

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 December 2024

DOCKET NUMBER: AR20240004321

APPLICANT REQUESTS:

- an upgrade of his under honorable conditions (General) discharge
- an amendment to his narrative reason for separation to a medical discharge

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Self-Authored Statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 1 December 2008

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. At the time of his enlistment, he disclosed the medical screws in his foot. While attending advanced individual training (AIT), the rain and the cold aggravated his pre-existing condition, which resulted in him failing the running event of the Army Physical Fitness Test (APFT).

b. He was placed in a different section and was afforded several opportunities to pass the APFT, however he failed again due to the weather conditions that aggravated his pre-existing condition.

c. He was then separated with a general discharge, and an unsatisfactory performance narrative reason for separation. This is an inequitable and improper

discharge and should change to reflect he was separated honorably with a medical discharge.

3. The evidence of record shows the applicant was honorably discharged on 1 December 2008; therefore, this portion of his request will not be considered by the Board. The Board will consider the applicant's request for a medical discharge.

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

a. He enlisted in the U. S. Army Reserve (USAR) on 9 November 2006, followed by a reenlistment in the Regular Army (RA) on 8 July 2007.

b. Two DA Forms 705 (APFT Scorecard), reflect the applicant failed the run event on six separate occasions as follows:

- On 21 July 2008
- On 31 July 2008
- On 5 September 2008
- On 12 September 2008
- On 14 October 2008
- On 20 October 2008

c. In a memorandum for record (MFR), undated, the applicant was counseled formally concerning his deficiencies under Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 13, Separation for Unsatisfactory Performance. He understood that he has been given ample opportunity to overcome his deficiencies, for his failure to pass the APFT, before being separated administratively from the Army. He further acknowledged, that he will try to overcome his deficiencies so he can continue to serve.

d. On 30 October 2008, his chain of command recommended that the requirement for rehabilitative transfer be waived. The applicant has shown no improvement, therefore reassigning him to another unit would benefit neither the Soldiers currently assigned to the gaining unit nor the Army.

e. On 3 November 2008, his commanding officer initiated action to separate the applicant, under the provisions of Army Regulation AR 635-200, Chapter 13, Unsatisfactory Performance, with an honorable characterization of service for failing to pass the APFT after numerous attempts. The applicant acknowledged the separation notice and was informed of the basis for the contemplated action to separate him for Unsatisfactory Performance under AR 635-200. After being afforded the opportunity to consult with legal counsel, he declined the opportunity, and further acknowledged the following:

- he was advised he could submit any statements he desired in his own behalf, and he elected not to do so
- he requested copies of documents supporting the proposed separation
- he could be ineligible for many, or all benefits administered by the Department of Veterans Affairs
- he could be deprived of many, or all Army benefits and he could be ineligible for many or all benefits as a veteran under both Federal and State laws

f. On 4 November 2008, in a memorandum subject: Separation Under Army Regulation 635-200, Chapter 13, Unsatisfactory Performance, shows his commanding officer recommended the applicant be discharged from the service with an honorable characterization of service.

g. 14 November 2008, the separation authority approved the applicant's separation from the Army under the provisions of Army Regulation 635-200, Chapter 13. He further directed that the applicant be issued an honorable discharge.

h. His DD Form 214 shows he was honorably discharged on 1 December 2008, pursuant to Army Regulation 635-200, Chapter 13, Unsatisfactory Performance. He completed 4 months and 24 days of active service. He was awarded or authorized the National Defense Service Medal.

5. Due to the applicant's claim of his pre-existing condition aggravated by his service, which resulted his failure of the APFT, the case is being forwarded to the medical staff at the Army Review Boards Agency (ARBA).

6. 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 ADRB in essence requesting a referral to the Disability Evaluation System. In his self-authored letter, he states in part:

“... Upon completing and passing all AIT [advanced individual training] training/testing, we had a final PT [Army Physical Fitness Test or APFT] of which I failed the run. Due to aggravation of preexisting foot condition, pain, cold weather, etc. Upon failing the required run time, I was placed in the (FTC) recycle platoon ...

I was given another opportunity to complete the run in the required time but failed for the same reasons. At this point, I was discharged with unsatisfactory performance under honorable conditions.”

c. The Record of Proceedings outlines the applicant's military service and the circumstances of the case. The applicant's DD 214 shows he entered the regular Army on 8 July 2008 and was honorably discharged on 1 December 2008 under the provisions in chapter 13 of AR 635-200, Active Duty Enlisted Administrative Separations (6 June 2005) after having failed multiple consecutive Army physical fitness test.

d. The only EMR encounter for foot pain is dated 18 October 2008 and shows the applicant had undergone left foot surgery in 2007. A radiology report from radiographs obtained that day shows the radiologist findings: “Two fixation screws at the first metatarsal body with evidence of old healed fracture. Mild periosteal reaction along the second metatarsal body. Joint spaces are normal.” The applicant was started on conservative treatment and released without limitations.

e. He underwent his pre-separation examination on 20 November 2008. The applicant was noted to be pain free and determined qualified for separation.

