

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 January 2024

DOCKET NUMBER: AR20230005879

APPLICANT REQUESTS: in effect, her narrative reason for separation be corrected to show she was discharged or retired due to a disability rather than misconduct.

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

- DD Form 149, Application for Correction of Military Record
- Separation Packet
- DD Form 214, Certificate of Release or Discharge from Active Duty
- Department of Veterans Affairs (VA) Decision Review Officer Decision
- VA Benefit Information letter

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 her request is related to post-traumatic stress disorder (PTSD) and other mental health issues. She further states, in effect, in the Summer of 2017 she sought mental health services after suffering a miscarriage. This event revealed a trail of health issues which ended up sending her into a deep depression. Her unit was aware that she was suffering from severe depression due to her ongoing health issues and the death of her close childhood friend. She contends that although she had been open with her chain of command about her depression, they advised her against any mental health therapy or spiritual counseling with the chaplain. Her chain of command was more concerned about the unit's readiness for their upcoming deployment. Despite her chain of command's advice, she still met with the chaplain each week and began to attend church on post. The VA has determined her mental health issues began while serving on active duty and has awarded her disability compensation with an effective date of 3 August 2018 for entitlement of benefits.
3. The applicant enlisted in the Regular Army on 26 July 2016. She held military occupational specialty 31B, military police.

4. Her record of misconduct includes:

a. A negative performance counseling statement, 6 December 2017, while serving in Kuwait. This form shows that the applicant tested positive for "THC" on or about 8 November 2017 during a unit urinalysis conducted after a deployment block leave. While awaiting the results, she deployed as part of 202nd Military Police Company but was being returned to Fort Bliss, Texas due to the nature of her offense and as part of required actions. She was informed that she could be punished under Article 15, Uniform Code of Military Justice (UCMJ), barred from reenlistment, placed under suspension of favorable action, or separated from the service under the provisions of Army Regulation (AR) 635-200, Active Duty Enlisted Administrative Separations. The applicant concurred with the key points and the plan of action. She did not enter any remarks.

b. A negative performance counseling, 13 December 2017, which recommended she be punished under Article 15, UCMJ and action be taken to initiate her involuntary separation under AR 635-200, Chapter 14-12c for illegal drug use. The applicant concurred with the key points and plan of action without making any remarks.

c. Her commander initiated a flag for involuntary separation of the applicant on 13 December 2017.

d. On 14 December 2017, she was command referred for enrollment in the Army Substance Abuse Program (ASAP). The DA Form 8003, ASAP Enrollment, shows the Chaplain saw the applicant.

5. On 11 January 2017, she underwent a separation physical examination. She noted the following medical conditions:

- recurrent back pain
- foot pain, flat feet
- left knee pain
- ovarian cysts
- growth in right breast
- dizziness after 8-mile ruck march
- frequent and severe headaches during the day
- pressure and tightness in the chest after running
- frequent trouble sleeping/sleep paralysis
- illegal use of marijuana
- change in menstrual cycle due to Depo-Provera
- hospitalized for lower abdominal pain/excessive bleeding

6. Upon evaluation, the military physician reported the applicant's conditions included a present systolic murmur, and pes planus bilateral. The applicant was found qualified for service.

7. The applicant completed a DD Form 2697, Report of Medical Assessment, 11 January 2018. She did not indicate any change in her health since her last physical examination on 10 October 2017.

8. On 6 February 2018 the applicant underwent a mental status evaluation. The evaluation screened the applicant for PTSD, depression, traumatic brain injury, substance misuse, and sexual trauma. The clinical psychologist found the applicant to be mentally responsible, able to distinguish right from wrong, and having the mental capacity to understand and participate in administrative/board proceedings. Further, the applicant did not have a Behavioral Health (BH) condition that warranted disposition through medical channels in accordance with AR 40-501, Medical Services-Standards of Medical Fitness. The applicant was psychiatrically cleared for administrative separation. The clinical psychologist also noted there was no indication that her alleged misconduct was related to a BH condition.

9. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the UCMJ for the wrongful use of marijuana on or about 7 October 2017 to on or about 6 November 2017. The applicant did not appeal her punishment and she did not provide matters in her defense. Her punishment included reduction to private/E-2, forfeiture of pay for two months (suspended), and extra duty.

10. The applicant's immediate commander notified her on 25 April 2018 that he had initiated action to separate her from service under the provisions of AR 635-200, chapter 14-12c(2), by reason of misconduct – abuse of illegal drugs, with a recommendation for an honorable characterization of service. Her commander cited the reason as the applicant's wrongful use of the marijuana.

11. On 27 April 2018, the applicant acknowledged receipt of the commander's intent and she was advised of the basis for the contemplated actions to separate her and of the rights available to her. She indicated that she had consulted with counsel and would submit a statement in her own behalf. She waived representation by military or civilian counsel. The applicant submitted the following matters in her defense:

a. Her personal statement wherein she took responsibility for her actions, and she requested to remain on active duty, or that her service be characterized as honorable. The applicant stated, in effect, that the catalyst for her action was the loss of a childhood friend in an automobile accident. She was ashamed of her actions not only because they went against everything she stood for but that her family and chain of command had to find out about how irresponsible and immaturely she dealt with one of

the darkest times in her life. She also noted her many achievement, to include her early promotion to private first class/E-3, awards, completion of various training, and certificate of achievement for attaining a high score of the Army Physical Fitness Test.

b. Character references from her former squad leader and direct supervisor. These individuals stated, in effect, the applicant had demonstrated technical and tactical proficiency, was an outstanding Soldier and always strived to excel. Her current situation was a onetime mistake and momentary lapse of judgement. She should be allowed to complete her contractual obligation because she had what it took to serve with distinction.

12. On 27 April 2018, the applicant's immediate commander formally recommended the applicant's separation from service, under the provisions of AR 635-200, Chapter 14-12c(2), by reason of misconduct- abuse of illegal drugs.

13. On 6 July 2018, the separation authority approved the recommended discharge and directed the applicant's service be characterized as honorable. (Note: The applicant's Army Military Human Resources Record contains two separation packets wherein the separation authority initially directed the applicant's characterization of service be under honorable conditions, and a second packet wherein the separation authority directed the applicant's characterization of service be honorable. The ABCMR analyst applied the separation packet that corresponds to the applicant's DD Form 214.)

14. The applicant was discharged on 2 August 2018. Her DD Form 214 confirms she was discharged under the provisions of AR 635-200, chapter 14-12c(2), by reason of misconduct (drug abuse) (Separation Code JKK and Reentry Code 4). The applicant's service was characterized as honorable. She completed 2 years and 7 days of net active service.

15. The applicant provided:

a. A VA Decision Review Officer Decision letter, 6 June 2022. This document shows the applicant was granted a new effective date of 3 August 2018 for entitlement of VA disability benefits. Her service-connected injuries or illnesses are not reported in the VA documents she provided.

b. A VA benefits letter, 9 June 2022. This letter shows the applicant is receiving disability compensation in the amount of \$3,746.20 (Combined Rating of 100%). This letter also shows a new effective date of 3 August 2018.

16. The Board should consider the applicant's statement and overall military service in accordance with the published equity, injustice, or clemency determination guidance.

17. If the Service member is unfit, retirement for a permanent and stable compensable disability is directed pursuant to Title 10, U.S. Code, section 1201 or 1204 either:

a. When the total disability rating is at least 30 percent in accordance with the VASRD and the Service member has less than 20 years of service computed pursuant Title 10, U.S. Code, section 1208; or

b. When the Service member has at least 20 years of service computed pursuant to Title 10, U.S. Code, section 1208, and the disability is rated at less than 30 percent.

18. 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.

19. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting her narrative reason for separation be corrected to show she was discharged or retired due to a disability rather than misconduct.

b. 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 26 July 2016; 2) On 6 December 2017, while serving in Kuwait, the applicant was counseled for testing positive for "THC" on 8 November 2017 during a unit urinalysis conducted after a predeployment block leave. While awaiting the results, she deployed to Qatar, but she returned to Fort Bliss due to the nature of her offense and as part of required actions; 3) Her commander initiated a flag for involuntary separation of the applicant on 13 December 2017; 4) The applicant was discharged on 2 August 2018, Chapter 14-12c(2), by reason of misconduct (drug abuse). The applicant's service was characterized as honorable.

