

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 December 2024

DOCKET NUMBER: AR20240003793

APPLICANT AND REPRESENTATIVE REQUESTS:

- upgrade of the service to be characterized as honorable vice uncharacterized
- upgrade of the narrative reason for separation
- upgrade of the reentry eligibility (RE) code
- award the National Defense Service Medal

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)
- Department of Veterans Affairs (VA) Decision)
- VA Benefits Letter

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 representative states that the applicant's back injury, incurred during service in August 1994, was misdiagnosed as preexisting sclerosis, leading to an unjust discharge. The applicant seeks an honorable medical discharge, claiming the separation was based on incorrect medical conclusions and failed to acknowledge their honorable service before and after the injury. The representative asserts eligibility for the National Defense Service Medal, citing the applicant's service during the authorized conflict period (August 1990 - November 1995). The applicant has spent 30 years advocating for recognition of their disability claim and has provided the Veterans Affairs with documentation to support their case, aiming to prove the medical discharge was due to a service-related spinal injury, not a preexisting condition.

3. The applicant provides:

a. His DD Form 214 dated 13 October 1994.

b. On 4 January 2022, the VA rating decision shows, entitlement to service connection for left and right sacroiliac joint condition, combined with service-connected lower back scoliosis and called lower back scoliosis with bilateral sacroiliac joint dysfunction, was granted with an evaluation.

c. On 20 February 2024, the VA benefits letter shows, the applicant has been awarded 70% disability rating.

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

a. He enlisted in the Regular Army on 29 June 1994.

b. A Standard Form (SF) 88 (Report of Medical Examination), dated 17 March 1993, shows the applicant underwent an examination for the purpose of enlistment. The applicant's clinical evaluation was marked "evaluated" in block 38 (Spine) and in block 77a (Examinee/Applicant) he was marked qualified for service.

c. A SF 93 (Report of Medical History), dated 17 March 1993, shows the applicant provided his medical history for the purpose of enlistment.

d. A DA Form 4707 (Entrance Physical Standards Board Proceeding) dated 15 September 1994 shows:

- Item 8 (Findings by the Evaluation Physicians)
 - 18 year old Caucasian male complaining of not being able to keep back straight during push-ups APFT. As this condition worsen with pain he was recycled in hopes to pass his APFT to graduate which he was not done as of that time.
 - Subjective findings: complaining of lower back
 - Objective findings: positive lumbar scoliosis, neurovascular grossly intact.
 - Lab and X-ray results: scoliosis back film – dextroscoliosis T11 – L2 = 8 degrees, T5 – T11 = 9 degrees.
 - Diagnosis: Teracoulomb Scoliosis (EPTS)
 - Recommendations: it is recommended that this soldier be separated from the United States Army for failure to meet medical procurement standards in accordance with chapter 2, para 2-37, AR 40-501. EPTS:

Yes. Permanently service aggravated: No. Soldier does meet medical retention standards IAW AR 40-501, chapter 3.

- Item 21 Action by Service Member
 - the we can't disagree with the proceedings because his condition was not disqualifying on entry and was aggravated by service (specific medical evidence is attached) and request his case be returned to the medical providing authority for reconsideration. 22 September 1994.
- Item 25 Action by Unit Commander:
 - Recommend the applicant be discharged/separated.
 - Case be returned to the medical approving authority.

e. On 19 September 1994, the immediate commander council the applicant regarding his options and the applicant elected to request retention. The immediate commander considered all factors concerning the applicant and he recommended separation. The intermediate commander concurs with separation of the applicant.

f. On 21 September 1994, the Appeal for Medical Boards considered, and the original findings and recommendation were confirmed.

g. On 13 October 1994, he was discharged from active duty with an uncharacterized characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 5 months and 15 days of active service with no lost time. He was assigned separation code JFW and the narrative reason for separation listed as "Failure to Meet Procurement Medical Fitness Standards," with reentry code 3. It also shows he was awarded or authorized Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16).

5. There is no evidence the applicant has 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 15-185), 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.

7. By (AR 600-8-22) states the National Defense Service Medal is awarded for honorable active service for any period between 27 July 1950 and 27 July 1954, 1 January 1961 and 14 August 1974, 2 August 1990 and 30 November 1995, and 11 September 2001 and a date to be determined.

8. By regulation (AR 635-8), 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.

9. 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 (AD) or active duty training (ADT) for initial entry training may be separated. Such findings will result in an entrance physical standards board which must be convened within the Soldier's first 6 months of AD.

10. MEDICAL REVIEW:

a. 58The 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 18 May 1994 uncharacterized discharge along with changes to the separation authority and reentry code on his DD 214 and, in essence, a referral to the Disability Evaluation System (DES). He states:

“Veteran suffered a back injury incurred during service (August 1994) which was misdiagnosed as preexisting scoliosis that led to an uncharacterized discharge. Veteran request to be made whole by granting an honorable (medical) discharge as the medical conclusion for separation was erroneous, not in compliance with standards, and negated the veteran's honorable service provided before and following the in-service injury event.”