f. Army Physical Fitness Test Scorecards (DA form 705) show the applicant failed all six (6) consecutive APFTs in the summer and fall of 2008: 7 and 31 July, 5 and 12 September, and 14 and 20 October. He never passed the APFT run event and thus never passed an APFT while in the Army.

g. On 3 November 2008, his company commander informed him of the initiation of separation action under chapter 13 of AR 635-200 – Unsatisfactory performance:

“The reasons for my proposed action are: You have failed to pass the Army Physical Fitness Test (APFT) after numerous attempts. While assigned to 701st MP BN [military police battalion], you were given four opportunities to pass the APFT. However, you were unable to do so. You were also transferred to FTC for the APFT platoon, a four-week program. You showed no improvement after two weeks, which caused you to be released back to your unit. Further attempts to train are not justified.”

h. The proposed separation action was approved by the brigade commander on 14 November 2008.

i. The applicant's pre-existing foot condition may well have been the cause of his failure to pass the APFT. However, had his command been aware of the condition, could also have separated the applicant under provisions provided by paragraph 5-11 of AR 635-200, Active Duty Enlisted Administrative Separations (6 June 2005): Separation of personnel who did not meet procurement medical fitness standards.

j. Paragraph 5-11a and 5-11b 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, 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 [EPSBD]. 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.

b. Medical proceedings, regardless of the date completed, must establish that a medical condition was identified by an appropriate military medical authority within 6 months of the soldier's initial entrance on AD for RA or during ADT for initial entry training for ARNGUS and USAR that—

(1) Would have permanently or temporarily disqualified the soldier 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 the soldier for retention in the military service per AR 40-501 [Standards of Medical Fitness], chapter 3. As an exception, soldiers with existed prior to service (EPTS) conditions of pregnancy or HIV infection (AR 600-110) will be separated.”

k. Separation under this paragraph would have resulted in an uncharacterized discharge.

l. JLV has no VA associated encounters and he has on VA service-connected disabilities.

m. The DES compensates an individual only for service incurred 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 authority were granted by Congress to the Department of Veterans Affairs and are executed under a different set of laws.

n. It is the opinion of the Agency Medical Advisor a referral to the DES is 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 the available documentation showing the applicant failed to consecutive APFT tests and the findings and recommendation outlined in 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:

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.

[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 635-200 (Active Duty Enlisted Administrative Separations), sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.
 - a. Honorable discharge. 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.
 - b. Chapter 13, Separation for Unsatisfactory Performance. A Soldier may be separated per this chapter when it is determined that he/she is unqualified for further military service because of unsatisfactory performance. This reason will not be used if the Soldier is in entry-level status. Soldiers separated under this chapter will be discharged.

(1) Counseling and rehabilitation requirements. Before initiating separation action against a Soldier, commanders will ensure that the Soldier has received adequate counseling and rehabilitation. Because military service is a calling different from any civilian occupation, a Soldier should not be separated when unsatisfactory performance is the sole reason for separation unless there have been efforts at rehabilitation.

(2) Characterization of service. The service of Soldiers separated because of unsatisfactory performance will be characterized as honorable or under honorable conditions as warranted by their military records. An honorable characterization of service generally is required when the Government initially introduces limited use evidence.

3. Army Regulation 15-185 (Army Board for Correction of Military Records), currently in effect, 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. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

4. Title 10 (Armed Forces), 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 (DES) and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 (Discharge Review Board (DRB) Procedures and Standards) 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 a Medical Evaluation Board (MEB); when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an Military Occupational Specialty (MOS) Medical Retention Board (MMRB); 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 Physical Evaluation Board (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. Army Regulation 350-1 (Army Training and Leader Development), prescribes policies, procedures, and responsibilities for developing, managing, and conducting Army training and leader development. The Army Physical Fitness Test (APFT) provides an assessment of the physical fitness training program. Physical conditioning or training periods solely devoted toward meeting APFT requirements are discouraged.

a. Soldiers must meet the physical fitness standards (as measured during the Army physical fitness test (APFT)) set forth in Field Manual (FM) 21-20 and this regulation. Soldiers who are unable to meet these standards or the mission-related physical fitness standards required of their duty assignment may be subject to administrative action.

b. The APFT provides a measure of cardio-respiratory and upper and lower body muscular endurance. It is a performance test that indicates a Soldier's ability to perform physically and handle his or her own body weight. Standards are adjusted for age and physiological differences between men and women.

c. The APFT consists of pushups, sit-ups, and a 2-mile run, done in that order on the same day. To be considered a record test, these events must be completed within 2 hours from the start of the push-up event until completion of the 2-mile run. Record APFT scores will be annotated on a DA Form 705 (Army Physical Fitness Test Scorecard).

d. All Soldiers must attain a score of at least 60 points on each test event or receive a "GO" on the alternate aerobic event. If a Soldier does not attain a minimum of 60 points in each event or a "GO" on an alternate aerobic event, the Soldier is an event failure. When a Soldier fails one or more events, the Soldier is a test failure.

6. Title 10 (Armed Forces), U.S. Code, section 1556 (Ex Parte Communications Prohibited) 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 applicant's (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//