

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 January 2025

DOCKET NUMBER: AR20240007368

APPLICANT REQUESTS:

- reconsideration of his previous request for upgrade of his uncharacterized service to honorable
- a copy of the appeal process, if his request is denied

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

- Self-authored letter, 26 February 2024
- Army Board for Correction of Military Records letter, 10 January 2024
- 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) Rating Decision Letter, 6 February 2024
- Operation Center Focus Program letter, 26 October 2017
- VA Letter, 7 February 2024
- The Secretary of Veterans Affairs Washington Letter, 5 December 2022
- Social Security Card and N.Y. Identification Card
- Three-American Legion Membership Cards
- VA Post Card

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20170016131 on 4 September 2020.
2. The applicant states he currently receives service-connected disability. He received a VA grant in 2017 and is eligible for VA life insurance, as evidenced by his attachments. He consistently receives letters from the VA, the Veterans Service, and many others addressing him as an Army Veteran. He has a letter from the Secretary of the VA addressing him as a Veteran, and his name is on the kiosk at the new Army Museum. He requests a new DD Form 214 that shows his honorable discharge. His paperwork from the archives in St. Louis state his medical discharge becomes

honorable 120 days after separation. If his request is denied he will need the appeal paperwork and intends to take this matter to the U.S. Supreme Court.

3. The applicant provides:

- a. A letter issued by ABCMR, 10 January 2024, responding to the applicant's request for reconsideration in case number AR20230006569. In this letter the Board states they are returning the request without action, and per Army Regulation 15-185 (ABCMR) the applicant must provide new evidence or argument that was not considered at the time of the ABCMR's prior consideration.
- b. DD Form 149, 11 August 2017, that show applicant's request for DD Form 214 to reflect an honorable discharge.
- c. A letter issued by J\_\_\_\_ E\_\_\_\_, Case Manager, Operation Center Focus Program, 26 October 2017, that show the applicant is a client, residing at Aspire Health Partners, William Just Center, a VA per diem Homeless Veteran's Residential Housing Program located in Orlando, FL. The applicant was admitted on 31 July 2017, and needs clothing.
- d. A letter issued by The Secretary of VA Washington, 5 December 2022, that shows in part, "Dear Veteran, it is our responsibility and privilege at the Department of VA to provide the best care and service to veterans."
- e. A VA Rating Decision letter, 6 February 2024, that show service connection for bilateral feet is granted with an evaluation of 0 percent effective 18 December 2017.
- f. A VA letter, 7 February 2024, that show the applicant may qualify for VA life insurance if he meets the criteria.
- g. A copy of the applicant's social security card and NY state identification card.
- h. Three American Legion Membership Cards.
- i. A VA post card, that show in part "there are Veterans working at the VA that take their work personally and would like to help Veterans like you."

4. A review of the applicant's record show:

- a. The applicant enlisted in the Regular Army on 16 July 1986.

b. He was issued a temporary physical profile on 5 August 1986 for bilateral flat feet and was limited to wearing tennis shoes and no further duty for training purposes. He was undergoing (Entrance Physical Standards Board (EPSB) Medical Board.

c. The EPSB found that he had a history of bilateral foot pain associated with prolonged standing. Flat feet were recognized at the military entry processing station (MEPS) on the physical examination. The foot pain increased in severity over the 3 weeks that he had been in training and was unable to continue training. He was found physically unfit for enlistment in accordance with Army Regulation (AR) 40-501 (Standards of Medical Fitness) and recommended discharge.

d. On 19 August 1986, the transition point was notified that the recommendation for separation under provision of AR 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-11 (Did not meet procurement medical fitness standards – No Disability) was approved and he was to be separated with entry level separation.

e. The applicant's DD Form 214 shows he was released from active duty on 21 August 1986, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-11 (Separation of Personnel who did not Meet Procurement Medical Fitness Standards), by reason of did not meet procurement medical fitness standards - no disability. His service was uncharacterized with separation code of JFT and reenlistment code RE-3. He was completed 1 month and 6 days of net active service. He was not awarded a military occupational specialty.

f. On 4 September 2020, in Docket Number AR20170016131, the ABCMR determined 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.

5. By regulation (AR 635-200), Soldiers who were not medically qualified under procurement medical fitness standards when accepted for enlistment or who become medically disqualified under these standards prior to entrance on active duty, active duty for training, or initial entry training would be separated.

a. 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.

b. Soldiers are considered to be in an entry-level status when they are within their first 180 days of active-duty service. The evidence of record shows the applicant was in an entry-level status at the time of his separation. An uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It simply means the

Soldier was not in the Army long enough for his or her character of service to be rated as honorable or otherwise.

6. 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.

