

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 February 2024

DOCKET NUMBER: AR20230007312

APPLICANT REQUESTS:

- correction of her records to show she was discharged due to a medical disability instead of personality disorder
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- memorandum subject: Mental Health Evaluation of (applicant), 5 November 2003
- U.S. Army Medical Command (MEDCOM) Form 691-R (Medical Record – Patient Release/Discharge Instructions), 5 November 2003
- memorandum subject: Report of Mental Status Evaluation, 22 June 2005
- memorandum subject: Report of Mental Status Evaluation, 22 July 2005
- memorandum of notification for separation, 29 August 2005
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 15 September 2005
- Capital Multi Health Group medical statement, 20 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, in effect, her reason for separation is incorrect, and affects her ability to obtain employment, receive psychiatric treatment, and enjoy other aspects of her personal life. She was denied the opportunity to receive an evaluation by a medical board after being hospitalized twice and being prescribed medication for depression and suicidal attempt/ideation due to sexual assault in the military. She received an administrative separation for personality disorder, but it should have been a medical

discharge. The narrative reason for separation on her DD Form 214 states personality disorder, which employers can see.

3. The applicant enlisted in the Regular Army on 6 November 2001.

4. A Medical Record – Patient Release/Discharge Instructions and a memorandum subject: Mental Health Evaluation of (applicant), both dated 5 November 2003, show the applicant was admitted on 3 November 2003 and that she diagnosed with adjustment disorder with mixed disturbance of emotions and conduct. The examining physician indicated the applicant's presented state of emotional and/or behavioral dysfunction was of such severity that her ability to perform military duties was significantly impaired. The condition met the criteria for administrative separation set forth in Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), paragraph 5-17 (Condition, Not a Disability).

5. The applicant's records contain DA Forms 4856 (Developmental Counseling Form) showing she was counseled on 30 March 2005 for failure to obey an order or regulation and on 21 June 2005 for insubordinate conduct towards her first sergeant.

6. A memorandum subject: Report of Mental Status Evaluation, dated 22 June 2005, shows she underwent a second behavioral health (BH) evaluation. The examining BH professional indicated the applicant's diagnosis of adjustment disorder with mixed disturbance of emotions and conduct met retention standards prescribed in AR 40-501 (Standards of Medical Fitness) and there was no psychiatric disease or defect that warranted a medical board. However, criteria for an administrative separation were present.

7. On 11 July 2005, the applicant received nonjudicial punishment under the provisions of Article 15, Uniform Code of Military Justice, for:

- two specifications of failing to go at the time prescribed to her appointed place of duty
- two specifications of being disrespectful in language towards noncommissioned officers
- two specifications of failure to obey lawful orders
- two specifications of dereliction of her duties

8. A DD Form 2808 (Report of Medical Examination) shows the applicant underwent a medical examination on 20 July 2005 and she was found qualified for service.

9. A memorandum subject: Report of Mental Status Evaluation, dated 22 July 2005, shows the applicant underwent a third BH evaluation and she was diagnosed with

personality disorder, not otherwise specified (NOS), and depression, NOS. The examining BH professional indicated the following:

a. The Soldier has a history of previous suicide attempts at age 12, 16, and 20. The suicide attempt at age 20 led to a psychiatric hospitalization for about a week.

b. She had been in psychiatric treatment prior to this admission and continued in treatment afterwards up until the present time. She was referred to inpatient psychiatry 19 July 2005 due to suicidal thoughts.

c. The Soldier states she does not desire to continue on active duty. The command states they feel she should be administratively separated due to problems in performing her duties as evidenced by counseling statements and by her recent receipt of nonjudicial punishment under the provisions of Article 15, Uniform Code of Military Justice.

d. She was and is mentally responsible, able to distinguish right from wrong and to adhere to the right and has the mental capacity to understand and to participate in board proceedings.

e. The condition is a deeply ingrained, maladaptive pattern of behavior of long duration. The severity of this condition results in significant impairment in her ability to function in a military environment.

f. This condition and the problems presented are not, in the opinion of the examiner, amenable to hospitalization, treatment, transfer, disciplinary action, training, or reclassification to another type of duty within the military. It is unlikely efforts to rehabilitate or develop her into a satisfactory member of the military will be successful.

g. Psychiatric factors indicate that administrative separation under AR 635-200, paragraph 5-13 (Separation because of personality disorder) would be in the best interests of the individual and the military.

10. On 25 August 2005, the applicant's commander informed her that he was initiating action to separate her from the Army under the provisions of AR 635-200, paragraph 5-13 for personality disorder, based on her diagnosis of adjustment disorders with mixed disturbance of emotions and conduct, which resulted in significant impairment of her ability to function in a military environment. The applicant was advised of her rights to consult with legal counsel, submit statements in her own behalf, and to waive her rights in writing.

