

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 November 2024

DOCKET NUMBER: AR20240004219

APPLICANT REQUESTS:

- correction of his records to show he was honorably discharged from the Army National Guard (ARNG) for medical reasons
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 2807-1 (Report of Medical History) (page 1 of 4)
- Memorandum from the Florida Army National Guard (FLARNG), Separations Branch, dated 29 November 2023, subject: Request for Correction to a Discharge Packet for (applicant)
- Department of Veterans Affairs (VA) certification of service-connected disability compensation letter, dated 18 January 2024

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:

a. The nature of his discharge is medical as reflected on his VA summary of benefits. He would accept a discharge status of medical or honorable, as it most accurately characterizes the nature of his service. He believes that corruption by the FLARNG to be the unjust and convenient cause for the characterization of his discharge. Look no further than the fact that he was sent to the Montgomery, AL, Military Entrance Processing Station (MEPS) when he was living in Jacksonville, FL, where a MEPS is located. This was done intentionally by the FLARNG in efforts to circumvent the MEPS process that would have rendered him ineligible for enlistment due to medical conditions, which he disclosed to his recruiter.

b. His recruiter's record has a history of such behavior, corroborating his claims. He is suggesting that when this plan and focus on achieving manpower numbers at the expense of integrity backfired when he became unfit to continue to serve, the FLARNG force him out of the service in a manner that was most convenient to their agenda; regardless of his health, reputation, and integrity.

3. The applicant records contain a DD Form 368 (Request for Conditional Release) showing that on 4 December 2016, the applicant, a member of the U.S. Air Force, requested a conditional release from the U.S. Air Force to enlist in the ARNG. His conditional release was approved on 4 December 2016.

4. The applicant provided a DD Form 2807-1 (page 1 of 4) showing he underwent a medical examination on 3 February 2017 for the purpose of enlistment in the ARNG. He highlighted the entries showing his home address as Jackson, FL and the examining location as Montgomery, AL MEPS.

5. On 6 February 2017, the Army National Guard Chief Surgeon approved a medical waiver for the applicant for history of left shoulder instability with surgical repair.

6. The applicant enlisted in the FLARNG on 7 February 2017. His enlistment documents show he enlisted for training in military occupational specialty 09S (Commission Officer Candidate).

7. Orders Number 324-084, published by the FLARNG on 20 November 2019, directed the applicant's discharge from the ARNG and as a reserve of the Army effective 20 November 2019 under the authority of National Guard Regulation (NGR) 600-200 (Enlisted Personnel Management), paragraph 6-35d(5), by reason of fraudulent enlistment with a character of service of uncharacterized. The orders also show the entry: Assignment/Loss Code: Pre-initial active duty for training (IADT) discharge program.

8. The applicant's National Guard Bureau (NGB) Form 22 (National Guard Report of Separation and Record of Service) shows he was discharged on 20 November 2019 under the authority of NGR 600-200, paragraph 6-35d(2), by reason of erroneous enlistment, reenlistment, or extension. The NGB Form 22 contains the entry "dsch [discharge] due to fraudulent enlistment" in block 18 (Remarks).

9. The applicant provided a memorandum from the FLARNG, Separations Branch, dated 29 November 2023, subject: Request for Correction to a Discharge Packet for (applicant), addressed to The Assistant Adjutant General, Florida National Guard, stating the following:

a. Enclosed is a request for discharge on (the applicant).

b. (The applicant) is not eligible for corrections to his discharge for the following reason: (The applicant) enlisted into the FLARNG being medically unfit and not disclosing prior medical conditions upon his enlistment physical at MEPS. Upon this discovery, he was discharged for defective enlistment and reenlistments.

c. The below supporting documentation is attached.

(1) Discharge Packet from the FLARNG which notified (the applicant) of the separation and his right to an administrative board. (The applicant) refused to sign the discharge paperwork.

(2) Line of Duty (LOD) Discharge Packet from the Department of the Air Force, where he was discharged due to his LOD that is signed by both him and his commanding officer.

