

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 May 2024

DOCKET NUMBER: AR20230000043

APPLICANT REQUESTS: Correction to her DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 13 May 2001 to show in item 28 (Narrative Reason for Separation): Medical Discharge vice Discharge. She also requests a personal appearance before the Board.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214, 13 May 2001

FACTS:

1. The applicant did not file within the three year time frame provided in Title 10, United States Code, section 1552(b); however, the 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, in effect, she is requesting a review of her discharge because of a Regular Army prior disability. She should have been medically discharged. She had back pain during her service and still had the pain when the Army was doing her exiting examination, prior to her expiration term of service, and the condition has worsened.

3. The applicant does not provide any medical documentation to support her claim of back issues.

4. A review of the applicant's service records shows:

a. DA Form 2-1 (Enlisted Qualification Record), item 35 (Record of Assignments) reflects the applicant had prior service:

- 13 March 1990 to 15 March 1991: Active Duty – No DD Form 214 available
- 16 March 1991 to 14 May 1998: Army National Guard – No NGB Form 22 available

b. DD Form 4 (Enlistment/Reenlistment Document) shows the applicant enlisted in the Regular Army on 14 May 1998 in the rank of E4 for 3 years.

c. She received 14 Developmental Counseling Forms from 24 July 1998 to 25 June 1999 consisting of failing to obey proper sick call procedures, failing to go to her appointed place of duty, failing to pay financial obligations, failure to report to duty, uniform violations, and failure to report to physical training on time.

d. On 29 May 1999, she was cited by civilian police for speeding and having no proof of insurance.

e. On 23 July 1999, she received counseling from her command for indebtedness to a catalog sales company, in the amount of \$250.00, which she failed to pay.

f. On 25 August 1999, she received nonjudicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ) for being derelict in the performance of her duties and for being disrespectful in deportment and language toward a sergeant, a noncommissioned officer, on 4 June 1999. She was found guilty and received a reduction in rank to private first class (PFC) (suspended), extra duty and restriction for seven days. She did not appeal.

g. On 20 October 1999, the applicant had the suspension of her reduction to PFC vacated due to driving on post while her driving privileges were suspended. She was reduced to PFC.

h. On 17 December 1999, she received company grade nonjudicial punishment for violating post suspension. She was reduced to PFC and received extra duty for 14 days.

i. On 4 January 2000, she received a report of mental status evaluation. She received the following determinations:

- Behavior: normal
- Level of alertness: full alert
- Level of orientation: fully oriented
- Mood or affect: unremarkable
- Thinking process: clear
- Thought content: normal
- Memory: good

j. The applicant was noted to have the mental capacity to understand and participate in the separation proceedings, was mentally responsible, and met the retention requirement of Chapter 3, Army Regulation 40-501. She was psychiatrically

cleared for any administrative action deemed necessary by command. It was also noted that a discharge via mental health criteria is not warranted at that time.

k. She received another 12 Developmental Counseling Forms from 27 January 2000 to 24 May 2000 for driving while driving privileges were suspended, failure to report back to work, financial obligations, conduct, failure to report, making a false statement, malingering, failure to comply with corrective training, failure to obey an order, failure to obey a regulation and having a second offense during suspension of license.

l. On 10 October 2000, she received another nonjudicial punishment for speeding and violating a lawful general order. She was found guilty and received a reduction to private (suspended). She did not appeal.

m. A Report of Medical History, dated 11 December 2000 reflects she had the following past/current medical history: swollen or painful joints, pain or pressure in chest, adverse reaction to medication, and a tumor. This document also notes that she checked "Yes" to have you ever been discharged from military service because of physical mental or other reasons. She did not give a reason.

n. Memorandum, Subject: Recommendation for Separation, Army Regulation 635-200, Chapter 14, Paragraph 14-12b, Initiating Separation, dated 18 January 2001, shows her command initiated separation processing, under the provisions of Army Regulation 635-200, Chapter 14, for a pattern of misconduct and that her character of service be under other than honorable.

o. On 18 January 2001, the applicant received her rights and was advised by her consulting counsel of the basis for the contemplated action to separate her and its effects. She requested an administrative separation board; however, she did not submit any statements on her own behalf and requested counsel.

p. On 26 January 2001, the applicant's command recommended that she be discharged for a pattern of misconduct with a general discharge.

q. On 22 May 2001, after receiving her Administrative Separation Board, the Board made the following findings and recommendations: Pursuant to Army Regulation 635-200, Chapter 14, her pattern of misconduct was approved. The Board recommended she receive a general discharge and that she not be transferred to the Individual Ready Reserve.

r. On 22 May 2001, the findings and recommendations of the Administrative

Separation Board were approved for the applicant to be discharged with a general characterization of service due to a pattern of misconduct.

s. Her DD Form 214 shows she completed 3 years of net active service this period, with 1 year and 3 days of total prior active service with 7 years, 1 month and 28 days of total prior inactive service. This document also reflects in:

- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Army Good Conduct Medal (AGCM), National Defense Service Medal (NDSM), Army Service Ribbon (ASR)
- Item 23 (Type of Discharge): "Discharge"
- Item 24 (Character of Service): "Under Honorable Conditions (General)"
- Item 25 (Separation Authority): "AR 635-200, Chapter 4"
- Item 28 (Narrative Reason for Separation): "Misconduct"