11. On 29 August 2005, the applicant consulted with legal counsel, and she was advised of the basis for the contemplated action to separate her for a personality

disorder under the provisions of AR 635-200, paragraph 5-13, and its effect, of the rights available to her, and the effect of any action taken by her in waiving her rights. She elected not to submit statements in her own behalf.

12. On 1 September 2005, the separation authority approved the applicant's separation under the provisions of AR 635-200, paragraph 5-13, by reason of personality disorder and directed the applicant receive an honorable characterization of service.

13. The applicant's DD Form 214 shows she was honorably discharged on 15 September 2005 under the provisions of AR 635-200, paragraph 5-13, by reason of personality disorder. The DD Form 24 also shows she completed 3 years, 10 months, and 10 days of active service.

14. The applicant provided a Capital Multi Health Group medical statement, dated 20 March 2023, showing she has been receiving treatment since 26 February 2021 for major depressive disorder, post-traumatic stress disorder, bipolar disorder, and anxiety disorder. She is seen monthly and sometimes biweekly for medication management depending on her mental health status as a result of military sexual trauma.

15. 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 14 August 2023, the U.S. Army Crime Records Center responded by letter stating a search of Army criminal file indexes revealed no records for the applicant. This request for records was submitted based on the applicant's statement that she experienced sexual trauma during her military service.

16. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a correction to her DD Form 214 to show that she was separated due to a medical disability instead of personality disorder.

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 6 November 2001; 2) On 11 July 2005, the applicant received nonjudicial punishment for two specifications failing to be on time, two specifications being disrespectful towards an NCO, two specifications to obey lawful orders, and two specifications of dereliction of duties; 3) Report of Mental Status Evaluation, dated 22 July 2005, recommended the applicant for an administrative separation under AR 635-200, paragraph 5-13 (Separation because of personality disorder); 4) The applicant was honorably discharged on 15 September 2005 under the provisions of AR 635-200, paragraph 5-13, by reason of personality disorder.

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

d. The applicant asserts her reason for separation is incorrection, and it negatively impacts her life. She also reported experiencing military sexual trauma (MST), and she was denied the opportunity to receive an evaluation by a medical evaluation board for Depression. She was instead administratively separated for a personality disorder. Due to the time of the applicant's service, her full military medical records were not available for review. However, there is evidence the applicant had a history of engagement with behavioral health treatment starting at Fort Bragg. There was evidence the applicant was admitted to an inpatient psychiatric hospital treatment program on 03 November 2003 till 05 November 2003. She was diagnosed with an Adjustment Disorder with Mixed Disturbance of Emotions and Conduct. She was recommended for further individual and group therapy, substance abuse treatment, and occupational therapy. Also on 05 November 2003, the applicant had a Mental Health Evaluation completed. She was diagnosed with an Adjustment Disorder with Mixed Disturbance of Emotions and Conduct. She was found to have the mental capacity to participate in the proceedings, was mentally responsible, was able to distinguish between right and wrong, and meets the retentions requirements of Chapter 3, AR 40-501. She was recommended for a Chapter 5-17 administrative separation due to an Adjustment Disorder.

e. She had her second Mental Status Evaluation on 22 June 2005 in Germany. She was reported to have a history of moderate Depression and numerous suicidal attempts to include being hospitalized in November 2003. At the time of her evaluation, she was diagnosed again with an Adjustment Disorder with Mixed Disturbance of Emotions and Conduct and met the retention standards as prescribed in Chapter 3, AR 40-501. She was not found to be experiencing a psychiatric disease or defect that warrants a medical board, but she did warrant a 5-17 administrative separation for an Adjustment Disorder.

f. A review of the electronic medical record provided evidence the applicant was seen on 18 July 2005 again for an emergency psychiatric evaluation in Germany. She was reported to have a lengthy history of mental health concerns starting in childhood and had a history of suicidal and self-harm behavior. She also reported a history of disordered eating and trauma starting in childhood. At the time of this psychiatric admission, she reported an increase in family and occupational stress, which resulted in an increase in her symptoms. She had been on psychiatric medication for a year, and she was looking forward to her discharge from active service. She again had a Mental Status Evaluation completed on 22 July 2005. She again was recommended

for an administrative separation. However, during this evaluation, she was diagnosed with a Personality Disorder Not Otherwise Specified and Depression, Not Otherwise Specified. She was found to meet retention requirements as prescribed in Chapter 3, AR 40-501, and she did meet criteria for an administrative separation for a Personality Disorder.

g. A review of JLV provided evidence the applicant has been diagnosed with service-connected Major Depressive Disorder in 2019, and she receives disability for the condition (50%). She reported experiencing MST during her Compensation and Pension Evaluation in 2019, but her description of MST was not consistent with sexual trauma. Therefore, she was not identified as expiring service-connected MST or PTSD. The applicant also provided a letter from a civilian provider that she has been in regular behavioral health care since 2021 for Major Depressive Disorder, PTSD, Bipolar Disorder, and Anxiety Disorder.

