

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 October 2024

DOCKET NUMBER: AR20230005017

APPLICANT REQUESTS: in effect, correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 13 September 2022, by amending item 28 (Narrative Reason) to reflect "Disability, Permanent." In addition:

- 100 percent (%) disability
- a personal appearance before the Board

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

- DD Forms 149 (Application for Correction of Military Record)
- DD Form 214
- A letter issued by the Department of Veterans Affairs (VA), 2 March 2023
- Name change order, 8 March 2023
- A letter issued by the VA, 20 July 2024

FACTS:

1. The applicant states, in effect, she is requesting correction of her narrative reason for discharge to show "Disability, Permanent" vice "Misconduct (Serious Offense)". She does not have a record of misconduct, and at the time of discharge, her disability rating was over 70%. In a subsequent application, she further explains that she should also receive 100% disability rating, as she should not have been discharged for misconduct, rather for being medically unfit for duty. Due to the VA special monthly compensation (SMC) for housebound status, she is now considered by the VA as totally and permanently 100% disabled. This has been an ongoing issue that she was trying to resolve before her separation ever occurred.

2. The applicant provides letters issued by the VA, that provide the following:

(1) On 2 March 2023, shows her service-connected disability rating was 70%, with an effective date of 14 September 2022.

(2) On 20 July 2024, shows her service-connected disability rating was totally and permanently 100% disabled, also with an effective date of 14 September 2022.

3. The applicant's service record reflects the following:

a. On 25 July 2017, the applicant enlisted in the Regular Army followed by multiple extensions to her enlistment.

b. A memorandum subject: Gender Marker Change, issued by Headquarters, 5th Special Forces Group (Airborne), 13 December 2021, shows the applicant's gender marker request was approved from male to female, pursuant to Army Directive 2021-22 (Army Service by Transgender Persons and Persons with Gender Dysphoria).

c. DA Forms 4856 (Developmental Counseling Form) show the following issues:

- On 8 November 2021 for refusal of the COVID vaccine
- On 8 February 2022 for denial of her COVID vaccine exemption request
- On 15 February 2022 for failing to receive the first dose of the COVID vaccine

d. DA Form 3822-R (Report of Mental Status Evaluation), 17 February 2022, shows she underwent a mental status evaluation. She was cleared from a behavioral perspective for any administrative action deemed appropriate by her command, in accordance with Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14 (Separation for Misconduct). This document shows the following:

- She could understand and participate in administrative proceedings
- She could appreciate the difference between right and wrong
- She met medical retention requirement (did not qualify for a Medical Evaluation Board)
- She presented normal behavior
- Her impulsivity was found to be normal

e. On 25 April 2022, her immediate commander, initiated action to separate the applicant prior to her expiration term of service (ETS), under the provisions of Army Regulation 635-200, Chapter 14-12c, Separation for Misconduct, Commission of a serious offense for refusal of the COVID vaccine. The applicant acknowledged the separation notice and after consulting with legal counsel, she further acknowledged:

- She was advised she could submit any statements she desired in her own behalf, and she elected not to do so
- She will be ineligible to apply for enlistment in the United States Army for a period of two years after discharge

- She may up until the date the separation authority orders, directs, or approves her separation, withdraw the waiver of any of the above rights
- She acknowledged she may encounter substantial prejudice in civilian life if she received a less than honorable discharge

f. On 16 May 2022, her commander recommended that the applicant be separated from the Army prior to her ETS, under the provisions of Army Regulation 635-200, Chapter 14-12c. He further recommended she be issued a general discharge and not be transferred in the Individual Ready Reserve (IRR).

g. On 19 May 2022, her battalion commander also recommended that the applicant be separated from the Army prior to her ETS, be issued a general discharge and not be transferred in the IRR.

h. On 1 June 2022, her brigade commander recommended that the applicant be separated from the Army prior to her ETS, be issued an honorable discharge and not be transferred in the IRR.

i. On 29 July 2022, the separation authority directed the applicant's separation from the Army separate prior to her ETS, under the provisions of Army Regulation 635-200, Chapter 14-12c, Separation for Misconduct, Commission of a serious offense, and issued an honorable discharge.

j. Orders 241-0233, 29 August 2022, show she was reassigned to the U.S. Army transition point for transition processing, with an effective date of discharge 13 September 2022.

k. Enlisted Record Brief, shows in:

(1) Section I - Assignment Information:

- Service in Syria from 10 January 2020 to 11 July 2020
- Flag Code and Start Date: BA (Involuntary separation or discharge (field initiated)), 15 February 2022 and AA (adverse action), 15 February 2022

(2) Section III – Service Data: Promotion to sergeant (SGT) E-5 on 1 August 2021.