(3) Discharge Order 324-084.

(4) NGB Form 22

10. The applicant also provided a VA certification of service-connected disability compensation letter, dated 18 January 2024, showing he is receiving service-connected disability compensation for undisclosed conditions with a combined evaluation of 80%.

11. 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/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 20 November 2019 uncharacterized discharge and, in essence, a referral to the Disability Evaluation System (DES).

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His National Guard Report of Separation and Record of Service (NGB Form 22) shows he enlisted in the Army National Guard on 7 February 2017 and separated from the Florida Army National Guard the (FLARNG) on 20

November 2019 under provisions provided in paragraph 6-35d(2) of NGR 600-200, Enlisted Personnel Management (31 July 2009): Erroneous enlistment, reenlistment, or extension.

d. On 6 February 2017, the applicant had received an accession medical waiver for "History of Left Shoulder Instability (M24819) with surgical repair."

e. A 21 July 2016 urology consult for nephrolithiasis (kidney stones) shows the applicant had a "previous history of kidney stones," had bilateral kidney stones at that time, and right sided hydronephrosis. From the Cleveland Clinic website: "Hydronephrosis (upper urinary tract dilation) is a condition where something keeps urine from flowing from your kidney to your bladder. When that happens, one or both of your kidneys swell. It can be sudden or chronic, partial or complete, one-sided or bilateral (both sides)." (<https://my.clevelandclinic.org/health/diseases/15417-hydronephrosis>)

f. On his 22 December 2016 Accessions Medical Prescreen Report (DD Form 2807-2), the applicant's marked "NO" to Do you currently have or any history of: "Kidney stone, infection or disease," "Kidney or urinary tract surgery of any kind," "Blood or protein In urine," and "Painful or difficult urination."

g. Two sub-paragraphs in paragraph 2-15 (Urinary System) of AR 40-501, Standards of Medical Fitness (14 June 2017), show the applicant's renal condition failed medical enlistment standards:

"2-15f(5) Current or history of hydronephrosis does not meet the standard."

"2-15h Current or history of urolithiasis within the preceding 12 months does not meet the standard. Recurrent calculus, nephrocalcinosis, or bilateral renal calculi at any time, does not meet the standard."

h. An FLARNG memorandum to the Assistant TAG of the FLARNG states:

"SGT [Applicant] is NOT eligible for corrections to his discharge for the following reason: SGT [Applicant] enlisted into the Florida Army National Guard being medically unfit and not disclosing prior medical conditions upon his enlistment physical at MEPS. Upon this discovery, he was Discharged for Defective Enlistment and Reenlistments.

The below supporting documentation is attached.

- a. Discharge Packet from the FLARNG which notified SGT [Applicant] of the separation and his right to an Administrative Board. SGT [Applicant] refused to sign the discharge paperwork.
- b. LOD Discharge Packet from the Department of the Air Force, where he was discharged due to his LOD that is signed by both him and his Commanding Officer.”
- i. Neither the applicant’s separation packet nor other documentation addressing his involuntary administrative separation was submitted with the application or uploaded into iPERMS,
- j. There is insufficient probative evidence the applicant had any duty-incurred medical condition which would have failed the medical retention standards of chapter 3, AR 40-501 prior to his voluntary discharge. Thus, there was no cause for referral to the Disability Evaluation System.
- k. JLV shows he has been awarded numerous VA service-connected disability ratings, including major depressive disorder, prostate gland condition, and limited motion of both shoulders. 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.
- 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 not 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 request and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant’s request, available military records and the medical review, the Board concurred with the advising official finding insufficient

probative evidence the applicant had any duty-incurred medical condition which would have failed the medical retention standards prior to his voluntary discharge. The opine found that neither a discharge upgrade nor a referral of his case to the DES is not warranted.

