

IN THE CASE OF: ██████████

BOARD DATE: 21 December 2023

DOCKET NUMBER: AR20230005817

APPLICANT REQUESTS:

- upgrade of her uncharacterized discharge to honorable
- narrative reason for separation changed to service-connected disability
- a personal appearance hearing before the Board via video or telephone

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 25 June 1996
- Department of Veterans Affairs (VA) service-connected disability compensation letter, 26 June 2021
- VA Summary of Benefits letter, 8 November 2021

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 when she went to refinance her home, she discovered she was not eligible for a VA home loan because the information on her DD Form 214 did not match the information in the VA system regarding her service-connected disability. She received her service-connected disability rating and condition(s) from the VA shortly after her discharge. However, she did not know then that she should have requested a change to her DD Form 214 to match what the VA had in their system. She would like to use the VA home loan to purchase a home for her three generations and growing family. She asks the Board for relief because only a corrected DD Form 214 will work to prove her eligibility.

3. The applicant enlisted in the Regular Army on 4 April 1996 for 5 years. She did not complete training and was not awarded a military occupational specialty (MOS).

4. The complete facts and circumstances surrounding her discharge are not available for review. However, her record contains a DD Form 214 that shows the following:

a. On 25 June 1996, the applicant was discharged under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), paragraph 5-11, by reason of failure to meet procurement medical fitness standards, in the grade of E-1. She received a Separation Code of "JFW" and a reentry code "RE-3." Her service was uncharacterized.

b. She completed 2 month and 22 days of net active service during the covered period. She did not complete her full term of service.

5. The applicant provides a VA service-connected disability compensation letter and a VA summary of benefits letter showing her service-connected disability rating as 30 percent effective 1 December 2020.

6. Regulatory guidance provides Soldiers are considered to be in an entry-level status when they are within their first 180 days of active-duty service. The evidence of record confirms the applicant was in an entry level status at the time of her discharge.

7. The Board should consider the applicant's argument and evidence, along with the overall record, in accordance with the published equity, injustice, or clemency determination guidance.

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 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 her uncharacterized discharge and, in essence, a referral to the Disability Evaluation System (DES). She states:

"Veteran benefits for my VA home loan have been removed because my DD 214 did not match the information of my service-connected disability in the VA system. The rating and reason were identified shortly after discharge but I was

unknowledgeable that I should have had the DD 214 paperwork updated at that time.

I did not find out about the discrepancy until I went to refinance home many years later and found out the results to my VA home loan. I am looking to purchase a home again and would like to use VA home loan again so I need to get the DD 214 updated. The VA home loan people said they only will use what is on the discharge papers not a letter from the VA of my service-connected disability data.”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. Her DD 214 shows she entered the Regular Army on 4 April 1996 and received an uncharacterized discharged on 25 June 1996 under the separation authority provided by paragraph 5-11 of AR 635-200, Personnel Separations – Enlisted Personnel (26 June 1996): Separation of personnel who did not meet procurement medical fitness standards.

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

a. 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 [active duty] or ADT [active duty for training] for initial entry training, will be separated. Medical proceedings, regardless of the date completed, must establish that a medical condition was identified by appropriate military medical authority within 6 months of the soldier’s initial entrance on AD for RA [regular Army], or during ADT for initial entry training for ARNGUS [Army National Guard of the United States] and USAR [United States Army Reserve], which—

(1) Would have permanently or temporarily disqualified him or her for entry into the military service or entry on AD or ADT for initial entry training had it been detected at that time.

