

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 December 2024

DOCKET NUMBER: AR20240005539

APPLICANT REQUESTS:

- in effect, honorable physical disability discharge in lieu of uncharacterized administrative discharge due to failure to meet procurement medical fitness standards
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- partial Standard Form 88 (Report of Medical Examination), 16 August 1999
- DD Form 2648 (Preseparation Counseling Checklist), 11 January 2000
- U.S. Army Maneuver Support Center and Fort Leonard Wood Orders 028-0353, 28 January 2000
- DD Form 214 (Certificate of Release or Discharge from Active Duty) covering the period ending 28 January 2000

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. His Military Entrance Processing Station (MEPS) paperwork was falsified, stating he has flat feet. This falsehood is proven by x-rays and medical records with the Department of Veterans Affairs (VA). This falsehood caused his original claim for bilateral foot condition to be denied by the VA without a Compensation and Pension (C&P) examination and has cheated him out of a 30 percent disability rating for 3 years now.

b. He has contacted two Congressmen, one [REDACTED] and one [REDACTED], who sent him this application form. His DD Form 214 is falsified, stating he does not qualify

for veterans' benefits. Being raised by an attorney, he knows under Title 18, U.S. Code, section 1001, it is felony fraud to knowingly apply for benefits, so he did not do so until he met a VA representative 20 years later. This fraud has cheated him out of \$800,000.00 in benefits.

c. On his application, the applicant has marked the boxes indicating an honorable characterization of service, disability, and pay and allowances.

d. During COVID, he could not get his VA representative to respond to calls, texts, or emails and he was unaware of eBenefits. Due to fear of facing a felony charge, prison, and fines under Title 18, U.S. Code, section 1001, he did not apply for benefits at the time of his discharge because he had paperwork from the Federal government showing he did not qualify. This fraud, at his current disability rating, has cheated him out of a considerable amount of money and left him in physical pain, with mental issues for over 20 years. How many others have had the government commit fraud against them? Had he been told upon discharge and reflected in his DD Form 214 that he qualified for VA benefits, including treatment and payment, he would have gone as soon as he got home. Situations like this are why 22 veterans per day commit suicide.

3. A physical profile is used to classify a Soldier's physical disabilities. PULHES is the acronym used in the Military Physical Profile Serial System to classify a Soldier's physical abilities in terms of six factors, as follows: "P" (Physical capacity or stamina), "U" (Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric) and is abbreviated as PULHES. Each factor has a numerical designation: 1 indicates a high level of fitness, 2 indicates some activity limitations are warranted, 3 reflects significant limitations, and 4 reflects one or more medical conditions of such a severity that performance of military duties must be drastically limited. Physical profile ratings can be either permanent (P) or temporary (T).

4. A Standard Form 88 shows:

a. On 16 August 1999, the applicant underwent medical examination for the purpose of Regular Army Enlistment.

b. The notes show the applicant had asymptomatic, mild pes planus. On the copy of the form provided by the applicant, that portion of the document is highlighted, presumably by the applicant, with a handwritten note that this is different from plantar fasciitis.

c. The examinee found the applicant qualified for enlistment with a PULHES of 111111.

5. A DD Form 4 (Enlistment/Reenlistment Document) shows the applicant enlisted in the U.S. Army Reserve (USAR) Delayed Entry Program (DEP) on 20 August 1999. He was released from the USAR DEP and enlisted in the Regular Army on 7 October 1999.

6. The applicant's DA Form 2-1 (Personnel Qualification Record – Part II) shows he entered One Station Unit Training (OSUT) for Military Occupational Specialty (MOS) 12B (Combat Engineer) at Fort Leonard Wood, MO, on 14 October 1999.

7. The complete facts and circumstances surrounding the applicant's separation are unknown, as his discharge packet, to include a DA Form 4707 (Entrance Physical Standards Board (EPSBD) Proceedings) and a DA Form 3349 (Physical Profile), is not in his available records for review and have not been provided by the applicant.

8. The applicant provided a DD Form 2648, which shows a checklist of the pre-separation counseling he requested on 11 January 2000. He signed the form indicating he was offered pre-separation counseling on his transition benefits and services and accepted further transition assistance counseling. He checked those items where he desired further information or counseling.

a. The applicant checked "yes," on the following items, indicating he requested counseling on those services and benefits:

- Department of Labor sponsored Transition Assistance Program and service sponsored transition seminars/programs
- Transition Bulletin Board
- Federal employment opportunities
- State employment agencies/America's Job Bank
- Job Training Partnership Act
- Unemployment compensation

b. He checked "no" next to Reserve affiliation/priority.

c. He did not annotate a "yes" or a "no" check mark in the section pertaining to disabled veterans' benefits, which includes the Disabled Transition Assistance Program (DTAP) and VA disability benefits and left it blank.