(3) Section VIII – Awards and Decorations:

- Army Commendation Medal
- Army Good Conduct Medal
- National Defense Service Medal
- Inherent Resolve Campaign Medal

- Global War on Terrorism Service Medal
- Military Outstanding Volunteer Service Medal
- Noncommissioned Officer Professional Development Ribbon
- Army Service Ribbon
- Certificate of Appreciation
- Parachute Badge
- Marksmanship Qualification Badge expert - Carbine

I. DD Form 214 for the period ending 13 September 2022, shows she was discharged with an honorable discharge, pursuant to Army Regulation 635-200 (Active Duty Enlisted Administrative Separations). Her narrative reason for separation was "Misconduct (Serious Offense)". She completed 5 years, 1 month, and 19 days of active service. Applicant has service in Syria from 10 January 2020 to 11 July 2020.

4. The applicant's service record is void of any physical profile, medical evaluation board, or physical evaluation board regarding any mental or physical injuries.

5. Army Regulation 15-185 (Army Board for Correction of Military Records), currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a physical disability discharge in lieu of honorable discharge from active duty due to separation for misconduct (serious offense). The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) The applicant enlisted in the Regular Army on 25 July 2017; 2) On 13 September 2022, the applicant was honorably discharged, Chapter 14-12c with a narrative reason for separation of "Misconduct (Serious Offense)".

b. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) and additional VA documentation provided by the applicant were also examined.

c. The applicant states she was experiencing mental health conditions while serving on active service, and she is requesting a referral to IDES to be assessed for a physical disability discharge. The applicant first engaged in behavioral health while undergoing a SOF evaluation in August 2018, and she was not diagnosed with a mental health condition or recommended for behavioral health treatment. The applicant engaged in behavioral health treatment for one session in March 2019 related to occupational

stressors, and she was not diagnosed with a mental health condition, and she elected to see a Military Family Life Consultant. On 23 February 2021, she reported to behavioral health services and described experiencing “problems related to gender identification.” She denied other acute behavioral health symptoms or concerns. The applicant continued in monthly individual therapy focused on supportive counseling as she underwent gender reassignment treatment till her discharge. She was diagnosed only with Gender Dysphoria. The applicant was considered fit for duty without limitations including deployment. However, due to the medical procedures required for her gender reassignment, the applicant was not deployable. The applicant reported distress over not being able to deploy, but she was focused on caring for her foster children and transitioning out of the Army. On 17 February 2022, the applicant underwent a Mental Status Exam as a part of her Chapter 14 proceedings. The applicant demonstrated understanding of the evaluation and the reason of her administrative separation. The applicant was reported to be currently in treatment and functioning well at work and in her personal life. The applicant was assessed for all psychiatric conditions that would warrant disposition thru medical channels, to include PTSD, mood disorders, adjustment disorders, anxiety disorder, psychotic disorder, and TBI, as well as substance abuse disorder and military sexual assault. Her reported symptoms did not meet the threshold that would warrant a clinical diagnosis. She was diagnosed again with Gender Dysphoria and cleared from a behavioral health for any administrative action deemed appropriate by Command. The applicant continued in individual supportive counseling and gender group therapy till her discharge. The applicant was never placed on a psychiatric profile, required inpatient psychiatric treatment, or found to not meet retention standards from a psychiatric perspective while in active service.

d. A review of JLV provided evidence the applicant has been actively engaged with the VA after her discharge for mental health and physical concerns. She did undergo multiple Compensation and Pension Evaluations after her discharge, and she is currently diagnosed with service-connected Major Depressive Disorder and receives VA disability for this condition (100%SC).

e. Based on the available information, it is the opinion of the Agency Medical Advisor that the applicant has been diagnosed with service-connected Major Depression by the VA. However, there was sufficient evidence the applicant was performing adequately from a psychiatric perspective while on active service. In addition, there is insufficient evidence the applicant ever attended behavioral health treatment for a mental health condition beyond Gender Dysphoria, was ever placed on a psychiatric profile while on active service, required inpatient psychiatric treatment while on active service, or was found to not meet retention medical standards IAW AR 40-501 from a psychiatric perspective. Therefore, there is insufficient evidence the applicant was medically unfit as a result of a mental health condition during her active service. Thus, there is insufficient evidence her case warrants a referral to IDES at this time.

