

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 October 2024

DOCKET NUMBER: AR20240003658

APPLICANT REQUESTS:

- an upgrade of his characterization of service from uncharacterized to honorable for the period ending 4 October 2023.
- correction of his records to show he was medically discharged.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 15 April 2022
- NGB Form 22 (National Guard Report of Separation and Record of Service), 4 October 2023
- Orders Number 0006790924.00, 12 December 2023
- Department of Veterans Affairs (VA) Disability Rating Decision, 27 March 2024

FACTS:

1. The applicant states:

a. In January 2022 he was assigned to Alpha Company, 232nd Medical Battalion, 32nd Medical Brigade for Advanced Individual Training (AIT) as a 68W (Combat Medic Specialist). He was doing well and had been appointed into a student leadership role. During a morning physical training session, he began to have pain in his right leg. He continued the week thinking the pain would decrease, but on that Friday, they took the Army Combat Fitness Test (ACFT). Immediately after completing the ACFT, he returned to his barracks room to find his right leg red, swollen, and in a lot of pain. He sought medical attention which led him to being placed in a holding company, taken out of training, and eventually released from active duty back to [REDACTED] Army National Guard ([REDACTED] ARNG). Before he was released from active duty, he was issued a DA Form 2173 (Statement of Medical Examination and Duty Status), which documented a line of duty (LOD) injury.

b. The [REDACTED] ARNG took him back in April 2022. From April 2022, he had consistent challenges with receiving timely medical care at the expense of the Guard. The [REDACTED] ARNG did not refer him to the Integrated Disability Evaluation System (IDES) or seek to have his case reviewed by a medial board prior to discharge. In October 2023, the [REDACTED] ARNG discharged him with an uncharacterized discharge for failing to complete training. The only reason that he was unable to complete Initial Active Duty for Training (IADT) was due to a service-connected injury, which has now been determined by the VA to be 20 percent disabling. He is requesting that his discharge be upgraded to honorable, and the reason be changed to a medical reason, since that is the true reason behind his discharge.

2. The applicant provides his VA rating decision, dated 27 March 2024, which shows:

a. Service connection for right tibia stress fracture granted with an evaluation of 10 percent, effective 17 May 2022. Service connection for right tibia stress fracture was established as directly related to military service. Service treatment records show the treatment and diagnosis of right lower leg injury/pain as early as January 2022. VA examination, dated 15 March 2024, confirmed the diagnosis of right tibia stress fracture. The examiner's rationale, "Veteran had no issues related to the claimed condition prior to military service. Current diagnosis of right tibia stress fracture is related to the physical training. There is evidence of chronicity, and a nexus has been established. Fracture that he incurred during time in service. The Veteran is still experiencing pain and decreased range of motion from this injury in 2022."

b. Service connection for right leg exertional compartment syndrome granted with an evaluation of 10 percent, effective 17 May 2022. VA examination dated 15 March 2024, the examiner notated that the current condition was related to and/or caused by service-connected right tibia stress fracture.

3. A review of the applicant's service records show:

a. He enlisted in the ARNG of the United States on 23 June 2021 for a period of 6 years in the pay grade of E-4.

b. Orders Number 1242003, issued by the Military Entrance Processing Station, [REDACTED] dated 5 August 2021, ordered the applicant to IADT, reporting to basic training at Fort Sill, OK on 30 August 2021 and AIT for military occupational specialty (MOS) 68W at Fort Sam Houston, TX on 15 November 2021.

c. DD Form 214 shows he was honorably released from active-duty training on 15 April 2022. He completed 7 months and 16 days of net active service this period.

d. On 14 September 2023, the applicant's immediate commander notified the applicant of his intent to initiate separation actions against him under the provisions of National Guard Regulation (NGR) 600-200 (Enlisted Personnel Management), chapter 6, paragraph 6-35d (4), for failure to ship to Initial Entry Training (IET). The commander informed him he was recommending he receive an uncharacterized discharge and explained his rights.

e. On 14 September 2023, the applicant's immediate commander-initiated separation and recommended that his service be characterized as uncharacterized. The commander noted the following reasons for the recommended action(s) and characterization of service:

(1) The applicant graduated basic combat training and got hurt while at AIT. He was sent home from the training site on 15 April 2022. He was notified multiple times to start his LOD process but refused to go to the doctor or get medical documentation necessary to continue the process. When he finally decided to cooperate the LOD was expired, and he had hit his 24-month rule to become MOS qualified.