9. U.S. Army Maneuver Support Center and Fort Leonard Wood Orders 028-0353, 28 January 2000, reassigned the applicant to the Fort Leonard Wood, MO U.S. Army transition point for transition processing with a reporting date and date of discharge of 31 January 2000.

10. The applicant's DD Form 214 shows he was given an uncharacterized discharge on 31 January 2000, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-11, due to failure to meet procurement medical fitness standards, with corresponding separation code JFW. He was credited with 3 months and 24 days of net active service, and he was not awarded an MOS.

11. The Army rates only conditions determined to be physically unfitting at the time of discharge, which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career. The VA does not have authority or responsibility for determining physical fitness for military service. The VA may compensate the individual for loss of civilian employability.

12. Title 38, USC, Sections 1110 and 1131, permit the VA to award compensation for disabilities which were incurred in or aggravated by active military service. However, an award of a VA rating does not establish an error or injustice on the part of the Army.

13. MEDICAL REVIEW:

1. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The applicant requests Honorable discharge due to medical disability. His contention concerns a bilateral foot condition.

2. The ABCMR ROP summarized the applicant's known record and circumstances surrounding the case. The applicant entered service 07Oct1999. He was discharged 31Jan2000 under provisions of AR 635-200 para 5-11 due to failure to meet procurement medical fitness standards. His service was designated as Uncharacterized.

3. Summary of medical records related to separation

a. 16Aug1999 Report of Medical Examination (for enlistment, SF Form 88). The foot examination revealed Mild Pes Planus, Asymptomatic under item #36. The PULHES was 111111. He was deemed qualified for service.

b. Service treatment records were not available for direct review. The applicant's 28Apr2023 Knee and Lower Leg DBQ VA examiner(s) reviewed the service treatment records and summarized them as follows: On 06Jan2000, orthopedics diagnosed Bilateral RPPS (Retropatellofemoral Pain Syndrome). The results of the 07Jan2000 Entrance Physical Standards Board Proceedings (EPSBP) noted that the applicant reported bilateral knee pain. He was in his 10th week of basic training and stated that

his knees had been bothering him a long time. The problem first started while skydiving (8-9 jumps) and during wrestling when he sustained recurrent knee hyperextension (*in high school*). The applicant was seen by orthopedics who diagnosed bilateral deviated patella with tracking on weightbearing. The applicant endorsed that he could not continue training due to bilateral knee and foot pain. He wore a knee brace. The x-ray showed laterally deviated left patella. Diagnosis: Bilateral Knee Pain from prior hyperextension injuries that existed prior to service, not aggravated by service. Recommendation: Soldier does not meet retention standards IAW AR 40-501, 2-10b(9) for the effects of injuries which existed prior to service.

c. The VA service-connected Left Knee; however, they did not service-connect the Right Knee. Neither knee sustained traumatic injury while in service. However, the rationale appears to be that the left knee symptoms were worse, and the left knee carried a diagnosis in addition to RPPS. For example, on 01Nov1999 (week 3 of training) the applicant was seen for left knee pain of 3 weeks duration. Method of injury was increased activity. Diagnosis: Left- Hamstring Tendonitis/Shin Splint. Again, there was no history of traumatic knee injury to either knee while in service.

4. The applicant contends that his MEPS foot exam should not show Pes Planus.

a. The available record did not show treatment for a bilateral foot condition while in service.

b. A Foot Conditions DBQ was not completed. During the Knee and Lower Leg Conditions DBQ exam, the applicant stated that he had been diagnosed with Plantar Fasciitis and that he does not have flat feet but instead has high arches.

c. A 31Aug2022 podiatry note showed diagnoses Bilateral Plantar Fasciitis; and Pes Cavus foot type (high arch).

d. 27Oct2022 Podiatry Note. He was seen following up on his bilateral heel pain which was worsened by walking/standing for his job. He had been using Power Steps brand orthotics with some relief. The foot exam again noted pes cavus foot type (right > left). He was dispensed over-the-counter orthotics, and he was casted for custom fit orthotics. He was dispensed soft heel cups.

5. The 25Aug2021 Rating Decision reportedly indicated that service connection for left laterally deviated patella with shin splints was granted with an evaluation of 10% effective 08Oct2020. JLV search today showed (of relevance) ratings for the following: Limited Flexion of Knee 10% and Limited Extension of Knee 10%. A foot condition was not rated.