BOARD DISCUSSION:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.
2. The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for consideration of requests for changes to discharges. The Board concurred with the conclusion of the ARBA Medical Advisor that the evidence does not show the applicant had any conditions that would have been a basis for referring her to the Disability Evaluation System during her period of active duty service. Based on a preponderance of the evidence, the Board determined the applicant's administrative discharge 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.

3/31/2025

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. Army Regulation 15-185 (Army Board for Correction of Military Records), currently in effect, prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. 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 ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. 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.
2. Title 10 (Armed Forces), 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.
3. Title 10 (Armed Forces), 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 AR 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 a Medical Evaluation Board (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.

4. Title 38 (Veterans Benefits):

a. 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.

b. U. S. Code of Federal Regulations, 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.

5. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) prescribes 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. It implements the requirements of Title 10, U.S. Code, chapter 61; Department of Defense Instructions (DoDI) 1332.18 (Disability Evaluation System (DES)); DoD Manual 1332.18 (DES Volumes 1 through 3) and Army Directive 2012-22 (Changes to Integrated Disability Evaluation System Procedures) as modified by DoDI 1332.18.

a. The objectives are to maintain an effective and fit military organization with maximum use of available manpower; provide benefits to eligible Soldiers whose military service is terminated because of a service-connected disability; provide prompt disability evaluation processing ensuring the rights and interests of the Government and Soldier are protected; and, establish the Military Occupational Specialty Administrative Retention Review (MAR2) as an Army pre-DES evaluation process for Soldiers who require a P3 or P4 (permanent profile) for a medical condition that meets the medical retention standards of Army Regulation 40-501. Soldiers, and mechanisms for the final disposition of disability evaluations by appropriate personnel.

b. The DES begins for a Soldier when either of the events below occurs:

(1) The Soldier is issued a permanent profile approved in accordance with the provisions of Army Regulation 40–501 and the profile contains a numerical designator of P3/P4 in any of the serial profile factors for a condition that appears not to meet medical retention standards in accordance with AR 40–501. Within (but not later than) 1 year of diagnosis, the Soldier must be assigned a P3/P4 profile to refer the Soldier to the DES.

(2) The Soldier is referred to the DES as the outcome of MAR2 evaluation.

c. A medical evaluation board is convened to determine whether a Soldier's medical condition(s) meets medical retention standards per Army Regulation 40-501. This board

may determine a Soldier's condition(s) meet medical retention standards and recommend the Soldier be returned to duty. This board must not provide conclusions or recommendations regarding fitness determinations.

d. The physical evaluation board determines fitness for purposes of Soldiers' retention, separation, or retirement for disability under Title 10, U.S. Code, chapter 61, or separation for disability without entitlement to disability benefits under other than Title 10, U.S. Code, chapter 61. The physical evaluation board also makes certain administrative determinations that may benefit implications under other provisions of law.

e. Unless reserved for higher authority, the U.S. Army Physical Disability Agency approves disability cases for the Secretary of the Army and issues disposition instructions for Soldiers separated or retired for physical disability.

f. Chapter 4 provides that Public Law 110–181 defines the term, physical DES, in part, as a system or process of the DOD for evaluating the nature and extent of disabilities affecting members of the Armed Forces that is operated by the Secretaries of the military departments and is comprised of MEBs, PEBs, counseling of Soldiers, and mechanisms for the final disposition of disability evaluations by appropriate personnel. Soldiers may not be discharged or released from active duty because of a disability until they have made a claim for compensation, pension, or hospitalization with the VA or have signed a statement that their right to make such a claim has been explained or have refused to sign such a statement.

6. Army Regulation 40-501 (Standards of Medical Fitness), 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.

//NOTHING FOLLOWS//