

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 August 2024

DOCKET NUMBER: AR20240000611

APPLICANT REQUESTS: In effect, correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show his characterization of service as "Under Honorable Conditions (General)" rather than "Uncharacterized." Additionally, he requests an appearance before the Board via video/telephone.

APPLICANT'S SUPPORTING DOCUMENT CONSIDERED BY THE BOARD:

DD Form 149 (Application for Correction of Military Record)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20200000855 on 6 March 2020.
2. The applicant states he currently has a service-connected disability rating of 100 percent from the Department of Veterans Affairs (VA). He believes his discharge should be upgraded because his current characterization of service affects his ability to apply for certain VA benefits to which he is entitled. At the time he received his DD Form 214, he did not know how the characterization of his service would affect certain benefits. His time served, albeit cut short, is a testament to his patriotism to his country.
3. The applicant underwent a pre-enlistment medical examination on 22 July 1988 and was found to be medically qualified for enlistment in the Army.
4. On 6 September 1988, the applicant enlisted in the Regular Army in the rank/pay grade of private (PV1)/E-1 for a period of 4 years. He was assigned to a unit at Fort Knox, KY for completion of Basic Combat Training.
5. A DA Form 3349 (Physical Profile) was rendered to suspend the applicant from participating in physical training, effective 12 September 1988 due to right knee pain. It was noted he was pending an evaluation board.

6. A DA Form 4707 (Entrance Physical Standards Board (EPSBD) Proceedings) shows an EPSBD was conducted to evaluate the applicant's condition on 12 September 1988. After careful consideration of medical records, laboratory findings, and medical examinations, the board found the applicant was unfit for appointment or enlistment in accordance with current medical fitness standards and in the opinion of the evaluating physicians, the condition existed prior to service (EPTS).

a. He complained of right knee pain and was unable to run and perform strenuous physical activity.

b. He was seen prior to active duty for a problem with his right knee. He was unable to participate in strenuous physical activity.

c. Physical examination showed that he had localized medial joint line tenderness. He had increased pain in the medial joint line with McMurray's maneuvers, negative effusion, negative laxity, full range of motion. X-rays were within normal limits.

d. The impression was that he had a meniscus tear in his right knee.

e. The applicant was determined to be medically unfit for military service and it was recommended that he be separated from the Army and not train in accordance with Army Regulation 40-501 (Standards of Medical Fitness) for failure to meet medical procurement standards due to his EPTS condition.

f. On 29 September 1988, the applicant acknowledged the EPSBD findings and further acknowledged that he had been advised legal counsel from an Army attorney was available to him or he could consult civilian counsel at his own expense. He could request discharge from the Army without delay or request retention on active duty. He concurred with the proceedings and requested discharge from the Army without delay.

g. The applicant's immediate and intermediate commanders recommended he be discharged.

h. The separation authority approved the EPSBD's recommendation on 5 October 1988 and directed the applicant's separation from service under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-11. He had not completed BCT, therefore he was not eligible for transfer to the Army Reserve Control Group (Individual Ready Reserve).

7. Orders and the applicant's DD Form 214 shows he was discharged in the rank/grade of PV1/E-1 on 11 October 1988, under the provisions of Army Regulation 635-200, paragraph 5-11, for failure to meet procurement medical fitness standards, not a disability. He was assigned Separation Program Designator (SPD) code "JFT," and

Reenlistment code "3." He did not complete initial entry training and was not awarded a military occupational specialty. He was credited with completion of 1 month and 6 days of net active service. His service was uncharacterized.

8. The applicant petitioned the ABCMR to have his characterization of service upgraded to "Honorable." He attested he was discharged due to an injury he received during basic training. He contended that he did not have a knee injury prior to entering the service; his leg was broken prior to entering. He concluded that he should not be penalized because he was injured. On 23 September 2020, the applicant was informed the ABCMR had considered his application under procedures established by the Secretary of the Army and denied his request for relief.

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. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition. By regulation, an applicant is not entitled to a hearing before the Board.

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 (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 uncharacterized discharge. He states:

"I'm 100% through VA service-connected disabilities. I believe an upgrade should be made to my DD 214. The current discharge characterization affects my ability to apply for certain VA benefits which I am entitled to."

c. The Record of Proceedings outlines the applicant's military service and the circumstances of the case. His DD 214 shows he entered the Regular Army on 6

September 1988 and received an uncharacterized discharge on 11 October 1988 under authority provided by paragraph 5-11 of AR 635-200, Personnel Separations – Enlisted Personnel (22 January 1988): Separation of personnel who did not meet procurement medical fitness.

d. 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 or ADT 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, 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.”

e. The applicant’s pre-entrance Report of Medical History shows the applicant had fractured his right leg but had no sequelae. On the accompanying Report of Medical Examination, the provider documented a normal examination, no defects or diagnoses, and found the applicant qualified for enlistment into the regular Army.

f. There is no additional medical documentation in the supporting documents and his period of service predates the EMR.

g. The applicant was referred to an Entrance Physical Standards Board (EPSBD) for right knee pain 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.

h. From narrative summary for his EPSBD Proceedings (DA form 4707):

“SUMMARY OF PRESENT ILLNESS: This is a 17-year-old black male who complains of right knee pain, who is unable to run and perform strenuous activities.

