

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 February 2024

DOCKET NUMBER: AR20230007820

APPLICANT REQUESTS: in effect, correction of her record/DD Form 214 (Certificate of Release or Discharge from Active Duty for the Period) ending 25 June 1997 to show -

- she was medically retired from active duty in 1997 vice being separated with entitlement to severance pay
- credit for her service in Saudi Arabia from May 1991 to December 1991

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs Medical Center Progress Notes, October 2016
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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 a local national attempted to rape her while in theater in Saudi Arabia. As soon as she opened the door, she struggled while he continued trying to force her towards the bed. She was in shock and could not even scream. However, at one point she was able to tell him she would scream, and he loosened his grip and ran out. She was still distraught and shaken and did not know how this incident would become a detriment to her future. She had nightmares, anxiety, and social withdrawal. To this day, she still has issues such as locking all doors, including her bedroom. When she wakes up in the morning, she opens the door thinking there is someone on the other side. She also jumps at the ring of her doorbell and hardly goes out unless someone is with her. She is always on alert, and this led to a lack of confidence. At the time of her service, PTSD (post-traumatic stress syndrome) was unknown. Later, when she went for her PTSD evaluation, her situation was ignored. She was discharged in 1997 due to her back with a 10% disability rating. She appealed it but her appeal was denied. At the time, she thought she was not healthy enough to stay but also not retired.

She could not see the MST (military sexual trauma) as an obstacle. She would also like her records to correctly reflect she served in Saudi Arabia, from December 1990 to May 1991. Her mother passed while she was in theater, and she was granted emergency leave. None of that is indicated on her DD Form 214. She did not know until recently of this resource to correct her records. She is almost 65 years of age, and she is seeking some justice. [Note: the applicant marked PTSD and Sexual Assault/Harassment on her DD Form 149.]

3. The applicant's request for correction of her DD Form 214 to show she served in Saudi-Arabia

4. Review of the applicant's service records shows:

a. The applicant enlisted in the Regular Army on 17 July 1986, and she held military occupational specialty (MOS) 63J, Aircraft Armament/Missile System Repairer.

b. She served through multiple reenlistments, in a variety of stateside and/or overseas assignments (as shown on her DA Form 2-1, Personnel Qualification Record), and she attained the rank/grade of staff sergeant (SSG)/E-6:

- Germany, 25 February 1987 to 17 January 1991
- Saudi Arabia, 18 January 1991 to 4 May 1991
- Germany, 5 May 1991 to 5 December 1991

c. A Record of MOS/Medical Retention Board (MMRB) Proceeding, dated 12 February 1996, states:

(1) The U.S Army Transportation Center and Fort Eustis MMRB evaluated her ability to perform the physical requirements of your PMOS 6BJ3H on 26 January 1996. Based on a thorough review of her most recent permanent physical profile, all pertinent records, and reports, the MMRB has determined that she be referred to the Medical Evaluation Board (MEB) due to limitations imposed by your permanent physical profile.

(2) She was directed to be scheduled for an MEB. Her ability to satisfactorily perform all the duties of her PMOS physically is questionable. Her commander would initiate immediate coordination with the Medical Treatment Facility Physical Evaluation Board Liaison Officer (PEBLO) to obtain additional information about the scheduling of a MEB/PEB.

(3) Her case will be forwarded to a Physical Evaluation Board (PEB) regardless of the MEB findings and recommendations. If during the MEB process, medical authorities determine that her current assignment limitations are not appropriate and the

result is the issuance of a less restrictive permanent profile, a copy of the new DA Form 3349, Physical Profile, will be forwarded to this headquarters.

d. The applicant's narrative summary states she has been experiencing recurring episodes of low back pain as a result of heavy lifting while stationed in Germany seven years ago. On 30 July 1996, her low back pain became severe, but subsided as a result of weight loss, physical therapy, and Pain Clinic treatment modalities. Nevertheless, physical training activities to include sit-ups, running and jumping for which she has received numerous profiles, continue to exacerbate her symptoms. To date she has not experienced associated radicular pain, paresthesia, or weakness of the lower extremities. She also denies experiencing bowel or bladder dysfunction. Her low back pain has become so severe as to require permanent profile restricting her from heavy lifting, running, sit-ups and jumping activities.

(1) Assessment: Recurring low back pain secondary to DJD (degenerative joint disease) of the LS-spine.