2. The Board determined there is insufficient evidence to support the applicant's contentions for correction of his records to show he was honorably discharged from the Army National Guard (ARNG) for medical reasons. The Board noted the applicant enlisted into the Florida Army National Guard was medically unfit and failed to disclose his prior medical conditions upon his enlistment physical at MEPS. Upon this discovery, the FLARNG initiated for Discharged for Defective Enlistment and Reenlistments. Based on the preponderance of evidence, 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) 135-178 (Army National Guard and Reserve Enlisted Administrative Separations) states in:

a. Paragraph 7-2 (Erroneous enlistment, reenlistment, and extension) a Soldier may be discharged on the basis of an erroneous enlistment, reenlistment, or extension of enlistment. An enlistment, reenlistment, or an extension of enlistment is erroneous in the following circumstances, if:

(1) It would not have occurred had the relevant facts been known by the Government or had appropriate regulations been followed.

(2) It was not the result of fraudulent conduct on the part of the Soldier.

(3) The defect is unchanged in material respects.

b. Paragraph 7-4, (Fraudulent enlistments or reenlistments), a Soldier may be separated on the basis of procurement of a fraudulent enlistment or reenlistment through any deliberate material misrepresentation, omission, or concealment which, if

known at the time of the enlistment or reenlistment, might have resulted in rejection. This includes all disqualifying information requiring a waiver. Concealment of a medical defect or disability that would have precluded enlistment or reenlistment in the ARNG or U.S. Army Reserve (USAR) when verified, substantiate the existence of a fraudulent enlistment or reenlistment.

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

a. Paragraph 4-3f(2), Soldiers under processing for an administrative separation for fraudulent enlistment or misconduct remain eligible to be referred to the Medical Evaluation Board (MEB). The Soldier's completed MEB must be referred to the Soldier's general court-martial convening authority (GCMCA) in accordance with AR 635-200 (Active Duty Enlisted Administrative Separations) to determine whether the Soldier will be referred to the Physical Evaluation Board. Approval and suspension of an AR 635-200 separation action is not authorized when the Soldier is pending both an AR 635-200 and AR 635-40 action. The GCMCA must decide which action to pursue.

b. Paragraph 5-17, Soldiers who entered the service with a medical waiver for a pre-existing condition and who are subsequently determined unfit for the condition will not be entitled to disability separation or retired pay unless the circumstances listed below apply:

(1) Military service permanently aggravated the medical condition. Permanent aggravation includes when service hastens the impairment's rate of natural progression.

(2) The Soldier is on active duty when their case is referred to the PEB and has completed 8 years of active service by the date of separation from active duty.

4. AR 635-200 sets forth the basic authority for the separation of enlisted personnel. The regulation in effect at the time states in:

a. Paragraph 3-7, 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. Only the honorable characterization may be awarded a Soldier upon completion of his/her period of enlistment or period for which called or ordered to active duty or active duty training or where required under specific reasons for separation, unless an entry-level status separation (uncharacterized) is warranted.

b. Paragraph 3-9, a separation would be described as entry level with uncharacterized service if processing was initiated while a Soldier was in an entry-level status, except when:

(1) An under other than honorable conditions characterization is authorized under the reason for separation and is warranted by the circumstances of the case.

(2) Headquarters, Department of the Army, on a case by case basis, determined a characterization of service as honorable is clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty. This characterization is authorized when the Soldier is separated by reason of selected changes in service obligation, for convenience of the government, and under Secretarial plenary authority.

(3) The Soldier has less than 181 days of continuous active military service, has completed Initial Entry Training, has been awarded a military occupational specialty, and has reported for duty at a follow-on unit of assignment.

c. Glossary-Section II (Terms), for ARNG and USAR Soldiers, entry-level status begins upon enlistment in the ARNG or USAR. For Soldiers ordered to initial active duty for training (IADT) for one continuous period, it terminates 180 days after beginning training. For Soldiers ordered to IADT for the split or alternate training option, it terminates 90 days after beginning Phase II advanced individual training.

5. AR 15-185 (ABCMR) provides Department of the Army policy, criteria, and administrative instructions regarding an applicant's request for the correction of a military record. Paragraph 2-11 states 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. Omission

6. Section 1556 of Title 10, U.S. 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 ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//