

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 November 2024

DOCKET NUMBER: AR20240006770

APPLICANT REQUESTS: upgrade of his uncharacterized discharge to honorable. Also, a personal appearance before the Board via video/telephone.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:  
DD Form 149 (Application for Correction of Military Record)

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 he would like to have his discharge changed to honorable. He passed the Military Entrance Processing Station (MEPS), and they approved his mallet toes. He had problems with them in basic training. He believes he came into the Army with only good intentions. When his toes started hurting him, the Army just discharged him. He sent in a similar case in 2009 and several more over the years. He has yet to get a response. He does not feel like he was treated well.
3. On 8 September 2008, the applicant completed a DA Form 2807-1 (Report of Medical History), wherein he acknowledged that he wore glasses, used marijuana, had surgery for "T&A" at age 12, reported alcohol abuse, and had no other medical issues or problems. A DA Form 2808 (Report of Medical Examination), dated 8 September 2008, indicates he was given a medical examination at the Salt Lake City MEPS, where a physician noted he wore glasses, that his feet were asymptomatic with normal arch, and he was qualified for military service.
4. The applicant enlisted in the Regular Army on 24 September 2008.
5. DD Form 2697 (Report of Medical Assessment) completed on 6 November 2008, shows he was seen for mallet toe, third toe on both feet. Left knee pain, joint pain,

soreness from exercise due to mallet toes affecting running and therefore referred pain to proximal joints related to improper running profile.

6. He was issued a temporary profile 6 November 2008, for mallet toes, involving 3rd toes both feet, left worse than the right.

7. A DA Form 4707 (Entrance Physical Standards Board (EPSBD) Proceedings), dated 6 November 2008, shows after careful consideration of his medical records, laboratory findings, and medical examination, the board found the applicant medically unfit for enlistment in accordance with current medical fitness standards and, in the opinion of the evaluating physician, the condition was characterized as existing prior to service (EPTS). This form shows the following entries:

a. This 20-year-old male in his 4th week of his initial enlistment training of basic combat training was identified as having an EPTS condition on 6 November 2008.

b. Subjective: Patient with bilateral mallet toes involving both 3rd toes, left worse than the right. Soldier was given medication and trial of trying to train and make it through basic training. He was unsuccessful and developed bilateral foot and knee pain secondary to not being able to run and march due to the congenital mallet toes giving secondary joint pain from improper running and marching posture.

c. Objective: Mallet toes 3rd toe bilateral, left worse than the right.

d. Diagnosis: Bilateral mallet toes (3rd toe) left worse than the right.

e. Disposition: It is recommended that he be separated from the military service.

f. The medical approving authority approved the findings of the EPSBD on 14 November 2008 and forwarded the recommended course of action to the unit commander for disposition.

g. The applicant was informed of the medical findings on 17 November 2008. He acknowledged he understood that legal advice of an attorney employed by the Army was available to him or that he could consult civilian counsel at his own expense. He also acknowledged he understood that he could request to be discharged without delay or to request retention on active duty. If retained, he could be involuntarily reclassified into another military occupational specialty based upon his medical condition.

h. The applicant concurred with the proceedings on 19 November 2008 and requested he be discharged from the Army without delay.

i. His immediate commander recommended his separation from the Army on 20 November 2008. The separation approving authority directed his discharge from the Army on 21 November 2008.

8. Accordingly, he was discharge on 4 December 2008, under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), paragraph 5-11, by reason of failed medical/physical/procurement standards. He was issued an "uncharacterized" character of service with a separation code of "JFW." He completed 2 months and 11 days of net active service this period. He was not awarded a military occupational specialty.

9. On 12 June 2020, in ABCMR Docket Number AR20190000589, the Board considered his application for medical separation, and the evidence presented and determined it 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. The Board denied his request.

10. By regulation, AR 635-200, in effect at the time, 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.

11. By regulation, AR 15-185 (ABCMR) states, an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

12. 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.

#### 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 petition and executed a comprehensive and standard review based on law, policy and regulation. The governing regulation provides that a separation will be described as an entry-level separation, with service uncharacterized, if the separation action is initiated while a Soldier is in entry-level status. Upon review of the applicant's petition and available military records, the Board determined the applicant completed 2 month and 11 days of net active-duty service and did not complete training and was discharged from active duty by reason of failed medical/physical/procurement

standards. As such, the applicant's DD Form 214 properly shows the appropriate characterization of service as uncharacterized. Therefore, the Board denied relief.

2. An uncharacterized discharge is not derogatory; it is recorded when a Soldier has not completed more than 180 days of creditable continuous active duty prior to initiation of separation. It merely means the Soldier has not served on active duty long enough for his or her character of service to be rated as honorable or otherwise. As a result, there is no basis for granting the applicant's request.

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) 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.
3. AR 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, 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.

a. Paragraph 3-7a (1) 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. Only the honorable characterization may be awarded a member upon completion of his or her period of enlistment or period for which called or ordered to active duty or active duty for training, or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.

b. Paragraph 3-7b (1) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 3-7b (2) states a characterization of under honorable conditions may be issued only when the reason for the member's separation specifically allows such characterization. It will not be issued to members upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

d. Paragraph 3-9 provided that 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 was authorized when the reason for separation and was warranted by the circumstances of the case; or

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

e. Entry-level status is defined as the first 180 days of continuous active service for Regular Army Soldiers.

f. Paragraph 5-11 provided that 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 entrance on active duty, active duty for training, or initial entry training would be separated. A medical proceeding,

regardless of the date completed, must establish that a medical condition was identified by appropriate medical authority within 6 months of the Soldier's initial entrance on active duty, that the condition would have permanently or temporarily disqualified the Soldier for entry into military service had it been detected at that time, and the medical condition did not disqualify the Soldier from retention in the service under the provisions of Army Regulation 40-501. 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.

4. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, BCM/NRs 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. 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.

//NOTHING FOLLOWS//