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 29 June 1994 and was discharged on 13 October 1994 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 shows that except for deficient color vision, he was in good health, without any significant medical history or conditions.

f. The applicant was referred to an Entrance Physical Standards Board (EPSBD) for lower back 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.

g. The applicant's Entrance Physical Standards Board (EPSBD) Proceedings (DA form 4707) show he had been determined to have pre-service thoracolumbar scoliosis both by examination and on radiographs:

"HISTORY OF EPTS [Existed Prior to Service] CONDITION: 18-year-old white male complaining of not being able to keep back straight doing pushups APFT [Army Physical Fitness Test]. As this condition worsened with pain he was recycled in hopes to pass his APFT to graduate which he has not done as of this time.

SUBJECTIVE FINDINGS: Complaining of lower back pain.

OBJECTIVE FINDINGS: Positive lumbar scoliosis, neurovascular grossly intact.

LAB AND X-RAY RESULTS: Scoliosis back film - dextroscoliosis T11 - L2 = 8 degrees, T5 - T11 = 9 degrees.

DIAGNOSIS: Thoracolumbar scoliosis. (EPTS)

RECOMMENDATIONS: It is recommended that this soldier be separated from the U.S. Army for failure to meet medical procurement standards IAW Chapter 2, para 2-37c(3) AR40-501 [Standards of Medical Fitness].

EPTS: Yes.

Permanently service aggravated: No.

Soldier does meet medical retention standards IAW Chapter 3, AR 40-501."

h. Paragraph 2-37c(3) of AR 40-501 (15 May 1989) states one circumstance under which scoliosis is a cause for rejection for enlistment is "It is symptomatic and associated with positive physical finding(s) and demonstrable by x-ray."

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 19 September 1994, the applicant non-concurred with the Board marking the election:

"I disagree with these proceedings because my condition was not disqualifying on entry and was aggravated by service (specific medical evidence is attached) and request my case be returned to the medical approving authority for reconsideration."

j. No additional evidence was in the supporting documentation and his period of service predates the EMR. On 21 September 1994, the Deputy Commander for Clinical Services indicated: "The appeal has been considered and the original findings and recommendation are confirmed."

k. JLV shows the applicant has a 20% VA service-connected disability rating for “Spondylolisthesis or Segmental Instability.” The associated VA ratings decision states:

“Entitlement to service connection for left and right sacroiliac joint condition, now combined with your service-connected lower back scoliosis and called lower back scoliosis with bilateral sacroiliac joint dysfunction, is granted with an evaluation of 10 percent effective January 6, 2016.

l. An evaluation of 20 percent is granted effective December 26, 2017.”

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 that an upgrade of his discharge, a change in his separation authority, and to a referral of his case to the Disability Evaluation System are all unwarranted.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant’s contentions, the military record, and regulatory guidance were carefully considered. Based upon available documentation and the findings of the medical review, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant’s military record.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
--------------	--------------	--------------	--

:	:	:	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.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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 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. 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.
3. Army Regulation 600-8-22 (Military Awards) states the National Defense Service Medal is awarded for honorable active service for any period between 27 July 1950 and 27 July 1954, 1 January 1961 and 14 August 1974, 2 August 1990 and 30 November 1995, and 11 September 2001 and a date to be determined. Second and subsequent awards of the National Defense Service Medal are denoted by a bronze service star affixed to the National Defense Service Medal.
4. Army Regulation 601-210 (Regular Army and Army Reserve Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the

Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-6 provides a list of RE codes.

- RE code "1" applies to Soldiers completing an initial term of active service, who are considered qualified for enlistment if all other criteria are met
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable – they are ineligible unless a waiver is granted
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification

5. Army Regulation 635-5-1 (Separation Program Designator (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. At the time, this regulation prescribed the separation code "JFW" is the appropriate code to assign Soldiers separated under the provisions of Army Regulation 635-200, paragraph 5-11, by reason of their failure to meet procurement medical fitness standards. Additionally, the SPD/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. JFF was the appropriate SPD Code for involuntary discharges under Secretarial Authority.

6. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets policies, standards, and procedures to insure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. Chapter 3 provides that a separation will be described as entry level with uncharacterized service if the Soldier has less than 180 days of continuous active-duty service at the time separation action is initiated.

b. Paragraph 3-7a (Honorable Discharge) states an honorable discharge is a separation with honor. 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. Paragraph 3-9 (Uncharacterized Discharge) states a separation will be described as entry-level with service uncharacterized if processing is initiated while a Soldier is in entry-level status.

d. Chapter 5-11 of the regulation states 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 (AD) or active-duty training (ADT) for initial entry training may 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, or during ADT for initial entry training. Unless the reason for separation requires a specific characterization, a Soldier being separated for the convenience of the Government will be awarded a character of service of honorable, under honorable conditions, or an uncharacterized description of service if in entry-level status.

e. 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.

7. Army Regulation 635-8 (Separation Processing and Documents), in effect at the time, 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.

//NOTHING FOLLOWS//