

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 February 2025

DOCKET NUMBER: AR20240008308

APPLICANT REQUESTS: in effect, a physical disability discharge

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

- DD Form 149 (Application for Correction of Military Record)
- Standard Form 600 (Report of Medical Examination), 23 February 1981
- Standard Form 600 (Chronological Record of Medical Care), 14, 27 and 30 April 1981
- Standard Form 93 (Report of Medical History), 30 April 1981
- Standard Form 519 (Radiographic Report), 30 April 1981
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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 has tried to purchase a home with the Department of Veterans Affairs (VA) since 2021. He was discharged from the U.S Army on 21 May 1981; however, his DD Form 214 does not display he was discharged due to his feet and that it is service connected. He was unable to commit to 90 days in the military and an amending to his DD Form 214 would allow him to get his certificate of eligibility (COE). He was denied a COE in May 2021, and sent paperwork to have it corrected, but they have not responded.

3. The applicant provides:

a. A copy of his Standard Form 600 (Chronological Record of Medical Care) that shows:

(1) On 14 April 1981, [applicant] not being able to wear boots and shoes causing pain.

(2) On 27 April 1981, [applicant] have hammer toes both feet and callouses on proximal inter-phalangeal (PIP) joints and flexible not rigid. Hammer toes both feet orthopedic appointment for consideration of special-order boots. Tennis shoe until orthopedic appointment.

(3) On 30 April 1981, [applicant] referred because of foot problems unable to wear boots. Quit civilian jobs because of feet problems.

b. A Standard Form 93 (Report of Medical History) with a date of examination on 30 April 1981 that shows in part "yes" checked for foot trouble.

c. A Standard Form 519 (Radiographic Report) 30 April 1981, that shows the applicant was diagnosed with painful feet.

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

a. The applicant enlisted in the Regular Army on 31 March 1981.

b. The applicant underwent a medical examination on 23 February 1981 for the purpose of enlistment. His Standard Form 88 (Report of Medical Examination) shows the applicant did not report a history of foot trouble.

c. On 30 April 1981 the applicant underwent a medical board the DA Form 4707 (Entrance Physical Standards Board (EPSB) Medical Board) shows in part:

(1) PRESENT ILLNESS: The [applicant] was referred from the Troop Clinic because of hammertoes on both feet. He has had nothing but problems since coming on active duty. He has been unable to wear boots because of the hammertoe deformities and has been in tennis shoes. Upon questioning the [applicant], he states "that he had to quit all of his jobs in civilian life because of being on his feet for long periods and being unable to stand the walking".

(2) PHYSICAL EXAMINATION: Examination of both right and left feet reveals hammer toes, 2nd, 3rd, and 4th toes, on both right and left feet. There is a mild decrease in the longitudinal arch as well. Remainder of the physical examination is essentially within normal limits.

(3) LABORATORY DATA: X-rays revealed hammertoe deformities bilaterally.

(4) PRESENT CONDITION: Due to the applicant's prolonged foot problem, it is unlikely that he will be able to complete basic training in a satisfactory manner. He will not be able to wear the military service boots and with the prolonged standing, running, marching, he will only continue to have foot problems.

(5) DIAGNOSIS: 7556 - Hammertoes, right and left. Existed Prior to Military Service (EPTS): Not Service Aggravated. (Unfit Under Provisions Army Regulation (AR) 40-501 (Standards of Medical Fitness), Chapter 2, Para 2-10b (8)).

(6) RECOMMENDATIONS: Though [applicant] meet retention criteria, it is felt to be in the best interest of the [applicant] medically and the U.S. Government, to separate [applicant] from active duty. Therefore, recommend separation under the provisions of paragraph 5-7, AR 635-200 (Personnel Separations – Enlisted Personnel).

(7) State Profile and Assignment Limitations: Permanent L3 profile – Codes C, D, and N. No crawling, stooping, running, jumping, prolonged standing or marching. No strenuous physical activity. No continuous wearing of combat boots. (Time permitted – 10 minutes).

d. A Disposition Form, 1 May 1981, that shows the applicant acknowledged in accordance with paragraph 6-6e (3), AR 40-3 (Medical, Dental and Veterinary Care), his request for separation by reason of erroneous enlistment under the provision of paragraph 5-7, AR 635-200. He was informed that even though he did not meet procurement medical fitness standards at the time of enlistment he may request retention on active duty to complete the period of service for which enlisted. He declined to apply for retention.

e. The applicant's DD Form 214 shows he was honorably discharged from active duty on 21 May 1981, under the provisions of AR 635-200, paragraph 5-7c (2) (Discharge of Personnel who did not Meet Procurement Medical Fitness Standards). He was issued separation code JFT and reenlistment code RE-3. He completed 1 month and 21 days of net active service. He was awarded a military occupational specialty.

5. By regulation (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 active duty (AD) or active duty training (ADT) for initial entry training may be separated. Such findings will result in an entrance physical standards board which must be convened with the Soldier's first 6 months of AD.

