

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 February 2024

DOCKET NUMBER: AR20230007118

APPLICANT REQUESTS:

- correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty) to show the character of her service as honorable instead of uncharacterized
- correction of her records to show she was discharged due to a service-incurred medical disability
- personal appearance 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)
- Department of Veterans Affairs (VA) benefits decision letter, dated 30 March 2023

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 disability is service connected. She was discharged because of medical conditions. She also indicated in her application that her issues/conditions are related to sexual assault/harassment.
3. The applicant enlisted in the Regular Army on 19 April 1989.
4. A DA Form 3647 (Inpatient Treatment Record Cover Sheet) shows the applicant was diagnosed with mitral regurgitation.
5. A DA Form 4107 (Entrance Physical Standards Board (EPSBD) Proceedings), dated 1 May 1989, shows the applicant was diagnosed with valvular heart disease and mitral valve prolapse with loud holosystolic murmur, existed prior to service, not service

aggravated. The examining physicians recommended her separation from the Army for failure to meet medical procurement standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 2. The examining physicians also indicated she met medical retention standards in accordance with Army Regulation 40-501, chapter 3.

6. On 2 May 1989, the applicant was informed of the medical findings. She acknowledged she understood that legal advice of an attorney employed by the Army was available to her or that she could consult civilian counsel at her own expense. She also acknowledged she understood that she could request to be discharged without delay or to request retention on active duty. If retained, she could be involuntarily reclassified into another military occupational specialty based upon her medical condition. She concurred with the proceedings and requested to be discharged from the U.S. Army without delay.

7. On 2 May 1989, the applicant's immediate commander recommended her separation from the Army. On 8 May 1989, the separation authority approved the recommendation and directed her discharge from the Army.

8. The applicant's DD Form 214 shows she was discharged on 17 May 1989 under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-11, by reason of "did not meet procurement medical fitness standards – no disability." The DD Form 214 also shows she completed 29 days of active service and a character of service of uncharacterized.

9. The applicant provided a VA benefits decision letter, dated 30 March 2023, showing she was granted service connection for anxiety disorder (also claimed as sleep disturbance, depression, and emotional disorder), with an evaluation of 30 percent, effective 4 May 2016.

10. During the processing of this application, the staff of the Army Review Boards Agency (ARBA) submitted a request for records pertaining to the applicant to the U.S. Army Crime Records Center, part of the U.S. Army Criminal Investigation Command. On 9 August 2023, the U.S. Army Crime Records Center responded by memorandum stating a search of Army criminal file indexes revealed no records pertaining to the applicant. This request for records was submitted based on the applicant's indication that she experienced sexual trauma during her military service.

11. 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.

## 12. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The applicant requests discharge upgrade from uncharacterized to honorable. In addition, she requests the reason for discharge to be changed to medical disability. The applicant indicated that PTSD, Other Mental Health, and Sexual Assault/Harassment conditions were related to her request.

b. The ABCMR ROP summarized the applicant's record and circumstances of the case. The applicant entered active duty for the Regular Army 19Apr1989. She was discharged 17May1989 under provisions of AR 635-200 para 5-11 due to not meeting procurement medical fitness standards. Her service was designated as uncharacterized.

c. Eight days after entry on active duty, the applicant was admitted to Moncrief ACH on 27Apr1989 for diagnosis Mitral Regurgitation. She was discharged to duty 30Apr1989. Shortly afterwards, that she underwent 01May1989 Entrance Physical Standards Board (EPSBD) proceedings during which the applicant divulged a history of palpitations. She also had exertional chest pain and shortness of breath. A Grade III/VI regurgitation murmur with loud mid to late systolic click was heard during the heart exam. The diagnosis was Valvular Heart Disease; and Mitral Valve Prolapse with Loud Holosystolic Murmur, which was determined to have existed prior to service (EPTS). The EPSBD found no evidence of service aggravation. The Board determined the condition failed medical procurements standards of AR 40-501 chapter 2 but did not fail retention standards of AR 40-501 chapter 3. The applicant was given a P3 physical profile and discharge was recommended.

