

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 December 2023

DOCKET NUMBER: AR20230003348

APPLICANT REQUESTS: correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) as follows:

- Character of Service: Honorable vice Uncharacterized
- Reason for Separation: Disability/Medical vice Entry Level Performance and Conduct

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs Summary of Benefits

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 was discharged for medical issues. He had no disciplinary issues against him. All his paperwork says honorable discharge except his DD Form 214. [Note: The applicant marked PTSD (Post-traumatic stress disorder) and Other Mental Health on his DD Form 149].
3. Review of the applicant's service records shows:
  - a. He enlisted in the Alabama Army National Guard (ALARNG) on 10 November 2003, agreeing to serve 6 years in the ARNG and 2 years in the Individual Ready Reserve.
  - b. He was ordered to active duty for training (ADT) and entered active duty on 27 January 2004. He was assigned to Fort Jackson, SC to complete training.

c. The complete facts and circumstances surrounding his discharge are not available for review. However, his DD Form 214 shows he was released from ADT and discharged from the Reserve of the Army on 20 July 2004 in accordance with what appears to be chapter 11 of Army Regulation (AR) 635-200 (Personnel Separation) by reason of Entry Level Performance and Conduct, with an uncharacterized discharge.

- He completed 5 months and 24 days of active service
- He was not awarded a military occupational specialty .

d. On 14 September 2004, ALARNG published Orders 258-032 discharging him from the ARNG effective 4 October 2004, by authority of paragraph 8-27y of National Guard Regulation (NGR) 600-200 (Enlisted Personnel Management) with an uncharacterized discharge.

e. His NGB Form 22 (Report of Separation and Record of Service) shows he was discharged in accordance with NGR 600-200, paragraph 8-27y with an uncharacterized discharge. It shows he completed 8 months and 29 days of his ARNG contract/service.

#### 4. MEDICAL REVIEW:

a. Background: The applicant is requesting her uncharacterized service be changed to honorable and she is requesting it be changed due to disability/medical versus entry level performance and conduct. The applicant contends other mental health and PTSD mitigate her discharge. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Below is a summary of information pertinent to this advisory:

- She enlisted in the Alabama Army National Guard (ALARNG) on 10 November 2003.
- She was ordered to active duty for training (ADT) and entered active duty on 27 January 2004.
- The complete facts and circumstances surrounding her discharge are not available for review. However, her DD Form 214 shows she was released from ADT and discharged from the Reserve of the Army on 20 July 2004 in accordance with what appears to be chapter 11 of AR 635-200, by reason of Entry Level Performance and Conduct, with an uncharacterized discharge.
- She was discharged from the ARNG effective 4 October 2004 with an uncharacterized discharge.

b. Review of Available Records Including Medical: The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, her ABCMR Record of Proceedings

(ROP), DD Form 214, some service and separation records (though his ROP noted missing information), as well as a Department of VA Summary of Benefits letter. The VA electronic medical record and DoD health record were reviewed through Joint Longitudinal View (JLV). Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts that other mental health and PTSD are related to her request for an upgrade. The applicant is requesting her discharge be changed to medical. She asserts that all of her paperwork says, "honorable discharge but my DD214," and she states she was discharged due to medical reasons and had no discipline issues.

d. The applicant's time in service predates consistent use of electronic health records (EHR) by the Army, hence no EHRs are available for review. Her service record and supporting documents did not contain her service treatment records (STR) and no other records were provided to substantiate her claim of other mental health nor PTSD. There is no indication the applicant was ever seen, treated, nor diagnosed with a mental health condition while in the service.