6. Summary/Opinion

a. The complete separation package was not available for this review. The EPSBP indicated the applicant was separated for a bilateral knee condition (not the feet). The bilateral knee condition was preventing training and failed procurement medical standards of AR 40-501 chapter 2. There was insufficient information to support that the bilateral knee condition failed medical retention standards of AR 40-501 chapter 3. A bilateral foot pain was contributory, but documentation did not indicate that the bilateral foot condition itself was a separate condition which did not meet medical procurement standards or that it failed medical retention standards.

b. Concerning the discrepancy between the Report of Medical Examination showing Mild Pes Planus, Asymptomatic and the 2022 podiatry note diagnosing Pes Cavus; it should be noted that Pes Planus and Pes Cavus are mutually exclusive. It should also be noted that the applicant states that his foot condition/disability is Plantar Fasciitis. Both Pes Planus and Pes Cavus can be associated with Plantar Fasciitis. And finally, the 02Aug2022 left foot film did not show either Pes Planus or Pes Cavus; it did however reveal mild degenerative changes of the bilateral first MTP joints.

7. Based on records available for review, there was insufficient evidence to support that the bilateral knee condition or a bilateral foot condition (Pes Planus, Pes Cavus or Plantar Fasciitis) failed medical retention standards of AR 40-501 chapter 3 at the time of discharge from service. Referral into the DES is not warranted.

BOARD DISCUSSION:

1. The Board determined 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.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The applicant's separation package was not available for this review.

a. Physical Disability Discharge: Deny. The EPSBD indicated the applicant was separated for a bilateral knee condition (not the feet). The bilateral knee condition was preventing training and failed procurement medical standards of AR 40-501 chapter 2. The Board reviewed and agreed with the medical reviewer's determination that there was insufficient information to support that the bilateral knee condition failed medical retention standards of AR 40-501 chapter 3. A bilateral foot pain was contributory, but documentation did not indicate that the bilateral foot condition itself was a separate

condition which did not meet medical procurement standards or that it failed medical retention standards.

b. Discharge Upgrade: Deny. The evidence shows the applicant did not complete training and was never awarded an MOS. He completed 3 months and 24 days of active duty. An uncharacterized discharge is given to individuals on active duty who separate prior to completing 180 days of military service, or when the discharge action was initiated prior to 180 days of service. Because the applicant did not complete basic training, he was in an entry level status at the time of his discharge and so received an uncharacterized discharge.

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.

12/20/2024

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. 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. 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 (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 their 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 their 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.

3. Army Regulation 635-40 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. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

a. Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in military service.

b. Soldiers who sustain or aggravate physically-unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

(1) The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

(2) The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

c. The percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Ratings are assigned from the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD). The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting, or ratable condition, is one which renders the Soldier unable to perform the duties of their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

4. Title 10, U.S. Code, section 1201, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30 percent. Title 10, U.S. Code, section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating of less than 30 percent.

5. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), 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. Chapter 3 states a separation will be described as entry level with uncharacterized service if the Soldier is in an entry-level status at the time separation action is initiated.

a. Paragraph 5-11 (Separation of personnel who did not meet procurement medical fitness standards) shows 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 or active duty training for initial entry training, may be separated. Such conditions must be discovered during the first 6 months of active duty. Such findings will result in an entrance physical standards board. This board, which must be convened within the Soldier's first 6 months of active duty, takes the place of the notification procedure required for separation.

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 of active duty for Regular Army or active duty training for Army National Guard of the United States and U.S. Army Reserve that:

- would have permanently or temporarily disqualified the Soldier for entry into the military service or entry on active duty or active duty training for initial entry training had it been detected at the time
- does not disqualify the Soldier for retention in the military service per Army Regulation 40-501, chapter 3. As an exception, Soldiers with existed prior to service conditions of pregnancy or HIV infection will be separated.

c. Section II (Terms) of the Glossary defines entry-level status for Regular Army Soldiers as the first 180 days of continuous active duty or the first 180 days of continuous active duty following a break of more than 92 days of active military service. For ARNG and USAR Soldiers, entry-level status begins upon enlistment in the ARNG or USAR. For Soldiers ordered to 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 of Advanced Individual Training.

6. Title 38, U.S. Code, section 1110 (General – Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

7. Title 38, U.S. Code, section 1131 (Peacetime Disability Compensation – Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

8. 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.

9. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. Paragraph 2-11 states applicants do not have a right to a formal hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires. 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.

//NOTHING FOLLOWS//