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's military service and medical records. The Armed Forces Health Longitudinal Technology Application (AHLTA) and the VA's Joint Legacy Viewer (JLV) were also examined.

d. The applicant states her request is related to post-traumatic stress disorder (PTSD) and other mental health issues. She reported experiencing depression as the result of personal losses. The applicant described being discouraged by her Command to seek behavioral health assistance. There is evidence the applicant was initially seen for an initial intake at the Substance Use Disorder Clinical Care (SUDCC) clinic on 14 December 2017. She denied a history of substance abuse. She did admit to using cannabis one time in response to grief related to the loss of a close friend, and she described an increase of alcohol use related to her recent losses and other stressors.

She also denied a history or current symptoms of PTSD or other mental health conditions. She was diagnosed with Unspecified Alcohol Related Disorders and Cannabis Use. On 08 January 2018, the applicant and her SUDCC provider reviewed her treatment plan. She was offered additional behavioral health treatment for stress and grief, which the applicant reported were related to her substance/alcohol use. The applicant declined services, and she reported seeing her Chaplain weekly and was satisfied with these services. She was recommended for individual and group substance abuse therapy at SUDCC, and the applicant agreed to this plan. She continued in this care till her discharge. She was not diagnosed with PTSD or another mental health condition while on active service, and she was not placed on a temporary or permanent psychiatric profile.

e. On 05 February 2018, the applicant was provided a Mental Status Evaluation as part of her Chapter Proceedings. She was evaluated by a licensed clinical psychologist. She was properly screened for PTSD, Depression, Traumatic Brain Injury, Substance Misuse, and Sexual Trauma. She denied any use of alcohol or illegal substances, and she denied any mental health symptoms. She was found mentally responsible, able to distinguish right and wrong, and had the mental capacity to understand and participate in administrative/board proceedings. She was found to not have a behavioral health condition that warranted disposition through medical channels IAW AR 40-501. She was psychiatrically cleared for administrative separation.

f. A review of JLV provided evidence the applicant was initially provided a Compensation and Pension Evaluation (C&P) evaluation on 14 November 2020. She was diagnosed with service-connected Unspecified Anxiety Disorder. She was provided another C&P evaluation on 23 March 2021. There was no change in her diagnosis. She was provided another C&P evaluation on 05 May 2021. The applicant's diagnosis was not changed, but she was also diagnosed with excoriation disorder. She was evaluated again on 09 August 2021, and her diagnoses was unchanged, but she was also diagnosed with Alcohol Use Disorder. There was no evidence the applicant was diagnosed with PTSD. However, it was noted in JLV the applicant has been found to be service-connected for PTSD since 06 July 2021 (70%). The applicant began treatment at the VA for depression and anxiety in November 2023.

g. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence available to support a referral to IDES. At this time, there is evidence the applicant was diagnosed with service-connected mental health conditions predominately for anxiety. However, the applicant was provided sufficient opportunities to attend behavioral health services while on active duty, and she was evaluated by more than one behavioral health provider. These evaluations were done correctly in accordance with policy at the time of the applicant's service. She was not diagnosed with a mental health condition beyond a substance use/abuse disorder; she was found

to meet retention standards; she was never hospitalized; and she was never placed on a psychiatric profile.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge status? Yes, the applicant has been diagnosed with a service-connected mental health condition.

(2) Did the condition exist or experience occur during military service? Yes, the applicant was diagnosed with a service-connected mental health condition.

(3) Does the condition experience actually excuse or mitigate the discharge? No, it is the opinion of the Agency BH Advisor that there is insufficient evidence available to support a referral to IDES. At this time, there is evidence the applicant was diagnosed with service-connected mental health conditions predominately for anxiety. However, the applicant was provided sufficient opportunities to attend behavioral health services while on active duty, and she was evaluated by more than one behavioral health provider. These evaluations were done correctly in accordance with policy at the time of the applicant's service. She was not diagnosed with a mental health condition beyond a substance use/abuse disorder; she was found to meet retention standards; she was never hospitalized; and she was never placed on a psychiatric profile. Therefore, there is insufficient evidence at this time to warrant a referral to IDES.