h. 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. The applicant was evaluated three times by different licensed behavioral health providers while on active service, and she was repeatedly found to meet medical retention standards from a psychiatric perspective. She was however recommended three times for an administrative separation. In addition, there is insufficient evidence the applicant was ever placed on a permanent psychiatric profile. However, it is recommended her reason for separation be changed to a 5-17 for an Adjustment Disorder, because she was originally recommended for this separation, and she was recommended twice for this type of separation. Lastly while there is insufficient evidence at this time beyond self-report the applicant experienced MST, her contention alone is sufficient for the Board's consideration per Liberal Consideration.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge status? No, the applicant was evaluated three times by different licensed behavioral health providers while on active service, and she was repeatedly found to meet medical retention standards from a psychiatric perspective. She was however recommended three times for an administrative separation. In addition, there is insufficient evidence the applicant was ever placed on a permanent psychiatric profile. However, it is recommended her reason for separation be changed to a 5-17 for an Adjustment Disorder, because she was originally recommended for this separation, and she was recommended twice for this type of separation. Lastly while there is insufficient evidence at this time beyond self-report the applicant experienced MST, her contention alone is sufficient for the Board's consideration per Liberal Consideration.

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition experience actually excuse or mitigate the discharge? N/A

BOARD DISCUSSION:

1. The Board 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 applicant's request for a personal appearance hearing was carefully considered. However, in this case, 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 Board insufficient available to support the applicant's referral to IDES considering she was evaluated by three separate Behavioral Health Providers who considered her to meet medical retention standards. There is no evidence she met the criterial for referral to a medical Board.

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. AR 635-200 sets forth the basic authority and procedures for the administrative separation of enlisted personnel. The regulation in effect at the time, dated 6 June 2005, provides in paragraph 5-13, a Soldier may be separated for personality disorder (not

amounting to disability per AR 635-40 (Disability Evaluation for Retention, Retirement, or Separation) that interferes with assignment or with performance of duty, when so disposed as indicated below:

a. The condition is a deeply ingrained maladaptive pattern of behavior of long duration that interferes with the Soldier's ability to perform duty (exceptions: combat exhaustion and other acute situational maladjustments). The diagnosis of personality disorder must have been established by a psychiatrist or doctoral-level clinical psychologist with necessary and appropriate professional credentials who is privileged to conduct mental health evaluations for the DoD components. It is described in the Diagnostic and Statistical Manual of Mental Disorders.

b. Separation because of personality disorder is authorized only if the diagnosis concludes that the disorder is so severe that the Soldier's ability to function effectively in the military environment is significantly impaired.

c. Separation processing may not be initiated under this paragraph until the Soldier has been counseled formally concerning deficiencies and has been afforded ample opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records.

3. AR 635-200 was revised in December 2009 and incorporated the following additions/changes pertaining to separation under the provisions of paragraph 5-13:

a. A Soldier with less than 24 months of active duty service, as of the date separation proceedings are initiated, may be separated for personality disorder.

b. The onset of personality disorder is frequently manifested in the early adult years and may reflect an inability to adapt to the military environment as opposed to an inability to perform the requirements of specific jobs or tasks or both. As such, observed behavior of specific deficiencies should be documented in appropriate counseling or personnel records and include history from sources such as supervisors, peers, and others, as necessary to establish that the behavior is persistent, interferes with assignment to or performance of duty, and has continued after the Soldier was counseled and afforded an opportunity to overcome the deficiencies.

4. AR 635-200, paragraph 5-17, of the regulation in effect at the time, provides for the separation of Soldiers on the basis of other physical or mental conditions, not amounting to disability, and excluding conditions appropriate for separation processing under paragraphs 5-11 (personnel who did not meet procurement medical fitness standards) or 5-13 (Personality Disorder), that potentially interfere with assignment to or performances of duty. Such conditions may include, but are not limited to, disorders manifesting disturbances of perception, thinking, emotional control or behavior

sufficiently severe that the Soldier's ability to effectively perform military duties is significantly impaired.

5. Title 10, U.S. Code, 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's Disability Evaluation System (DES) and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with Department of Defense Directive 1332.18 and AR 635-40. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with AR 40-501, as evidenced in a Medical Evaluation Board (MEB).

6. AR 40-501 provides that for an individual to be found unfit by reason of physical disability, he or she must be unable to perform the duties of his or her office, grade, rank, or rating. Performance of duty despite impairment would be considered presumptive evidence of physical fitness.

7. AR 635-40 establishes the DES 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 or her office, grade, rank, or rating. It provides that an MEB is convened to document a Soldier's medical status and duty limitations insofar as duty is affected by the Soldier's status. A decision is made as to the Soldier's medical qualifications for retention based on the criteria in AR 40-501. The regulation in effect at time states in paragraph 3-1, a mere presence of impairment does not of itself justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the member reasonably may be expected to perform because of his or her office, rank, grade, or rating.

8. AR 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.

9. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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//