

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 February 2025

DOCKET NUMBER: AR20240008014

APPLICANT REQUESTS: in effect, correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty)

- Item 12b (Separation Date this Period): from 87|06|26 (26 June 1987) to reflect 87|09|07 (7 September 1987)
- Item 24 (Character of Service): from uncharacterized to honorable
- Item 28 (Narrative Reason for Separation): remove EPTS (existed prior to service)

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214
- Request for discharge, 4 August 1987
- NGB Form 22 (Report of Separation and Record of Service)
- DA Form 2-1 (Personnel Qualification Record) page 4

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 correct separation date and type of discharge. It already shows 60% disabled at time of discharge. The corrections would allow him to be treated by Veterans Affairs for medical needs which he is entitled to for service-connected injury. He shattered his ankle in basic training and was medically discharged at 60% for life. Prior to military service he was Illinois state champion in track.
3. The applicant's service records are not available for review. An exhaustive search was conducted to locate the service records, but they could not be found. The only

documents available were the documents provided by the applicant. These documents are sufficient for the Board to conduct a fair and impartial review of this case.

a. His NGB Form 22 shows he enlisted in the Illinois Army National Guard (ILARNG) on 21 February 1987.

b. His DD Form 214 shows he entered a period of active duty on 3 June 1987 for active-duty training (ADT). He was released from ADT on 26 June 1987 and transferred to State Adjutant General of Illinois. His DD Form 214 also shows he completed 24 days net active service this period. It also shows:

- Item 12b: 87|06|26 (26 June 1987)
- Item 24: entry level uncharacterized
- Item 25 (Separation Authority): Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-11
- Item 26 (Separation Code): JFT
- Item 27 (Reenlistment Code): 3
- Item 28: Medical - EPTS

c. On 4 August 1987, his ILARNG commander requested he be discharged from the ILARNG and as a Reserve of the Army. In the memo he requested:

- Type of discharge: Uncharacterized
- Reason: Failure to meet enlistment standards
- Effective date: 7 September 1987

d. NGB Form 22 shows he was discharged from the ILARNG on 7 September 1987. He completed 6 months and 16 days net service this period. It also shows:

- Item 23 (Authority and Reason): MNIL Orders 164-6 dated 26 August 1987 (Medical Discharge)
- Item 24 (Character of Service): Uncharacterized
- Item 26 (Reenlistment Eligibility): RE-3

e. DA Form 2-1 page 4 which shows he was discharged – uncharacterized from the ILARNG on 7 September 1987.

4. 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.

5. 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.

6. 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.

7. Title 38, CFR, Part IV is the VA's schedule for rating disabilities. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge. As a result, the VA, operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform his duties. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

8. 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 ABCMR requesting an upgrade of his entry level status (ELS – aka uncharacterized) discharge and in essence, a referral to the Disability Evaluation System (DES). He states:

“I shattered my ankle in basic training and was medically discharge at 60% for life. Prior to military service, I was an Illinois state champion in track.”

c. The Record of Proceedings outlines the applicant's military service and the circumstances of the case. His DD 214 shows he former ARNG Soldier entered the Army on 3 June 1987 and was separated under provisions in paragraph 5-11 of Personnel Separations – Enlisted Personnel (1 February 1985): “Separation of personnel who did not meet procurement medical fitness standards.” The narrative reason for separation is “Medical – EPTS [Existed Prior to Service].”

d. Paragraph 5-11a of AR 635-200:

“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 or ADT 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. 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.”

e. 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.

f. No medical documentation was submitted with the application and his period of service predates the EMR.

g. Neither the applicant’s separation packet nor documentation addressing his discharge was submitted with the application or uploaded into iPERMS.

h. Given the authority for separation, it must be assumed the EPSBD determined the applicant had a medical condition which failed medical enlistment standards, had existed prior to service and not permanently aggravated by his brief period of service, and was not compatible with continued service.

i. JLV shows he no medical conditions listed on his medical problem list and no VA service-connected disabilities.

j. 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. This type of discharge does not attempt to characterize service as good or bad. Through no fault of his own, he simply had a medical condition which was, unfortunately, not within enlistment standards.

k. It is the opinion of the Agency Medical Advisor that neither an upgrade of his discharge nor a referral of his case to the Disability Evaluation System is warranted.

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, the Board made the following findings and recommendations related to the requested relief:

- Change the separation date: DENY, based upon the available documentation showing the applicant's ACTIVE DUTY service ended on 26 June 1987 and the DD Form 214 responsible for noting only active duty service greater than 90 days. NOTE: The applicant's USARNG duty ended in September, but that is not noted on a DD Form 214
- Upgrade Discharge Characterization: DENY, based upon the regulatory guidance concerning administrative separation initiated within the first 180 days of active duty service and the findings outlined in the medical review.
- Change the Narrative Reason for Separation: DENY, based upon the findings and recommendation outlined in the medical review.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	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.

X //SIGNED//

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 and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 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 an MEB; when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an MOS Medical Retention Board; 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 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.

3. Army Regulation (AR) 635-40 (Physical 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. 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. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with AR 40-501, chapter 3, as evidenced in a medical evaluation board (MEB); when they receive a permanent physical profile rating of "3" or "4" in any functional capacity factor and are referred by a Military Occupational Specialty Medical Retention Board; 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 or 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 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 are either 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 onetime severance payment, while veterans who retire based upon disability receive

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c. The mere presence of 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 medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

d. 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.

e. 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.

4. AR 40-501 (Standards of Medical Fitness) governs medical fitness standards for enlistment, induction, appointment (including officer procurement programs), retention, and separation (including retirement). The Department of Veterans Affairs Schedule for Rating Disabilities (VASRD). VASRD is used by the Army and the VA as part of the process of adjudicating disability claims. It is a guide for evaluating the severity of disabilities resulting from all types of diseases and injuries encountered as a result of or incident to military service. This degree of severity is expressed as a percentage rating which determines the amount of monthly compensation.

5. 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, USC, 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.

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. AR 635-200 (Personnel Separations - Enlisted Personnel), sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 5-1 states unless the reason for separation requires a specific characterization, a Soldier being separated for the convenience of the government will be awarded a character of service of honorable, under honorable conditions, or an uncharacterized description of service if in an entry-level status.

b. Paragraph 5-11 states 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 for training for initial entry training may be separated. Such conditions must be discovered during the first 6 months of active duty. For character of service, paragraph 5-1 should be adhered to.

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.

9. 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 Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//