6. By regulation (AR 635-5), the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active

duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation. Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designator (SPD) Codes).

7. By regulation (AR 40-501), medical evaluation of certain enlisted military occupational specialties and officer duty assignments in terms of medical conditions and physical defects are causes for rejection or medical unfitness for these specialized duties. If the profile is permanent the profiling officer must assess if the Soldier meets retention standards. Those Soldiers on active duty who do not meet retention standards must be referred to a medical evaluation board.

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 (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/or 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 a change in his characterization of service so he can apply for a VA loan. He states his discharge was due to his feet which is service connected.

c. The Record of Proceedings and prior denial detail the applicant's military service and the circumstances of the case. His DD 214 shows he entered the regular Army on 31 March 1981 and was honorably discharged on 21 May 1981 under the separation authority provided by paragraph 5-7c(2) of AR 635-200, Personnel Separations – Enlisted Personnel (1 March 1978): Separation of personnel who did not meet procurement medical fitness standards.

d. The applicant was first seen for bilateral hammer toes during his first week of basic combat training. He was seen by orthopedics who referred him to an Entrance Physical Standards Board (EPSBD) for this condition. EPSBDs are 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.

The fourth criterion for this process is that the preexisting condition was not permanently aggravated by their military service.

e. From the 30 April 1981 Entrance Physical Standards Board (EPSBD) Proceedings (DA Form 4707):

“PRESENT ILLNESS : This 20-year-old male was referred from the Troop Clinic because of hammer toes on both feet. He has had nothing but problems since coming on active duty. He has been unable to wear boots because of the hammertoe deformities and has been in tennis shoes. Upon questioning the SM [service member], he states that he had to quit all of his jobs in civilian life because of being on his feet for long periods and being unable to stand the walking.

PHYSICAL EXAMINATION: Examination of both right and left feet reveal hammer toes 2nd, 3rd, and 4th toes, on both right and left feet . There is a mild decrease in the longitudinal arch as well.

LABORATORY DATA: X- rays revealed hammertoe deformities bilaterally.

PRESENT CONDITION: Due to this SM's prolonged foot problem, it is unlikely that he will be able to complete basic training in a satisfactory manner. He won't be able to wear the military service boots and with the prolonged standing, running, and marching, he will only continue to have foot problems.

DIAGNOSIS: 7556 - Hammertoes, right and left

EPTS [Existed Prior to Service]: Not Service Aggravated

Unfit UP AR 40- 501, Chapter 2, Para 2-10b(8)

RECOMMENDATIONS : Though SM meets retention criteria , it is felt to be in the best interest of the SM medically and the U. S. Government, to separate SM from active duty. Therefore, recommend separation under the provisions of para 5- 7, AR 635-200.”

f. Paragraph 2-10b(8) of AR 40-501 states “Hammertoe which interfere with the wearing of combat boots” is a cause for rejection for appointment, enlistment, and induction.

g. On 8 May 1981, the board determined his medical condition had existed prior to service, had not been permanently aggravated by his military service, did not meet one or more medical enlistment/induction standards, and was not compatible with continued military service. The applicant agreed with the board's findings on 15 May 1981, marking and initialing the election "I concur with these proceedings and request to be discharged from the US Army without delay."

h. It is the opinion of the ARBA Medical Advisor that a discharge upgrade is not warranted.

BOARD DISCUSSION:

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 review based on law, policy, and regulation. Upon review of the applicant's petition, available military records, and the medical review, the Board concurred with the advising official finding that the applicant's condition existed prior to service and therefore did not warrant a recommendation to the Disability Evaluation System. Furthermore, the Board noted the applicant concurred with the proceedings and requested to be discharged from the U.S. Army without delay. Based on a preponderance of the evidence, the Board determined relief was not appropriate to support a physical disability discharge.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XX	:XX	:XX	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. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that 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 has occurred by a preponderance of the evidence. It is not an investigative body.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.

a. 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.

b. Paragraph 5-7 states members who were not medically qualified under procurement medical fitness standards when accepted initial enlistment will be will be separated when medical proceedings, regardless of the date completed, establishes that a medical condition was identified by appropriate military medical authority within 4 months of the member's initial entrance on active duty or active duty for training under the Reserve Enlistment Program of 1963.

c. Chapter 5-11 of the regulation 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 (AD) or active duty training (ADT) for initial entry training may be separated. Such findings will result in an entrance physical standards board which must be convened with the

Soldier's first 6 months of AD. 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 entry-level status.

4. Army Regulation 635-5 (Separation Documents), in effect at the time, states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation. Block 28 (Narrative Reason) is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designator (SPD) Codes).

5. Title 10, USC, 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.

6. Title 38 USC, 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 USC, 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. Army Regulation 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. Once a determination of physical unfitness is made, all disabilities are rated using the Department of Veterans Affairs Schedule for Rating Disabilities (VASRD).

a. Paragraph 3-2 states 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. Paragraph 3-4 states 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.

9. Army Regulation 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.

10. Section 1556 of Title 10, USC, 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//