7. 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 (AHLTA), 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 ABCMR requesting reconsideration of their prior denial of his request for an upgrade of his uncharacterized 21 August 1986 discharge from the Army for failure to meet procurement medical fitness standards. He states the reason for the requested reconsideration is the condition has been service connected by the VA.

c. The Record of Proceedings outlines the applicant's military service and the circumstances of the case. The applicant entered the regular Army on 16 July 1986 and was discharged on 21 August 1986 under authority provided by paragraph 5-11 of AR 635-200, Personnel Separations – Enlisted Personnel (1 February 1985): "Separation of personnel who did not meet procurement medical fitness standards."

d. This request was previously denied by the ABCMR on 4 September 1990 (AR20170016131). Rather than repeat their findings here, the board is referred to the record of proceedings and medical advisory opinion for that case. This review will concentrate on the new evidence submitted by the applicant.

e. A 6 February 2024 VA ratings decision shows the applicant was granted a 0% disability rating for bilateral flat feet originally effective 18 December 2017. JLV shows this rating is now 50% and that he has no additional VA service-connected disabilities.

f. No additional evidence was submitted with the case. Because of the period of service under consideration, there are no encounters in AHLTA or documents in iPERMS.

g. The prior medical advisory:

h. The supporting documentation contains the applicant's June 1986 pre-entrance Report of Medical History and Report of Medical Examination. The examiner noted the applicant had pes planus, asymptomatic and he was determined to be qualified for service.

i. The applicant was seen several times in July 1986 for painful feet and was referred to podiatry. The podiatrist placed him on a 90-day physical profile for bilateral symptomatic pes planus 5 August 1986 noting that the applicant was undergoing an entrance physical standards board (EPSBD). Paragraph 5-11a of AR 635-200:

Soldiers who were not medically qualified under procurement medical fitness standards when accepted for initial enlistment or who became medically disqualified under these standards prior to entry on AD or ADT 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, or during ADT for initial entry training for ARNGUS and USAR, 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.

j. When such a medical condition is identified, the Soldier is referred to an Entrance Physical Standards Board (EPSBD) 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. A second criterion for this process is that the preexisting condition was not permanently service aggravated.

k. The EPSBD proceedings are dated 5 August 1986 and note his history:

This is a 20-year-old male, Basic trainee, in his third week of Basic Training, complaining of severe bilateral foot pain. Patient has EPTS {existed prior to service} history of bilateral foot pain associated with prolonged standing. Flat feet were recognized at the MEPS Station on physical examination. Basic trainee's foot pain has increased in severity over the three weeks that the has been in training to the point where he is unable to continue training and carry out his duties and responsibilities as a trainee.

I. His physical examination revealed "There is marked plantar grade appearance of the feet bilaterally with medial prominence of the head to the talus bilaterally. There is almost complete obliteration of the plantar arch bilaterally with marked pain to palpation of the medial band of the plantar fascial bilaterally. The diagnosis was "Pes planus, symptomatic, bilaterally" with "Discharge is recommended for this EPTS condition."

m. The chapter 2 enlistment standard for pes planus is found in paragraph 2-10b(5) of AR 40-501, Standards of Medical Fitness (1 December 1983): "Flatfoot, pronounced cases, with decided eversion of the foot and marked bulging of the inner border, due to inward rotation of the astragalus {talus}, regardless of the presence or absence of symptoms "does not meet enlistment standards.

n. The chapter 3 standard in paragraph 3-13b(2) states that " Pes Planus: Symptomatic, more than moderate, with pronation on weight bearing which prevent the wearing of a military shoe, or when associated with vascular changes" does not meet medical retention standards. There is no evidence this condition was permanently aggravated by his brief period of service.

o. The applicant concurred with the board's finding on 14 August 1986 and initialed the box for "I concur with these proceedings and request to be discharged from the US Army without delay." With this and the board's finding, the applicant was then appropriately processed under the provisions of paragraph 5-11 of AR 635-200.

p. The DES only compensates an individual for permanent 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.

q. It is the opinion of the Agency Medical Advisor that an upgrade of his discharge and/or a referral of his case to the disability evaluation system both remain unwarranted.

**BOARD DISCUSSION:**

1. After reviewing the application, all supporting documents, the evidence found within the military record, and regulatory guidance, the Board found that relief was not warranted.
2. The Board carefully considered the applicant's contentions, his record and length of service, the outcome of his referral to an Entrance Physical Standards Board (EPSBD), the reason for his separation and the characterization he received upon discharge. The Board considered the applicant's statement regarding his VA correspondence and the review and conclusions of the Agency medical advisor. The Board considered his initial VA rating and subsequent evaluations. The Board did not find sufficient evidence that showed his pre-existing condition was permanently aggravated by high short period of military service. The Board considered that the character of service for Soldiers separated under this provision of the applicable regulation would be uncharacterized if the Soldier was in an entry-level status. The Board did not find circumstances sufficiently unusual to warrant an upgrade to Honorable. Based on a preponderance of evidence, the Board determined that the character of service he received upon separation was not in error or unjust.

**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]

[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. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.
  - a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. 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.
  - b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge. A characterization of under honorable conditions may be issued only when the reason for the Soldier's separation specifically allows such characterization.
  - c. 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) a discharge under other than honorable conditions was authorized, due to 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.

d. Paragraph 5-11 (Separation of Personnel who did not Meet Procurement Medical Fitness Standards) provides 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. Medical proceeding, regardless of the date completed, must establish that a medical condition was identified by appropriate medical authority within six 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(Standards of Medical Fitness).

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.

2. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NR) 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.

a. 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, Boards 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.

b. 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//