5. On 20 May 2009, the applicant submitted a request to the Army Discharge Review Board (ADRB) requesting a change to her narrative reason for separation. On 12 May 2010, the ADRB granted her request. The Board reasoned that the evidence of record supports that she was discharged on the expiration term of service (ETS) date. She served her entire enlistment and the command had the option to allow her to be separated by reason of ETS. In view of the foregoing, the Board voted to change the narrative reason for separation to "Completion of Required Active Service" under the provisions of Army Regulation 635-200, Chapter 4. She was issued a new DD Form 214, which reflects the following information:

- Item 13: AGCM, NDSM, ASR
- Item 23 (Type of Discharge): "Discharge"
- Item 24 (Character of Service): "Honorable"
- Item 25 (Separation Authority): "AR 635-200, Chapter 4"
- Item 26 (Separation Code): "KBK"
- Item 27 (Reentry Code): "1"
- Item 28 (Narrative Reason for Separation): "Completion of Required Active Service"

6. 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/or the Interactive Personnel Electronic Records

Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant has applied to the ABCMR in essence requesting a referral to the Disability Evaluation System (DES). She states:

“I am requesting a review of discharge because of a regular army prior disability to be medical. Just that I had back pain during service and while they were doing my exing{sic} examination to ETS and condition has worsened.”

c. The Record of Proceedings outlines the applicant’s military service and the circumstances of the case. Her DD 214 for the period of service under consideration shows she entered the Regular Army on 14 May 1998 and received an honorable discharge on 13 May 2001 under the provisions in chapter 4 of AR 635-200, Active Duty Enlisted Administrative Separations (1 November 2000), after having completed her required active service. The DD 214 does not show a period of service in a hazardous duty pay area. Her reentry code of “1” signifies she was fully eligible to reenlist.

d. There are several contemporaneous radiology reports in EMR - four sets of chest radiographs and one set of right-hand radiographs – but no spine radiographs, and there are no clinical encounters.

e. The applicant underwent her pre-separation medical examination on 11 December 2000. She noted her current back pain and the provider noted she had been experiencing low back pain since pregnancy. He documented a normal physical examination, mild tachycardia (heartrate of 105 beats per minute, normal 60 -100), no defects or other diagnoses, and determined she was qualified for separation.

f. There is no probative evidence a lumbar spine condition or any other duty incurred medical condition would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to her voluntary separation; or that any duty incurred medical condition prevented the applicant from reenlisting. Thus, there was no cause for referral to the Disability Evaluation System. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of her office, grade, rank, or rating prior to her discharge.

g. JLV shows she has been awarded three VA service-connected disability ratings: Psychosis, schizophrenia residual on 18 August 2009 (100%), degenerative arthritis of the lumbar spine on 12 October 2021 (20%), and paralysis of the right sciatic nerve on 12 October 2021 (20%). However, the DES compensates an individual only for service incurred medical condition(s) which have been determined to disqualify him or her from further military service. 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.

h. It is the opinion of the ARBA medical advisor that a referral of her case to the DES is not warranted.

BOARD DISCUSSION:

1. After reviewing the application and all supporting documents, the Board found relief is not warranted.
2. The Board concurred with the conclusion of the ARBA Medical Advisor that the evidence does not support a conclusion that the applicant had a medical condition prior to her discharge that warranted referring her to the Disability Evaluation System. Based on a preponderance of the evidence the Board determined the reason for her discharge, as amended by the ADRB, is 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.

10/2/2024

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, United States 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 Army Board for Correction of Military Records (ABCMR) determines it would be in the interest of justice to do so.
2. Army Regulation 15-185 (ABCMR) states ABCMR members will review all applications that are properly before them to determine the existence of an error. The ABCMR will decide cases on the evidence of record. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. 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. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), Chapter 3 contains the policy and outlines the standards for determining unfitness because of physical disability. It states, in pertinent part, that the mere presence of an impairment does not, of itself, justify a finding of unfitness because of physical disability.
 - a. Chapter 3 states the mere presence of impairment does not, of itself, justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the member reasonably may be expected to perform because of his or her office, rank, grade, or rating.

b. Chapter 4 provides guidance on referring Soldiers for evaluation by an MEB when a question arises as to the Soldier's ability to perform the duties of his or her office because of physical disability.

4. Army Regulation 40-501 (Standards of Medical Fitness) provides medical retention standards and is used by MEBs to determine which medical conditions will be referred to a PEB. Paragraph 3-3 states Soldiers whose medical conditions fail retention standards are to be referred to a PEB as defined in Army Regulation 635-40. The PEB will make the determination of fitness or unfitness.

5. 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. 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.

6. 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.

7. Title 38 (Veterans' Benefits), U.S. Code, section 1110 and 1131 (Basic entitlement), permit the Veterans Affairs to award compensation for disabilities that were incurred in or aggravated by active military service. (However, an award of a higher VA rating does not establish error or injustice on the part of the Army. The Army rates only conditions determined to be physically unfitting at the time of discharge which disqualify the Soldier from further military service. The VA does not have the authority or responsibility for determining physical fitness for military service. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge, to compensate the individual for loss of civilian employability. These two government agencies operate under different policies. 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.)

//NOTHING FOLLOWS//