

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 September 2024

DOCKET NUMBER: AR20240001084

APPLICANT REQUESTS: an upgrade of his uncharacterized discharge to honorable.

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

- Three DD Forms 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD 4 (Enlistment/Reenlistment Document – Armed Forces of the United States)
- DA Form 2-1 (Personnel Qualification Record)
- Standard Form (SF) 88 (Report of Medical Examination) dated 4 February 1991
- SF 93 (Report of Medical History) dated 4 February 1991
- DA Form 4707 (Entrance Physical Standards Board (EPSBD) Proceedings) dated 25 October 1991
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Medical Documents (20 pages)

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. The correction of his records would facilitate his ability to receive benefits for his disability. He had not attempted to use the benefits until this year, when he noticed the discharge type. He seeks to receive benefits from the Department of Veterans Affairs (VA) to include medical care and loans. He was discharged at the recommendation of the physician treating him for repeated injuries to his feet and legs from stress fractures he received during training. He was unable to continue serving. In his most current statement, he further noted he received a 70% service connected rating by the VA for his injuries and is only asking that his record be corrected to reflect an honorable discharge, not uncharacterized. At a minimum, he requests the Board grant him an under honorable conditions discharge.

3. The applicant provides, in addition to the documents listed above:

a. His medical records (20 pages) for treatment received from approximately 11 September 1991 through approximately 25 October 1991.

b. The DD Form 293 further indicated the applicant provided documentation of his 70% service-connected disability from the Department of Veterans Affairs; however, the document was not included with the attachments.

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

a. He enlisted in the Regular Army on 21 August 1991.

b. The service record includes the applicant's medical examinations, dated 4 February 1991, for the purpose of enlistment which indicates he was generally in good health. The applicant was marked qualified for service.

- SF 88 (Report of Medical Examination)
- SF 93 (Report of Medical History)

c. A DA Form 4707 (EPSBD Proceedings), dated 25 October 1991, 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 was diagnosed with plantar fasciitis bilaterally, secondary to pes planus. The applicant had been on various profiles, non-steroidal anti-inflammatory drugs, and arch supports without any relief of his pain. The applicant stated he had pain in his feet bilaterally prior to coming into the service and it was relieved with rest. He was recommended for separation and the findings were approved by the medical approving authority on 30 October 1991. The applicant concurred with the proceedings on 6 November 1991.

d. On 6 November 1991, the applicant's commander recommended approval of the applicant's discharge due to a condition existing prior to entry.

e. On 6 November 1991, the separation authority approved the discharge recommendation based on the EPSBD proceedings.

f. The available service record is void of the separation proceedings.

g. On 14 November 1991, he was discharged from active duty with an uncharacterized characterization of service. His DD Form 214 shows he completed 2 month and 24 days active service with no lost time. He was assigned separation code JFT, and the narrative reason listed as "Did Not Meet Procurement Medical Fitness Standards – No Disability," with reentry code 3. It also shows he was awarded or authorized:

- Marksman Marksmanship Qualification Badge with Rifle Bar (M-16)
- Sharpshooter Marksmanship Qualification Badge with Hand Grenade Bar

5. There is no evidence the applicant applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

6. By regulation (AR 635-5), 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.

7. 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 may be separated. Such conditions must be discovered during the first 6 months of active duty. Such findings will result in an EPSBD. This board, which must be convened within the Soldier's first 6 months of active duty, takes the place of the notification procedure required for separation under this chapter.

8. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

9. 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 is applying to the ABCMR requesting an upgrade of his 14 November 1991 uncharacterized discharge and, in essence, a referral to the Disability Evaluation System. He states:

“I was discharged at the recommendation of the base doctor that was treating me for repeated injuries to my feet and legs from stress fractures. I have the medic show that these injuries occurred during basic training and should be deemed a service-related injury/ disability.”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. His DD 214 shows he entered the Regular Army on 21 August 1991 and was discharged on 14 November 1991 under authority provided by paragraph 5-11 of AR 635-200, Personnel Separations – Enlisted Personnel (17 September 1990): 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. The applicant’s pre-entrance Report of Medical History and Report of Medical Examination show the applicant to have been in good health, without any significant medical history or conditions.

f. 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.

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

CHIEF COMPLAINT: Painful feet bilaterally.

HISTORY OF PRESENT ILLNESS: The patient is an 18-year-old white male with a history throughout his time here at Ft. Leonard Wood of painful feet bilaterally. The patient is currently in his last week of BCT [basic combat training] and states he has the inability to march, run, jump, or ambulate for prolonged periods of time secondary pain in his feet bilaterally

PHYSICAL EXAMINATION: Neurovascular status was intact with positive tenderness about the medial longitudinal arch bilaterally. There was no edema or ecchymosis noted. There was a mildly decreased arch on weight bearing bilaterally

X-RAYS: X-rays of the ankle and feet bilaterally showed no evidence of fracture.

DIAGNOSIS: Plantar fasciitis bilaterally secondary to pes planus [flat feet].

RECOMMENDATION: The soldier is unable to perform his military duties and it is recommended he be separated from the military service IAW AR 2-10d(5) {sic}.

h. 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.”

i. 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. On 6 November, the applicant concurred with the Board by both initialing and marking the election "I concur with these proceedings and request to be discharged from the US Army without delay."

j. JLV shows he has been awarded a total of three VA service-connected disability ratings, all related to his feet and ankles. 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.

k. 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.

l. It is the opinion of the ARBA Medical Advisor that neither an upgrade of his discharge nor a referral of his case to the Disability Evaluation System is warranted.

#### BOARD DISCUSSION:

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 24 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 the applicant's recent receipt of multiple VA service-

connected disability ratings has no bearing on his administrative separation for a pre-exiting medical condition which failed enlistment medical standards. Therefore, the Board determined relief 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, 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 635-5 (Separation Documents) 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.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the soldier'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. A separation will be described as entry-level with service uncharacterized if processing is initiated while a Soldier is in entry-level status

c. Paragraph 5-11 provided that 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 entrance on active duty, active duty for training, or initial entry training would be separated. 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 under the provisions of Army Regulation 40-501 (Standards of Medical Fitness). 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.

4. 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/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 based on 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.

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//