e. Per the applicant's VA EHR, she is 100% service connected, to include 100% for major depressive disorder (MDD). A benefits summary letter provided by the applicant also shows that she is considered totally and permanently disabled, effective 13 September 2021. The applicant has been engaged in care at the VA since 2004, and with mental health care since 2005. She has been diagnosed with major depressive disorder (recurrent – severe – without psychotic symptoms, recurrent – moderate, recurrent – unspecified), other sleep disorders, insomnia, mood disorder in conditions classified elsewhere, as well as psychosocial concerns such as other problems related to housing and economic circumstances, unemployment, and other psychosocial or physical stress – not elsewhere classified. She has engaged in medication management, vocation rehabilitation, hud vash/housing support, individual therapy, pain management, and acute inpatient care. It appears that she was first diagnosed with a mood disorder secondary to health concerns after her discharge. In addition, during a psychiatric consult on 28 June 2005 (her first mental health specific appointment) she noted "no previous psychiatric history and treatment." It was reported that the onset of her depression was after her basic training in Texas where she sustained an injury, a stress fracture, and was engaged in rehab. She was unable to finish basic training due to this injury. Through review of Joint Legacy Viewing, this applicant did have "Community Health Summaries and Documents" available, though there was no record of a mental health treatment nor diagnoses.

f. There are numerous components to this opine. First, it is the opinion of this Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had

a condition or experience that warrants a referral to the DES. There is insufficient evidence the applicant was ever diagnosed with PTSD, nor any other mental health condition, during her time in service. While the applicant has since been service connected (100%) for MDD, there is no evidence to suggest the applicant was ever issued a permanent profile or was diagnosed with a med boardable condition that did not meet medical fitness standards in accordance with AR 40-501 during her period of service. In addition, VA examinations are based on different standards and parameters; they do not address whether a medical condition met or failed Army retention criteria or if it was a ratable condition during the period of service. Therefore, a post-discharge diagnosis of MDD and a VA disability rating does not imply failure to meet Army retention standards at the time of service, nor is it indicative of an injustice at the time of service. In addition, a diagnosis of MDD or PTSD during her time in service would not have necessarily rendered her unfit for duty.

g. Second, this applicant has no known misconduct to mitigate though there were minimal records provided from her time in service, particularly regarding her separation. That said, uncharacterized discharges are not punitive or negative; it simply reflects that she did not serve long enough to receive a characterization. In summary, her separation process appears proper, equitable and free of error, and insufficient new evidence has been provided to determine otherwise.

#### Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Not applicable (NA).

(2) Did the condition exist or experience occur during military service? NA

(3) Does the condition or experience actually excuse or mitigate the discharge? NA

#### 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 applicant's contentions, the military record, and regulatory guidance were carefully considered. The applicant's separation packet is not available for review. Other evidence shows she was released from ADT and discharged from the Reserve of the Army on 20 July 2004 by reason of Entry Level Performance and Conduct, with an uncharacterized discharge. A separation will be described as entry-level with service uncharacterized if processing is initiated within the first 180 days of service. 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 by a preponderance of the evidence. The Board considered the medical records, any VA documents provided by the applicant and the

review and conclusions of the advising official. The Board concurred with the medical advisor's finding insufficient evidence to support the applicant had a condition or experience that warrants a referral to the disability evaluation system. There is also insufficient evidence the applicant was ever diagnosed with PTSD, or any other mental health condition, during the applicant's time in service. Based on a preponderance of evidence, the Board determined that the character of service and reason for separation the applicant received upon separation was not in error or unjust.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.

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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 635-200 (Personnel Separations), in effect at the time, sets policies, standards, and procedures for the administrative separation of enlisted Soldiers for a variety of reasons.

a. Paragraph 3-7a provides that 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. Paragraph 3-7b provides that 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.

c. 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 an under other than honorable conditions characterization was authorized when the reason for separation and was warranted by the circumstances of the case; or 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.

3 National Guard Regulation 600-200 (Enlisted Personnel Management) prescribes the criteria, policies, processes, procedures, and responsibilities to classify, assign, utilize, transfer, separate and appoint ARNG and Army National Guard of the United States enlisted Soldiers. Chapter 8 establishes that the authority to discharge Soldiers from the Reserve of the Army. The authority for discharging Soldiers from a state Army National Guard is the Adjutant General of the State except for those Soldiers who are within two years of completing service required for retired pay. In those cases, the Chief, National Guard Bureau is the authority for discharge. Paragraph 8-27(y) of that regulation provides in pertinent part that individuals can be discharged from the ARNG as a result of discharge from the Reserve of the Army.

4. 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. 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.

b. 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.

c. 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, and (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.

5. 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.

6. 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.

7. Title 10, U.S. Code, section 1556 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//