SUMMARY OF PAST MEDICAL HISTORY: This 17-year-old black male was seen prior to active duty for a problem with his right knee. He was unable to participate in strenuous physical activity.

PHYSICAL EXAMINATION: Shows that he had localized medial joint line tenderness. He has increased pain in the medial joint line with McMurray's

maneuvers [a provocative test for meniscal tears], negative effusion, negative laxity, full range of motion. X-rays are within normal limits.

IMPRESSION: Meniscus tear, right knee.

RECOMMENDATION: This is unfitting in accordance with AR 40-501, chapter 2, paragraph 10c(2).

Waiver is not recommended.

i. Paragraph 2-10c(2) of AR 40-501 (1 July 1987) states a lower extremity criterion for failing procurement standards is "Physical findings of an unstable or internally deranged joint" A torn meniscus is an internal derangement of the knee.

j. On 29 September 1988, the board determined his knee 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. The applicant agreed with the board's findings on 29 September 1988, both marking and initialing the election "I concur with these proceedings and request to be discharged from the US Army without delay."

k. There is no evidence the applicant had any duty incurred medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System.

l. JLV shows he has been awarded three VA service-connected disability ratings related to his right knee. However, the DES only compensates an individual for service incurred medical condition(s) which have been determined to disqualify him or her from further military service and consequently prematurely ends their career. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

m. 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.

n. It is the opinion of the ARBA Medical Advisor the applicant's discharge was appropriate and IAW Army regulations and a referral of his case to the Disability Evaluation System is not warranted.

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 and standard review based on law, policy and regulation. The governing regulation provides that a separation will be described as an entry-level separation, with service uncharacterized, if the separation action is initiated while a Soldier is in entry-level status. Soldiers are authorized and honorable discharge while in entry-level status only if they complete their active-duty schooling and earn their MOS. Upon review of the applicant's petition, available military record and medical review, the Board concurred with the advising official finding no evidence the applicant had any duty incurred medical condition which would have failed the medical retention standards. The opine noted, there was no cause for referral to the Disability Evaluation System.
2. The Board determined the applicant completed 1 month and 6 days of net active-duty service and did not complete training and was released from active duty for, failure to meet procurement medical fitness standards, not a disability. As such, his DD Form 214 properly shows the appropriate characterization of service as uncharacterized. The Board noted, an uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It merely means the Soldier has not been in the Army long enough for his or her character of service to be rated as honorable or otherwise. As a result, there is no basis for granting the applicant's request for upgrade of his uncharacterized character of service. Therefore, the Board agreed reversal of the previous Board determination is without merit and denied relief.
3. 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:

The Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR20200000855 on 6 March 2020.

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 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
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.

prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that 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. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. 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.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. A separation would be described as entry level with uncharacterized service if the Soldier had less than 180 days of continuous active-duty service at the time separation action was initiated.

b. 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. A general discharge is a separation from the Army under honorable conditions. When authorized, it was issued to a Soldier whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. Soldiers separated in an entry-level status receive an uncharacterized character of service. A separation is an entry level status separation if its processing is initiated during the Soldier's first 180 days of continuous active duty. The Secretary of the Army could, on a case-by-case basis, issue an honorable character of service to entry-level Soldiers when clearly warranted by unusual circumstances involving personal conduct or duty performance.

e. Paragraph 5-11 specifically provided that Soldiers who were not medically qualified under procurement medical fitness standards when accepted for enlistment were to be separated. EPSBD proceedings were required to be convened within the Soldier's first 6 months of active duty service, and had to establish the following: that medical authority identified the disqualifying medical condition(s) within 6 months of the Soldier's initial entrance on active duty; that the condition(s) would have permanently disqualified the Soldier from entry into military service, had it been detected earlier; and that the medical condition did not disqualify him/her for retention in military

service. A Soldier disqualified under this provision could request retention on active duty; the separation authority made the final determination.

f. 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. An uncharacterized discharge is neither favorable nor unfavorable; in the case of Soldiers issued this characterization of service, an insufficient amount of time would have passed to evaluate the Soldier's conduct and performance.

4. Army Regulation 635-5-1 (SPD Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. This regulation prescribed that the separation code "JFW" was an appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, paragraph 5-11, by reason of failure to meet procurement medical fitness standards. Additionally, the SPD/Reentry Eligibility (RE) Code Cross Reference Table established that RE code "3" was the proper reentry code to assign to Soldiers separated under this authority and for this reason.

5. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), in effect at the time, governed the evaluation for physical fitness of Soldiers who might be unfit to perform their military duties due to a disability. It states the mere presence of an impairment did not, of itself, justify a finding of unfitness due to physical disability. In each case, it was necessary to compare the nature and degree of the physical disability with the duty requirements of the soldier, based on his or her office, grade, rank, or rating; and a Soldier was presumed to be in sound physical and mental condition upon entering active duty.

6. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder (PTSD); traumatic brain injury; sexual assault; or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs 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, Boards 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//