(2) This disposition was appropriate for the situation and condition of the Soldier.

f. On 17 September 2023, the applicant acknowledged receipt of his commander's separation notification and after being advised by his consulting counsel of the basis for the contemplated action to separate him for failure to ship to IET, under the provisions of NGR 600-200, paragraph 6-35d (4), and its effects; of the rights available to him; and the effect of any action he took in waiving his rights, he further acknowledged:

(1) He may expect to encounter substantial prejudice in civilian life if his service was characterized as general, under honorable conditions or under other than honorable conditions.

(2) He understood that as the result of issuance of a discharge where the service is characterized as under other than honorable conditions, he may be ineligible for many or all benefits as a veteran under both Federal and State laws.

(3) He waived his right to consult with an appointed counsel for consultation, or military counsel of his own choice, or civilian counsel at his own expense.

(4) He requested copies of the documents.

(5) He understood that if he had less than 6 years of total active and/or Reserve military service at the time of separation, he was not entitled to have his case heard by an administrative separation board.

(6) He elected not to submit statements in his own behalf.

(7) He understood that the characterization of his discharge would be under uncharacterized conditions, and he may make application to the Army Discharge Review Board or the Army Board for Correction of Military Records (ABCMR) for review of his characterization of service; however, an act of consideration by either board did not imply that his characterization of service would be upgraded.

g. NGB Form 22 shows the applicant was discharged from the [REDACTED] ARNG and as a Reserve of the Army on 4 October 2023, under the provisions of NGR 600-200, trainee discharge program, release from IADT, in the rank/grade of specialist (SPC)/E-4, and his service was uncharacterized. He completed 2 years, 3 months, and 12 days of net service this period. He was not awarded a military occupational specialty. Additionally, his NGB Form 22 shows in Block 13 (Primary Specialty Number, Title and Date Awarded): 09B10 Trainee, unassigned.

4. 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.

#### 5. 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, the Army Aeromedical Resource Office (AERO), 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) and a discharge upgrade. He states that he sustained a right leg injury while in training and after he was released back to [REDACTED] Army National Guard ([REDACTED] ARNG):

"From April 2022, I had consistent challenges with receiving timely medical care, at the expense of the guard. The [REDACTED] ARNG did not refer me to IDES or seek to have my case reviewed by a medical board prior to discharge. In October 2023, the [REDACTED] ARNG discharged me with an uncharacterized discharge for failing to complete training. The only reason I was unable to complete IADT [Initial Active Duty for

Training] was due to an in service, connected, injury which has now been determined by the VA to be 20% disabling.”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. His Report of Separation and Record of Service (NGB Form 22) shows he enlisted in the [REDACTED] ARNG on 23 June 2021 and received an uncharacterized discharge on 4 October 2023. The authority and reason are “NGR 600-200 – Trainee discharge program release from IADT.”

d. Guardsman are required to become qualified in their duty military occupational specialty within 24 months of entering the ARNG or they will be separated.

e. His DD 214 shows he was in IADT from 30 August 2021 thru 15 April 2022.

f. The EMR shows the applicant was seen for right leg pain in January 2022 and diagnosed with a stress injury (not a fracture) of his right tibia in February 2022. He was treated conservatively, and then placed on 30 days of unit convalescent leave on 2 March 2022.

g. He was reevaluated by orthopedics on 11 April 2022 at which time he was allowed to return to his job with pain limited physical activities but not returned to duty:

“Reviewed x-rays from March 2022 that reveals no evidence of stress fracture, injury of the tibia. Since he was last seen, his pain has improved clinically. Advised the patient that he may return to work without restrictions. He is limited by his pain and should avoid going straight back into high impact activities such as running/jumping. He was instructed to work on low impact activities such as stationary bike, strengthening of his lower extremity muscles, and increase his walking pace as long as he does not have pain. He may progress to running as long as he has no pain.”

h. The applicant began out-processing the following day.

i. From the intermediate commander’s 14 September 2023 recommendation the applicant be separated from the [REDACTED] ARNG:

“In accordance with AR 135-178, paragraph 3-4 and 3-10 I have notified the Soldier of these proceedings and the characterization of service I have recommended. Following are my reasons for the recommended action(s) and character characterization of service:

a. SPC [Applicant] graduated BCT [basic combat training] and got hurt while at AIT [advance individual training]. SPC [Applicant] was sent home from the training site on 15 April 2022. SPC [Applicant] was notified multiple times to start his LOD [Line of Duty] process but refused to go to the doctor or get medical documentation necessary to continue the process. When he finally decided to cooperate the LOD was expired and the SM [Service Member] had hit his 24-month rule to become MOS qualified.

b. This disposition is appropriate for the situation and condition of the Soldier.”

j. Not only was this applicant’s failure a failure to obey lawful orders, but it is also against Army Regulation. Paragraph 1-19 of AR 40-502, Medical Readiness (27 June 2019):

