

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 20 February 2024

DOCKET NUMBER: AR20230007588

APPLICANT REQUESTS: in effect, a physical disability discharge in lieu of her hardship discharge

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) notice of ineligibility
- medical records (total of 40 pages)

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 indicates her application is related to post-traumatic stress disorder (PTSD), other mental health, and sexual assault/harassment, are related to her request and she states:

a. She was not provided the opportunity during her discharge to be evaluated for the trauma she suffered during her service which led to her being forced into an unwanted discharge. She left home at the age of 15 to get away from her abusive parents. She had not had contact with them since. After reporting to her duty station, she was called into her commander's office and threatened with disciplinary action for not keeping her parents aware of her location. She was married with children of her own at that time. He insisted she call her parents in front of him.

b. A week later her parents forced her back to Sacramento. They had contacted command in California and acquired a transfer and hardship discharge since they both worked on that base. Her military career was cut short and she was forced back into an abusive situation. Her commander put her abusers back in her life. She has anxiety and post-traumatic stress disorder (PTSD) due to the military's mishandling of her pleas for

assistance during her active duty tour. Her father has passed away and her mother is completely out of her life. She is fighting for what was taken from her.

c. Her applicant indicates her request is related to her PTSD, other mental health conditions, and sexual assault/harassment.

3. The applicant underwent a medical examination on 5 September 1991 for enlistment. Her Standard Form (SF) 88 (Report of Medical Examination) shows she was found qualified for service without defect and was assigned a physical profile of 111121.

A physical profile, as reflected on a DA Form 3349 (Physical Profile) or DD Form 2808, is derived using six body systems: "P" = physical capacity or stamina; "U" = upper extremities; "L" = lower extremities; "H" = hearing; "E" = eyes; and "S" = psychiatric (abbreviated as PULHES). Each body system has a numerical designation: 1 meaning a high level of fitness; 2 indicates some activity limitations are warranted, 3 reflects significant limitations, and 4 reflects one or more medical conditions of such a severity that performance of military duties must be drastically limited. Physical profile ratings can be either permanent or temporary.

4. The applicant enlisted in the Regular Army for 5 years on 21 January 1992. She completed her required training at Fort Sam Houston, TX and was assigned to Fitzsimons Army Medical Center, Aurora, CO effective 8 June 1992.

5. The applicant requested and was approved to take leave from 24 August 1992 through 2 September 1992. Orders 173-007 show the applicant was transferred to Sacramento Army Depot, CA effective 2 September 1992.

6. A Personnel Action shows the applicant requested discharge in accordance with Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 6, paragraph 6-3b (Hardship) on 3 September 1992.

7. A letter from Chaplain, MAJ SEB states he had counseled the applicant and discussed the applicant's desire for a hardship discharge due to the extreme nature of the adverse living conditions of her children.

a. Her estranged husband had taken her children from their home in Texas and moved them to his parents' home in Nevada where he would not allow her to see them. The applicant stated her husband was a seller and user of illegal drugs and had been physically and emotionally abusive to her. She was fearful for the children's lives and the emotional stress she was experiencing caused her to feel unable to handle some of the crucial decisions as a patient administration specialist. Her lawyer had advised her that she must act quickly in requesting her custodial rights and visitation with her children.

b. MAJ SEB agreed with the applicant and her lawyer that she had justifiable grounds for a hardship discharge and recommended approval.

8. The applicant provided 2 statements concerning her hardship request:

a. She was requesting this hardship due to the unyielding circumstances of family matters involving her two small children. She needed to leave her career to remove her children from a dangerous and abusive situation.

b. She and her husband had irreconcilable differences. She was trying to better her life and he was selling and using drugs. He had been abusive toward her causing physical harm and mental harassment, having aimed a gun at her on one occasion.

c. She was fearful for herself and her children's lives due to the drug abuse and constant harassment. The fear was causing her mental stress and she felt unable to handle her position as a patient administration specialist.

d. She had seen numerous attorneys and gone to many court appearances to resolve the controversy. She tried, through the help of her Commanding Officer, to get assistance through the military. Her military status denied her equal consideration enjoyed by her civilian counterparts.

e. Her husband was denying access to her children. The Nevada court told her she was considered an unstable parent because she was in the Army, and she was therefore only entitled to visitation as dictated by her spouse.

f. She could not file for divorce proceedings if she remained at her duty station, and she would lose her legal rights to her children for abandonment. She was advised by her attorney to leave the military.