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.

a. The Board noted that the applicant's narrative reason for separation was assigned based on the fact that she was discharged under chapter 14-12c of AR 635-200 due to misconduct (illegal drugs). Absent her misconduct, there was no reason to process her for separation. The underlying reason for her discharge was her misconduct. The only valid narrative reason for separation permitted under chapter 14 is "Misconduct." The Board found no error or injustice in her narrative reason or separation.

b. The Board reviewed and agreed with the medical advisor's finding insufficient evidence available to support a referral to the integrated disability evaluation system (IDES). There is evidence the applicant was diagnosed with service-connected mental health conditions predominately for anxiety. However, the applicant was provided

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 Army Board for Correction of Military Records (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 (AR) 635-200, Active Duty Enlisted Administration Separations, sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:
 - a. Chapter 14 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed.
 - b. A discharge under other than honorable conditions was normally considered appropriate. However, the separation authority could direct a general discharge if such was merited by the Soldier's overall record. A characterization of honorable may be approved only by the commander exercising general court-martial jurisdiction or higher authority unless authority is delegated.
3. Department of Defense Instruction 1338.18, 5 August 2014, incorporating Change 1, effective 17 May 2018, Subject: Disability Evaluation System (DES) establishes policy, assigns responsibilities and provides procedures for referral, evaluation, return to duty, separation, or retirement of Service members for disability.
 - a. The purpose of the Physical Evaluation Board (PEB) is to determine the fitness of Service members with medical conditions to perform their military duties and, for members determined unfit because of duty-related impairments conditions, their eligibility for benefits pursuant to chapter 61 of Title 10, U.S. Code. Service members may appeal the decision of the PEB. The PEB process includes the informal physical evaluation board (IPEB), formal physical evaluation board (FPEB) and appellate review of PEB results.
 - b. The IPEB reviews the case file to make initial findings and recommendations without the Service member present. The Service member may accept the finding, rebut the finding, or request a FPEB.

c. In accordance with section 1214 of Title 10, U.S. Code, Service members who are found unfit are entitled to a formal hearing, an FPEB, to contest their IPEB findings. The PEBLO will document the Service member's declination of an FPEB. If the Secretary of the Military Department concerned changes those findings or determinations following a Service member's concurrence, the Service member will be entitled to a formal hearing to contest the changes.

d. The Secretary of the Military Department concerned may: (1) Direct the PEB to reevaluate any Service member determined to be unsuitable for continued military service. (2) Retire or separate for disability any Service member determined upon re-evaluation to be unfit to perform the duties of the member's office, grade, rank, or rating.

e. Permanent Disability Retirement. If the Service member is unfit, retirement for a permanent and stable compensable disability is directed pursuant to Title 10, U.S. Code, section 1201 or 1204 either:

(1) When the total disability rating is at least 30 percent in accordance with the VASRD and the Service member has less than 20 years of service computed pursuant Title 10, U.S. Code, section 1208; or

(2) When the Service member has at least 20 years of service computed pursuant to Title 10, U.S. Code, section 1208, and the disability is rated at less than 30 percent.

f. Separation With Disability Severance Pay Criteria. Separation is directed pursuant to Title 10, U.S. Code, section 1203 or 1206 when the member is unfit for a compensable disability determined in accordance with the standards of this instruction, and the following requirements are met. Stability is not a factor for this disposition.

(a) The Service member has less than 20 years of service computed pursuant to Title 10, U.S. Code, section 1208.

(b) The disability is rated at less than 30 percent.

4. Title 38, USC, section 1110 (General - Basic Entitlement): 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.

5. Title 38, USC, section 1131 (Peacetime Disability Compensation - Basic Entitlement): 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.

6. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

7. Section 1556 of Title 10, U.S. Code, 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 ABCMR applicants (and/or their counsel) prior to adjudication.

8. AR 15-185 (ABCMR), states 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.

//NOTHING FOLLOWS//