### d. Rational/Opinion

The applicant's record showed a clinical diagnosis of Mitral Regurgitation—the record did not show an in-service echocardiogram. Decades later, mild mitral valve regurgitation was demonstrated in the 20Sep2023 echocardiogram. With symptomatic mitral valve regurgitation, high intensity strength training should be avoided. The condition can improve with surgery. The applicant's valvular heart condition had not required surgery. There was no evidence the condition had worsened due to her military service. Based on records available for review, medical evidence was insufficient to support that the preexisting mitral valve condition failed medical retention standards of AR 40-501. Referral for medical discharge processing is not warranted.

e. Concerning the applicant's request for honorable discharge, the 03Sep2014 Secretary of Defense Liberal Guidance Memorandum and the 25Aug2017 Clarifying Guidance were considered. The applicant submitted VA benefits correspondence

which showed she was service connected for Anxiety Disorder at 30% effective 04May2016. In 2023, the applicant sought treatment for excessive self-destructive behavior (excessive spending, pathologically ingratiating herself to others, etc.). For example, she impulsively bought a corvette; she went to the store to buy a pair of shoes and she ended up spending \$2500 on items she didn't need; she met a guy online and married him after dating 3-4 weeks; and she contemplated buying a business for a boyfriend. She reported that her mental health had significantly worsened after an October/November 2022 BH (behavioral health) compensation and pension evaluation had triggered intrusive memories. She first sought BH services in 2002 for help with incidents of road rage. During that time frame, she was psychiatrically hospitalized for suicide attempt (tried to overdose on aspirin while pregnant). After months of treatment, she finally shared that she had experienced military sexual trauma. She stated a drill sergeant had coerced her to have sex with him so that she could avoid what others had to do. She did not previously disclose this because she thought it was her fault. Since discharge from service, she has married and divorced 3 times. And although she became a chiropractor and built a successful private practice; in January of this year, she shared she got a second job working 5 days a week at the airport as a wheelchair passenger assistant because of excessive spending. She denied childhood trauma and premilitary psychiatric history. There was also no family history of mental health illness.

f. Rational/Opinion

The applicant was not seen for BH treatment while in service. An applicant's self-assertion of MST/PTSD alone is sufficient under Liberal Consideration to merit consideration of upgrade by the Board and change in narrative reason for separation when a BH contributes to the reason for discharge. However, in this case, the applicant was separated from service for not meeting medical procurement standards due to preexisting valvular heart condition. There was no record of misconduct; therefore, there was no offence to mitigate due to a BH condition. That notwithstanding, the Board may consider the applicant's request for change in characterization of service to honorable, given that the MST/PTSD condition has impacted her post military life significantly. Based on records available for review, there was insufficient evidence that the applicant's BH condition failed medical retention standards or AR 40-501 chapter 3 at the time of discharge from service. Referral for medical discharge processing is not warranted.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.
2. The evidence of record and independent evidence provided by the applicant was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.
3. The applicant was separated from service for not meeting medical procurement standards due to preexisting valvular heart condition; there is nothing in the record that indicates her her condition was incurred during or as a result of her service. Further, The evidence of record shows she was properly discharged, and she received the proper character of service for an entry-level status Soldier.

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.

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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 sets forth the basic authority for the separation of enlisted personnel. The regulation in effect at the time states in:

a. Paragraph 3-9, 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:

(1) An under other than honorable conditions characterization 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, determined a 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, for convenience of the government, and under Secretarial plenary authority.

b. Paragraph 5-11, 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 or active duty training for initial entry training, may be separated. Such conditions must be discovered during the first 6 months of active duty. Such findings will result in an EPSBD. This board must be convened within the Soldier's first 6 months of active duty. Medical proceedings, regardless of the date completed, must establish that a medical condition was identified by an appropriate military medical authority within 6 months of the Soldier's initial entrance on active duty for Regular Army Soldiers that:

(1) Would have permanently or temporarily disqualified the Soldier for entry into the military service or entry on active duty or active duty training for initial entry training had it been detected at that time.

(2) Does not disqualify the Soldier for retention in the military service per Army Regulation 40-501, chapter 3.

(3) A Soldier being separated under this provision will be awarded a character

of service of uncharacterized if in an entry-level status.

c. Section II (Terms), for Regular Army Soldiers, entry-level status is the first 180 days of continuous active duty.

3. Title 38, U.S. Code, 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.

4. Title 38, Code of Federal Regulations, Part IV is the VA 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 15-185 (ABCMR) provides Department of the Army policy, criteria, and administrative instructions regarding an applicant's request for the correction of a military record. Paragraph 2-11 states 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.

6. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the 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.

//NOTHING FOLLOWS//