9. The applicant's parents also provided a statement concerning her hardship request:

a. Their grandchildren were living in a garage at their daughter's in-laws and their father was selling and using drugs. Their daughter hoped to provide a safer and more secure lifestyle and completed high school, attended college, and entered the military. She was physically and mentally abused by her husband.

b. All efforts by their daughter to procure a better life had been met by extreme opposition. They were unable to access the legal system in Nevada which they contributed to the spouse's parents' personal affiliation with the district attorney and municipal officers. Their daughter was denied all rights and privileges to her children based on the assumption her military status placed her in an unstable position and made her incapable of providing care for her children.

c. They were unable to utilize any state level judicial system in California or Nevada. Their daughter's spouse refused her any contact with the children and demanded she sign a coerced agreement. Their daughter is of American Indian descent and the denial of access to her children denied them utilization of her tribal agency. They could not physically retrieve the children due to the violent nature of the situation.

10. The applicant's California based attorney also provided a statement supporting the applicant's request for a hardship discharge.

a. The applicant contacted him to find out how to regain custody of her two children. Her husband had moved their children from Texas to Nevada and refused the applicant access to the children until she signed divorce papers giving him custody of the children.

b. He informed the applicant the issue of custody and visitation must be litigated in Nevada where the children are living. She attempted to file documents in California but had no jurisdiction over children who had not been in the state.

c. The applicant has family in California to assist her with the litigation. She went to Nevada and was told they would not accept any of her California papers. She was denied the right to touch her children and could only see them with her husband standing by.

d. He advised the applicant she must file papers required by Nevada in Nevada Courts. She must not lose any time in requesting her custodial rights and gain visitation with her children.

e. The applicant must remain available to prepare and fight for access to her children and cannot do so from a distance. She must be available on an immediate basis.

11. On 9 September 1992, the applicant's request for hardship discharge was approved.

12. The applicant was honorably released from active duty on 30 September 1992. Her DD Form 214 shows she was released from active duty under the provisions of chapter 6 of AR 635-200 due to hardship and she was transferred to the U.S. Army Reserve Control Group to complete her remaining service obligations. She was credited 8 months 10 days net active service. She was assigned Separation Code MDB and Reentry Code 3.

13. Orders C-05-317826 show the applicant was reassigned from the Ready Reserve to an Army Reserve unit in Sacramento, CA effective 2 February 1993. She was transferred back to the Ready Reserve effective 28 April 1995 for unsatisfactory participation. Her expiration of term of service shows 20 January 2000.

14. The applicant provided a VA notice of ineligibility stating she served less than 24 continuous months and does not qualify for VA health care.

15. On 24 August 2023, the ABCMR requested the applicant provide medical documentation to support her issue of PTSD and other mental health. She provided 35 pages of documents.

16. On 24 August 2023, the ABCMR requested the Army Criminal Investigation Command provide any redacted reports concerning the applicant as a victim of an investigation related to sexual assault. They responded on 28 August 2023 that no such reports exist.

17. MEDICAL REVIEW:

a. The applicant requests, in effect, physical disability discharge in lieu of her hardship discharge. She contends her separation was related to PTSD, Other Mental Health Issues, and Sexual Assault/Harassment.

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 into the Regular Army on 21 January 1992; 2) The applicant requested and was approved leave from 24 August 1992 through 2 September 1992. Orders 173-007 show the applicant was transferred to Sacramento Army Depot, CA effective 2 September 1992; 3) A Personnel Action shows the applicant requested discharge in accordance with Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 6, paragraph 6-3b (Hardship) on 3 September 1992; 4) A letter from Chaplain, MAJ SEB states he had counseled the applicant and discussed the applicant's desire for a hardship discharge due to the extreme nature of the adverse living conditions of her children; 5) As outlined in the ROP the applicant's parents and California based attorney provided statements concerning her hardship request; 6) On September 1992, the applicant's request for hardship discharge was approved. She was honorably released from active duty and transferred to the Ready Reserve under AR 635-200, paragraph 6-3B for hardship effective 30 September 1992.

c. The VA electronic medical record (JLV), ROP, and casefiles were reviewed. The military electronic medical record, AHLTA, was not reviewed as it was not in use during the applicant's period of service. Included in the applicant's casefile was WebMD Health Record, dated 23 August 2023 that shows the applicant with a diagnosis of Depression

that was self-entered on 14 June 2022, and a diagnosis of MDD recurrent that was provider entered on 14 July 2023. No medical records were provided that associated the diagnoses with military service and no documentation was provided outlining a diagnosis of PTSD. Also included in the casefile was a U.S. Army CID Report dated 28 August 2023 that reflects that a search of the criminal file index revealed no sexual assault records related to the applicant. A review of JLV shows that only BH-related encounter for the applicant was related to a request for smoking cessation class on 7 January 2013. No additional BH related records were provided for review. The applicant does not have a service-connected disability.