(2) Does not disqualify him or her for retention in the military service under the provisions of AR 40–501, chapter 3.

e. No medical documentation was submitted with the application and her period of service predates AHLTA. Neither her separation packet nor documentation addressing her involuntary administrative separation was submitted with the application or uploaded into iPERMS.

f. Given her discharge under paragraph 5-11 of AR 635-200, the applicant would have been referred to an Entrance Physical Standards Board (EPSBD) IAW paragraph

5-11 of AR 635-200 for a medically disqualifying medical condition identified after entering active duty.

g. 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 or develop a condition which does not meet the enlistment standard in chapter 2 of AR 40-501, Standards of Medical Fitness (1 December 1983), 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.

h. Given her 5-11 separation, it is assumed the EPSBD determined the condition was identified during her first six months of service, failed the enlistment standards in chapter 2 AR 40-501, had not been permanently aggravated by his military service, and was not compatible with continued service.

i. JLV shows she has four 10% VA service-connected disability ratings, one each for Lumbosacral or Cervical Strain, Right Knee Condition, Limited Flexion of Right Thigh, and Tinnitus. However, the DES only compensates an individual for service incurred medical condition(s) which have been determined to disqualify him or her from further military service and consequently prematurely ends their career. 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. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

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 her own, she 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 her discharge nor referral of his case to the DES is warranted.

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 liberal consideration of requests for changes to discharges.

3. The Board noted the evidence confirms the applicant was in an entry-level status when she was discharged, and, as required by regulation, her service was uncharacterized. The Board concurred with the conclusion of the ARBA Medical Advisor that the evidence does not indicate she should have been referred to the Disability Evaluation System instead of being discharged for what was, presumably, a medical condition that existed prior to service and did not meet entrance physical standards. Based on a preponderance of the evidence, the Board determined the reason for the applicant’s discharge and her uncharacterized service were 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.

2/27/2024

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CHAIRPERSON

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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, USC, Section 1552(b), provides that applications for correction of military records must be filed within three 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 three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.

3. 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.

4. 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.

5. Title 38, 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.

6. Army Regulation 15-185 (ABCMR), paragraph 2-11, states applicant's do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

7. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, set 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. Readiness is promoted by maintaining high standards of conduct and performance.

a. Paragraph 3-4(2) Entry-Level status. Service will be uncharacterized, and so indicated in block 24 of DD Form 214, except as provided in paragraph 3-9a.

b. Paragraph 3-7 states an honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the soldier'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.

c. Paragraph 3-9a Entry-level status separation. A separation will be described as entry-level with service uncharacterized if processing is initiated while a Soldier is in entry-level status, except when—

(1) Characterization under other than honorable conditions is authorized under the reason for separation and is warranted by the circumstances of the case.

(2) Headquarters Department of the Army, on a case-by-case basis, determines that characterization of service as honorable is clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty. This characterization is authorized when the Soldier is separated by reason of selected changes in service obligation, convenience of the Government, and Secretarial plenary authority.

(3) The Soldier has less than 181 days of continuous active military service, has completed Initial Entry Training, has been awarded an MOS, and has reported for duty at a follow-on unit of assignment.

d. 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 may be separated. Such conditions must be discovered during the first 6 months of active duty. Such findings will result in an Entrance Physical Standards Board (EPSBD). This board, which must be convened within the Soldier's first 6 months of active duty, takes the place of the notification procedure required for separation under this chapter.

(1) Medical proceedings, regardless of the date completed, must establish that a medical condition, which was identified by an appropriate military medical authority within 6 months of the Soldier's initial entry on active duty would have permanently or temporarily disqualified the Soldier for entry into military service had it been detected at that time or the medical condition does not disqualify the Soldier for retention in military service per Army Regulation 40-501 (Medical Services - Standards of Medical Fitness), chapter 3.

(2) A Soldier who is found not to have been qualified under procurement medical fitness standards at the time of enlistment after entry on active duty may request to be retained on active duty if, after considering the proceedings of an EPSBD, the

separation authority determines the Soldier's disqualifying condition will not prevent the Soldier from performing satisfactorily throughout his/her period of enlistment in the MOS for which he/she is being trained or in another MOS based on the Soldier's medical condition and the Soldier, after being counseled and given the opportunity to obtain legal advice, signs a statement requesting to complete the period of service for which enlisted. Soldiers not retained will be processed for separation.

e. Section II (Terms): Character of service for administrative separation - A determination reflecting a Soldier's military behavior and performance of duty during a specific period of service. The three characterizations are honorable, general (under honorable conditions), and under other than honorable conditions. The service of Soldiers in entry-level status is normally described as uncharacterized.

//NOTHING FOLLOWS//