

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 November 2024

DOCKET NUMBER: AR20240001960

APPLICANT REQUESTS, in effect: a discharge due to disability vice being discharged for failing medical procurement standards.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:  
DD Form 149, Application for Correction of Military Record.

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, in effect, he enlisted in the New Jersey Army National Guard (NJARNG) and during his first week of training he was hurt and was unable to complete his Basic Combat Training (BCT). He remained at his BCT location for six months and then the Army discharged him for being medically unfit even though he passed the entrance physical and determined that his service was uncharacterized. He contends that he was perfectly healthy prior to entering the military. He further contends that he should have been medically discharged. He tried to serve his country but when he got injured the Army just tossed him aside. He needs his record corrected in order to receive veteran's education benefits.
3. The record shows the applicant enlisted in the NJARNG on 11 July 2019. He was assigned to Fort Benning, GA for training.
4. His military record is void of a separation package; however, it does contain:
  - a. Orders 016-2207, 16 January 2020, issued by U.S. Army Installation Management Command, Fort Benning, GA which released the applicant from active-duty training effective 23 January 2020.
  - b. A DD Form 214, which shows the applicant was released from active-duty training on 23 January 2020, in accordance with Army Regulation 635-200 (Active Duty

Enlisted Administrative Separations), paragraph 5-11, failed medical/ physical/ procurement standards. Item 18, Remarks, of the DD Form 214 shows he was discharged him from the Reserve of the Army and returned to the ARNG. His service was uncharacterized (Separation Code JFW, Reentry Code 3). He completed 2 months and 12 days of active service.

c. NJARNG Orders 0000191614.00, 7 February 2020, which show the applicant was involuntarily separated on 23 January 2020 due to medical unfitness at the time of appointment.

d. NGB Form 22, National Guard Report of Separation and Record of Service, which shows the applicant was discharged on 23 January 2020 in accordance with National Guard Regulation 600-200, Personnel-General-Enlisted Personnel Management, paragraph 6-35c(5a), for being medically unfit at time of appointment. His service was uncharacterized.

5. The Board should consider the applicant's overall record and provided statement in accordance with the published equity, injustice, or clemency determination guidance.

6. By regulation, the mere presence of impairment does not of itself justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the member reasonably may be expected to perform because of his or her office, rank, grade, or rating.

7. 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.

8. 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 29 October 2019 uncharacterized discharge and, in essence, a referral to the Disability Evaluation System DES). He states in part:

"I was enlisted under as New Jersey Army National Guard [NJARNG]. In my first training week, I was hurt and I could not complete my training and I was there for 6 months and the army discharge me saying I was medically not fit but I had passed my medical from the army before I was enlisted and was perfectly fine. The discharge me under uncharacterized. I was perfectly fine b4 enlisting in the army. I was supposed to medically discharge."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 for the period of service under consideration shows the former Army National Guard Soldier entered active duty for initial entry training on 12 November 2019 and was discharged on 23 January 2020 under the separation authority provided by paragraph 5-11 of AR 635-200, Active Duty Enlisted Administrative Separations (19 December 2016): 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 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 EMR shows the applicant was diagnosed with anxiety disorder and hypothyroidism during basic combat training. The applicant underwent an EPTS (existed prior to service) physical examination on 12 December 2019. The examination itself is not available for review but the accompanying Report of Medical Assessment (DD Form 2697) states that his right tibia stress reactions had "resolved" and that his hypothyroidism requiring oral medication had existed prior to service. He was subsequently referred to an Entry Physical Standards Board (EPSBD) IAW paragraph 5-11 of AR 635-200.

f. 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 service aggravated.

g. Paragraph 2-8h(2) of AR 40-501 Standards of Medical Fitness (14 June 2017), states "Current hypothyroidism uncontrolled by medication does not meet the standard."

h. The applicant's Entrance Physical Standards Board (EPSBD) Proceedings (DA form 4707), separation packet, and/or other documentation addressing his involuntary administrative separation was not submitted with the application or uploaded into iPERMS. Given the applicant's separation authority, it must be concluded the EPSBD determined his condition failed medical enlistment standards, had existed prior to service, had not been permanently aggravated by his brief service, and was not compatible with continued service.

i. The applicant has no VBA service-connected disabilities.

j. 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. 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; or which did not cause or contribute to the termination of their military career. 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 on active duty who separate prior to completing 180 days of military service, or when the discharge action was initiated prior to 180 days of service. For the reserve components, it also includes discharges prior to completing initial entry training (IET). There are two phases - Basic Combat Training (BCT) and Advanced Individual Training (AIT). Because the applicant did not complete BCT, he was in an entry level status at the time of his discharge and so received an uncharacterized discharge. This type of discharge does not attempt to characterize service as good or bad. Through no fault of his own, he simply developed a medical condition which was, unfortunately, not within enlistment standards.

l. It is the opinion of the ARBA Medical Advisor that neither a discharge upgrade nor a referral of his case to the DES is 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. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising official finding that neither a discharge upgrade nor a referral of his case to the DES is warranted.

2. The Board noted the applicant completed 2 months and 12 days of active service. and did not complete training and was released from active duty for failed medical/ physical/ procurement standards and discharged from the Reserve of the Army and returned to the ARNG. 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. The Board agreed there is insufficient evidence to support the applicant's contentions for a discharge due to disability vice being discharged for failing medical procurement standards. Therefore, the Board denied relief.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	GRANT FULL RELIE
:	:	:	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.

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 Army Board for Correction of Military Records (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 (AR) 635-200, Personnel Separations-Active Duty Enlisted Administrative Separations, sets forth the basic authority for the separation of enlisted personnel.
  - a. 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.
  - b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
  - c. An uncharacterized discharge is warranted for a Soldier in entry-level status. Entry level status for ARNG of the United States begins upon enlistment in the ARNG.

For Soldier ordered to initial active-duty training (IADT) for one continuous period, it terminates 180 days after beginning training.

c. Paragraph 5-11, 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 or active-duty training from initial entry training, may be separated. Such conditions must be discovered during the first six months of active duty. Such findings will result in an entrance physical standards board. This board must also be convened within the Soldier's first six months of active duty.

3. AR R 635-40, Personnel Separations-Physical Evaluation for Retention, Retirement, or Separation, establishes the PDES and sets forth the policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his or her office, grade, rank, or rating. It states:

a. Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in service.

b. The mere presence of impairment does not of itself justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the member reasonably may be expected to perform because of his or her office, rank, grade, or rating.

c. Rating disabilities which are neither unfitting nor contribute to the physical unfitness of a Soldier is prohibited.

d. Permits for permanent retirement when the disability is rated at 30 percent or more under VASRD, or the Soldier has at least 20 years of active Federal service.

3. Title 10, U.S. Code, section 1203, provides for the physical disability separation with severance pay of a member who has less than 20 years of service and a disability rated at less than 30 percent.

4. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for

Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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.

5. AR 15-185 (ABCMR) states 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.

//NOTHING FOLLOWS//