d. The applicant requests, in effect, physical disability discharge in lieu of her hardship discharge. She contends her separation was related to PTSD, Other Mental Health Issues, and Sexual Assault/Harassment. A review of the records was void of any BH diagnosis or treatment history during service. Post service records shows the applicant diagnosed with Depression and MDD, however, there is no documentation associating the diagnoses with military service. Additionally, there is no documentation supporting a diagnosis of PTSD and a review of the U.S. Army CID file index was void of any records of sexual assault related to the applicant. While the applicant's self-reported history of spousal physical and emotional abuse and concerns for her children's safety likely resulted significant distress that could have resulted in depressed mood and trauma related symptoms, there is no documentation in the records to support she met diagnostic criteria for either. Additionally, even if her asserted diagnoses are taken as fact, the experiences had onset prior to service, and even if mitigated by service, there is nothing in the records to support the conditions failed medical retention standards IAW AR 40 – 501 Chapter 3 and thus nothing that would have supported a referral for MEB. The applicant, her parents, and her lawyer requested a hardship separation, and her command supported the decision. Based on the available records, the separation decision appears proper and equitable.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence that the applicant had an experience or condition during her time in service that would mitigate the separation decision. However, the applicant contends her misconduct was related to PTSD, Other Mental Health Issues, and Sexual Assault/Harassment, and per liberal guidance, her contention is sufficient to warrant the Board's consideration.

Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes. The applicant contends her separation decision was related to PTSD, Other Mental Health Issues, and Sexual Assault/Harassment

(2) Did the condition exist or experience occur during military service? Yes.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of the records was void of any BH diagnosis or treatment history during service. Post service records shows the applicant diagnosed with Depression and MDD, however, there is no documentation associating the diagnoses with military service. Additionally, there is no documentation supporting a diagnosis of PTSD and a review of the U.S. Army CID file index was void of any records of sexual assault related to the applicant. While the applicant's self-reported history of spousal physical and emotional abuse and concerns for her children's safety likely resulted significant distress that could have resulted in depressed mood and trauma related symptoms, there is no documentation in the records to support she met diagnostic criteria for either. Additionally, even if her asserted diagnoses are taken as fact, the experiences had onset prior to service, and even if mitigated by service, there is nothing in the records to support the conditions failed medical retention standards IAW AR 40 – 501 Chapter 3 and thus nothing that would have supported a referral for MEB. The applicant, her parents, and her lawyer requested a hardship separation, and her command supported the decision. Based on the available records, the separation decision appears proper and equitable.

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 Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, the applicant's record of service, and the reason for separation. The applicant requested and was approved to be honorably discharged from active duty due to hardship, after she completed 8 months 10 days net active service. The Board found no error or injustice in the separation processing. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the advising official. The Board concurred with the medical reviewers finding insufficient evidence that the applicant had an experience or condition during her time in service that would mitigate the separation decision. Additionally, the Board also agreed that even if her asserted diagnoses are taken as fact, the experiences had onset prior to service, and even if mitigated by service, there is nothing in the records to support the conditions failed medical retention standards in accordance with AR 40-501, Chapter 3 and thus nothing that would have supported a referral for a medical evaluation board. Based on a preponderance of evidence, the Board determined that the narrative reason for separation the applicant received upon separation was 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 1.

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

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 (Personnel Separations - Enlisted Personnel) sets policies, standards, and procedures to insure 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. Chapter 6 (Separation Because of Dependency or Hardship) states separation under this chapter

is for the convenience of the Government. Paragraph 6-3b states hardship exists when in circumstances not involving death or disability of a member of the soldier's (or spouse's) immediate family, separation from the Service will materially affect the care or support of the family by alleviating undue and genuine hardship.

3. Title 10, 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 Army Regulation 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 an 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 USC, 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.

5. Title 38 USC, section 1131 (Peacetime Disability Compensation - 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 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. AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation) establishes 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. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability. Once a determination of physical unfitness is made, all disabilities are rated using the Department of Veterans Affairs Schedule for Rating Disabilities (VASRD).

7. AR 40-501 (Standards of Medical Fitness) governs medical fitness standards for enlistment, induction, appointment (including officer procurement programs), retention, and separation (including retirement). The Department of Veterans Affairs Schedule for Rating Disabilities (VASRD). VASRD is used by the Army and the VA as part of the process of adjudicating disability claims. It is a guide for evaluating the severity of disabilities resulting from all types of diseases and injuries encountered as a result of or incident to military service. This degree of severity is expressed as a percentage rating which determines the amount of monthly compensation.

8. Section 1556 of Title 10, USC, 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.

//NOTHING FOLLOWS//