

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 November 2024

DOCKET NUMBER: AR20240002443

APPLICANT REQUESTS: in effect –

- a discharge due to disability vice being separated under the Trainee Discharge Program
- a video/telephone appearance before the Board

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD: a 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 indicates his request is related to reprisal. He states, in effect:
  - a. In 1992, he entered the Basic Airborne training course which was required training to become qualified for a Special Forces military occupational specialty (MOS). During week 3, better known as jump week, he was injured attempting a Parachute Landing Fall (PLF) and severely injured his neck and shoulders. The cadre told him that he needed to conduct a satisfactory PLF even though he was in pain from the fall.
  - b. He was escorted to the Troop Medical Clinic where he was denied treatment and told to return to training. He contends that he was told that if he refused to continue training that he would be dismissed from the course. He was subsequently released without cause and without his medical records.
3. The applicant enlisted in the Regular Army on 10 February 1988. He was honorably released from active duty on 9 February 1992. His DD Form 214 shows he held MOS 42D, Dental Laboratory Specialist at the time of his separation.

4. On 5 October 1992, after a break in service, the applicant enlisted in the Regular Army. His DA Form 2-1, Enlisted Record Brief, shows he selected the training option for MOS 18X, Special Forces Candidate.

5. On 16 October 1992 the applicant was counseled for being medically dropped from Basic Airborne Course which was a prerequisite for 18X training. This form further shows the applicant elected not to participate in Battalion Retraining Program and would be recommended for separation under the provisions Army Regulation (AR) 635-200, Personnel Separations-Enlisted Personnel, chapter 11, for lack of reasonable effort. The applicant concurred with the information on the counseling form.

6. On 21 October 1992, the applicant's commanders notified the applicant that he was initiating action to separate him from active duty due to failure to complete Airborne training which was a prerequisite for the Special Forces assessment.

7. The applicant acknowledged receipt of the notification on 22 October 1992. He declined to make a statement, declined to consult with military legal counsel, declined to consult with civilian counsel, declined a separation medical examination, and declined to have copies of the documents supporting this action.

8. On 26 October 1992, the separation authority approved the applicant's discharge under the provisions of AR 635-200, Trainee Discharge Program. He directed the applicant be discharged with an entry level status separation.

9. On 3 November 1992, he was released from active duty. His DD Form 214 for this period shows he was released from active duty under the provisions of paragraph 11-3a of AR 635-200 and his service was uncharacterized (Separation Code LBA and Reentry Code 3). He completed 29 days of active service.

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

11. By regulation –

a. An Entry Level Performance and Conduct, states the separation of a Soldier in entry level status may be warranted on grounds of unsatisfactory performance or unsatisfactory conduct (or both) as evidenced by inability, lack of reasonable effort, failure to adapt to the military environment, or minor disciplinary infractions.

b. The mere presence of an 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 office, grade, rank, or

rating. All relevant evidence must be considered when evaluating the fitness of a member.

c. 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. Additionally, applicants may be represented by counsel at their own expense.

## 12. 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 requesting a referral to the Disability Evaluation System (DES). He states in part:

“In 92, SM [Service Member] entered AB [Airborne] school at Ft. Benning, GA, for SF MOS(X) [18X – Special Forces Candidate]. In week three, SM suffered an injury while conducting PLF [parachute landing fall] training. SM requested medical attention.

SM was finally granted medical at TMC [Troop Medical Clinic] clinic. Clinic staff refused to provide SM medical treatment for a neck injury. SM was released from AD [active duty] / AB without cause/treatment or to finish AB school. SM never received medical treatment records or discharge from Ft. Benning.”

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 reentered the Regular Army on 5 October 1992 and was separated with an uncharacterized discharge on 3 November 1992 under provisions provided in paragraph 11-3a of AR 635-200, Personnel Separations – Enlisted Personnel (17 September 1990), for falling below entry level performance and conduct standards. The applicant did not identify the injury(s)/condition(s) he believes fail(ed) medical retention standards and warrant referral to the DES.

d. A 16 October 1992 General Counseling Form (DA Form 4856) states the applicant, an 18X at the time, was dropped from the basic airborne course because "SM elected not to participate in the battalion retraining program and will be recommended for separation under the provisions of chapter 11, AR 635-200 (lack of reasonable effort)."

e. On 21 October 1992, the applicant's company commander noticed him of the action to separate him under provisions in chapter 11 of AR 635-200:

"The specific reason for my proposed action is: Failed to complete Airborne training which is a prerequisite for the Special Forces assessment. Under provisions of your enlistment contract, you needed to complete all training or face separation under Chapter 11, AR 635-200."

f. On 22 October 1992, the applicant declined the opportunity to undergo a separation medical examination.

g. No medical documentation was submitted with the application and his period of service predates the EMR.

h. JLV shows the applicant has been awarded only one service-connected disability rating of 10% for tinnitus. However, the DES compensates an individual only 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.

i. It is the opinion of the ARBA Medical Advisor that a referral of his case to the Disability Evaluation System remain is unwarranted.

#### 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. Upon review of the applicant's petition, available military records and

medical review, the Board concurred with the advising official finding that a referral of his case to the Disability Evaluation System remain is unwarranted.

2. The Board determined there is insufficient evidence to support the applicant's contentions for a discharge due to disability vice being separated under the Trainee Discharge Program. The Board noted the applicant did not complete training and was released from active duty. Evidence shows he completed 29 days of active service. The Board agreed an uncharacterized discharge is not derogatory; it is recorded when a Soldier has not completed more than 180 days of creditable continuous active duty prior to initiation of separation. It merely means the Soldier has not served on active duty long enough for his or her character of service to be rated as honorable or otherwise. Based on the medical opine and the absence of supporting medical documentation, the Board 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 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 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) 635-40, Personnel Separations-Physical Evaluation for Retention, Retirement, or Separation, in effect at the time, established the Army Physical Disability Evaluation System and set forth policies, responsibilities, and procedures that apply in determining whether a member is unfit because of physical disability.
  - a. The mere presence of an 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 office, grade, rank, or rating.
  - b. All relevant evidence must be considered when evaluating the fitness of a member. Despite the presence of physical deficiencies, inadequate performance, per se, should not be considered as evidence of physical unfitness for a member's office, grade, rank, or rating unless a cause/effect relationship between the two factors exist.

c. Once a member has been enlisted, inducted, or commissioned, the fact that he may later fall below initial entry physical standards does not, in itself, authorize separation or retirement unless it is also established that he is unfit because of physical disability.

d. A member being processed for separation for reasons other than physical disability is presumed fit for duty as shown by his continued performance of duty. Such a member should not be referred to a PEB unless his physical defects raise substantial doubt that he would be fit were he to continue the duties of his office, grade, rank, or rating.

3. AR 635-200, Personnel Separations-Enlisted Personnel, sets forth the basic authority for the separation of enlisted personnel. Paragraph 11, Entry Level Performance and Conduct, states the separation of a Soldier in entry level status may be warranted on grounds of unsatisfactory performance or unsatisfactory conduct (or both) as evidenced by inability, lack of reasonable effort, failure to adapt to the military environment, or minor disciplinary infractions. This policy applies to Soldiers in an entry level status and, before the date of the initiation of separation action, have completed no more than 180 days of creditable continuous active duty or initial active duty training, or no more than 90 days of Phase II under a split or alternate training option.

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. Title 10, U.S. Code, section 1556 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.

6. AR 15-185, Boards, Commissions, and Committees-ABCMR, prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR will decide cases on the evidence of record. It is not an investigative body. 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. Additionally, applicants may be represented by counsel at their own expense.

//NOTHING FOLLOWS//