applying the criteria in paragraph 4-19e(1)(c) to the applicant’s unfitting medical condition:

“e. Conditions which existed prior to entry in service.

(1) Unchanged physical defects. A soldier will not be found unfit because of physical defects that-

(a) Were known to exist at the time of acceptance for military service,

(b) Have remained essentially unchanged since acceptance,

(c) Have not interfered with performance of effective military service.”

q. It is clear from both the physician’s and her commander’s evaluations that her plantar fasciitis, a condition which had not existed prior to her Service, was interfering with her “effective military service.”

r. Review of her records in JLV shows the applicant has been awarded 30% VA service-connected disability ratings for “flat foot condition.”

s. It is the strong opinion of the ARBA Medical Advisor that a long overdue referral of her case to the DES is clearly warranted.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board carefully considered the applicant’s record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant’s petition, available military records and

medical review, the Board concurred with the advising official finding that a long overdue referral of her case to the DES is clearly warranted. The Board determined there is sufficient evidence based on the medical opine noting, both the applicant's physician's and her commander's evaluations of her plantar fasciitis, a condition which had not existed prior to her service, was interfering with her "effective military service. Based on the preponderance of evidence, the Board granted partial relief to refer the applicant's case to the disability evaluation system (DES).

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	GRANT FULL RELIEF
■	■	■	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION



BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined that the evidence presented was sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by directing the applicant be entered into the Disability Evaluation System (DES) and a Medical Evaluation Board concerned to determine whether the applicant's conditions(s), met medical retention standard at the time-of-service separation.

a. In the event that a formal physical evaluation board (PEB) becomes necessary, the individual concerned may be issued invitational travel orders to prepare for and participate in consideration of her case by a formal PEB if requested by or agreed to by the PEB president. All required reviews and approvals will be made subsequent to completion of the formal PEB.

b. Should a determination be made that the applicant should have been separated under the DES, these proceedings will serve as the authority to void her administrative separation and to issue him the appropriate separation retroactive to her original separation date, with entitlement to all back pay and allowances and/or retired pay, less any entitlements already received.

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to retirement due to service-incurred physical disability.



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. 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 and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with Department of Defense Directive 1332.18 and Army Regulation 635-40 (Disability Evaluation for Retention, Retirement or Separation).

3. Army Regulation 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.

a. The disability evaluation assessment process involves two distinct stages: the Medical evaluation Board (MEB) and PEB. The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his or 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 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.

b. Service members whose medical condition did not exist prior to service who are determined to be unfit for duty due to disability are either 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. Paragraph 4-24b(4), of the regulation in effect at the time, concerns final disposition wherein disposition instructions will be prepared stating separation will be for physical disability without severance pay.

d. Appendix B, paragraph B-10 (rating disabilities aggravated by active service), in effect at the time states:

(1) When considering existed prior to service (EPTS) cases involving aggravation, by active service, the rating will reflect only the degree of disability over and above the degree existing at the time of entrance into the active service, less natural progression occurring during active service. This will apply whether the particular condition was noted at the time of entrance into active service or is

determined upon the evidence of record or accepted medical principles to have existed at that time. Therefore, it is necessary to deduct from the present degree of disability, if ascertainable, the degree of disability existing at the time of entrance into active service and also the natural progression that has occurred during active service in terms of the rating schedule.

(2) Hereditary, congenital, and other EPTS conditions frequently become unfitting through natural progression and should not be assigned a disability rating unless service aggravated complications are clearly documented or unless a Soldier has been permitted to continue on active duty after such a condition, known to be progressive, was diagnosed or should have been diagnosed.

4. Title 38, U.S. Code, Sections 1110 and 1131, permit the VA to award compensation for disabilities which were incurred in or aggravated by active military service. However, an award of a VA rating does not establish an error or injustice on the part of the Army.

5. Title 38, Code of Federal Regulations, Part IV is the VASRD. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge. As a result, the VA, operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform his duties. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

6. Army Regulation 15-185 (ABCMR) provides Department of the Army policy, criteria, and administrative instructions regarding an applicant's request for the correction of a military record. Paragraph 2-11 states 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.

7. Section 1556 of Title 10, U.S. 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 ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//