“1–19. Soldiers and other deployable personnel

The Soldiers and other deployable personnel will—

a. Monitor and maintain currency of medical readiness requirements. RC personnel may have to accomplish some IMR [individual medical readiness] requirements on their own time such as civilian dental exams or medical evaluations.

b. Complete all DHAP [Deployment Health Assessment Program] assessments on the required forms, within the published timelines, in accordance with DoDI 6490.03, DoDI 6490.12, and Army policy as specified in chapter 4.

c. Per DoDI 6025.19, report medical (including mental health) and health issues that may affect their readiness to deploy or fitness to continue serving in an active status.”

k. Paragraph 2-2b of AR 40-502, (27 June 2019) opens with:

“All RC Soldiers will provide their unit records custodian, patient administration officer, unit administrator, and/or commander all relevant medical documentation, including civilian and VA health records, regarding their medical readiness status.

l. His stress injury did not constitute a permanent disability IAW AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (19 January 2017). Given the onset of this condition was during training, the nature of these injuries, and the treatment

thereof in a healthy individual, they would be expected to heal once he was removed for the rigors of military training. The applicant's failures to seek care strongly suggest this was the case.

m. 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.

n. JLV shows he has been awarded three VA service-connected disability ratings: A rating for chronic adjustment disorder and two 10% ratings related to his right leg. 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; 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.

o. It is the opinion of the Agency Medical Advisor that neither a discharge upgrade nor a referral of his case to the DES is warranted.

#### BOARD DISCUSSION:

1. The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of requests for changes to discharges. The Board considered the applicant's statement, his record of service, and the reason for his separation. The Board considered the applicant's health claim and the review and conclusions of the ARBA Medical Advisor.

2. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding there being no evidence of a duty-related disabling medical condition that would have been a basis for referring the applicant to the Disability Evaluation System. The record confirms that, because he had not completed MOS training, he was in an entry-level status when he was discharged, and his service was uncharacterized in accordance with the governing regulation. Based on a preponderance of the evidence, the Board determined the applicant's uncharacterized service and the reason for his discharge were not in error or unjust.

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.

4/1/2025

X

CHAIRPERSON

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. National Guard Regulation 600-200 (Enlisted Personnel Management), prescribes the criteria, policies, processes, procedures, and responsibilities to classify; assign; utilize; transfer within and between states; provides Special Duty Assignment Pay; separation; extension/reenlistment, and appoint to and from Command Sergeant Major, Army National Guard and Army National Guard of the United States enlisted Soldiers.

a. Paragraph 6-35 provides the reasons, applicability, and codes for administrative separation or discharge from the Reserve of the Army, the State Army National Guard only, or both. Paragraph 6-35d (4) list the following reason for separation: failure to attend IET (phase I and Phase II) anytime within 24 months or those Soldiers who refuse to ship as scheduled. All Soldiers will be notified of a commander's recommendation for their involuntary discharge.



b. Paragraph 6-8 (Characterization of service) states, an 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. An honorable characterization may only be awarded a Soldier upon completion of his or her service obligation, or where required under specific reasons for separation, unless an uncharacterized description is warranted.

c. Paragraph 6-10 (Separation where service is uncharacterized) states, entry level status: Service will be described as uncharacterized if separation processing is initiated while a Soldier is in an entry level status.

d. Paragraph 6-34 (Reentry Eligibility Codes), states, if the reason for separation is waivable, the RE code will be RE 3, not fully qualified for reentry or continuous service at time of separation, but this disqualification is waivable.

2. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) states, for Army National Guard and United States Army Reserve Soldiers, entry-level status begins upon enlistment in the Army National Guard or the United States Army Reserve. For Soldiers ordered to IADT for one continuous period, entry-level status terminates 180 days after beginning training.

3. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designators), lists the specific authorities, regulatory, statutory, or other directive, and reasons for separation from active duty, active duty for training, or full time training duty. The separation program designator JGA corresponds to the narrative reason entry-level performance and conduct.

4. 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 DOD Directive 1332.18 and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in an MEB; when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an MOS Medical Retention Board; and/or they are command-referred for a fitness-for-duty medical examination.

b. The disability evaluation assessment process involves two distinct stages: the 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/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 or not 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. Service members who are determined to be unfit for duty due to disability either are 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. The mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of his or her office, grade, rank, or rating. Reasonable performance of the preponderance of duties will invariably result in a finding of fitness for continued duty. A Soldier is physically unfit when a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

5. 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 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. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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.

6. 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.

7. 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. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

//NOTHING FOLLOWS//