(2) Recommendation: In accordance with Army Regulation (AR) 40-501, Standards of Medical Fitness, paragraph 3, this service member does not meet the standards of fitness and is therefore referred to the Physical Evaluation Board for further disposition.

e. On 20 December 1996, an MEB convened and after consideration of clinical records, laboratory findings, and physical examinations, the MEB found the applicant was diagnosed as having the medically unacceptable condition of Recurring low back pain secondary to DJD of the LS-spine. The MEB recommended her referral to a PEB. On 22 January 1997, she was counseled, and she agreed with the MEB's findings and recommendation. She also indicated she desired to continue on active duty. The MEB proceedings were approved. She was rated under the VA Schedule for Rating Disabilities (VASRD), assigned code 5299/5295, and awarded a 10% disability rating. The PEB recommended her separation with entitlement to severance pay, if otherwise qualified. Ratings of less than 30% for soldiers with less than 20 years retirement service require separation with severance pay in lieu of retirement.

f. On 12 March 1997, the applicant was counseled by a PEB liaison officer who explained her rights, the disability process, the MEB process and how to appeal, the PEB adjudication, the difference between an informal and formal PEB, and the role of the U.S. Army Physical Disability Agency (USAPDA). She elected to concur with the PEB's findings and recommendation and waived her right to a formal hearing of her case.

g. On 4 April 1997, the U.S. Total Army Personnel Command (now called U.S. Army Human Resources Command) disapproved her continuation to remain on active duty

under the provisions of AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation). Following this decision, the case is now being further processed in accordance with Chapter 4, AR 635-40. Appropriate orders will be published, or proper instructions issued based on the decision of the U.S. Army Physical Disability Agency.

h. The applicant was honorably discharged on 25 June 1997 under the provisions of paragraph 4-24b(3) of AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation) by reason of physical disability with entitlement to severance pay. Her DD Form 214 shows she completed 10 years, 11 months, and 9 days active service. Her DD Form 214 also shows in Block 18 (Remarks) "Service in Southwest Asia from 18 January 1991 to 4 May 1991)" and "Disability severance pay \$31,111.13."

4. On 15 August 2023, in response to the agency's request for sanitized copies of Law Enforcement Reports from Department of the Army, Criminal Investigation Division, related to the applicant's sexual assault, the U.S. Army Criminal Investigation Command stated that a search of the Army criminal file indexes utilizing the information provided revealed no MST records pertaining to [Applicant]. The records at this center are Criminal Investigative and Military Police Reports and are indexed by personal identifiers such as names, social security numbers, dates and places of birth and other pertinent data to enable the positive identification of individuals.

5. 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 may compensate the individual for loss of civilian employability. 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/her duties. Unlike the Army, the VA can evaluate a veteran throughout his/her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

6. MEDICAL REVIEW:

a. Request: The applicant is requesting correction of her records to show she was medically retired from active duty in 1997 versus separated with entitlement to severance pay. The applicant selected PTSD and Sexual Assault/Harassment on her DD Form 149 as related to her request.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Below is a brief summary of information pertinent to this advisory:

- The applicant enlisted in the Regular Army on 17 July 1986 and served multiple reenlistments.
- The U.S Army Transportation Center and Fort Eustis MMRB evaluated her ability to perform the physical requirements of your PMOS 6BJ3H on 26 January 1996. Based on a thorough review of her most recent permanent physical profile, all pertinent records, and reports, the MMRB determined that she be referred to the Medical Evaluation Board (MEB) due to limitations imposed by her permanent physical profile.
- On 20 December 1996, an MEB convened and after consideration of clinical records, laboratory findings, and physical examinations, the MEB found the applicant was diagnosed as having the medically unacceptable condition of Recurring low back pain secondary to DJD of the LS-spine. The MEB recommended her referral to a PEB. On 22 January 1997, she was counseled, and she agreed with the MEB's findings and recommendation. She also indicated she desired to continue on active duty. The MEB proceedings were approved. She was rated under the VA Schedule for Rating Disabilities (VASRD), assigned code 5299/5295, and awarded a 10% disability rating. The PEB recommended her separation with entitlement to severance pay.
- On 4 April 1997, the U.S. Total Army Personnel Command (now called U.S. Army Human Resources Command) disapproved her continuation to remain on active duty under the provisions of AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation).
- Applicant was honorably discharged on 25 June 1997 under the provisions of paragraph 4-24b(3) of AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation) by reason of physical disability with entitlement to severance pay. Her DD Form 214 shows she completed 10 years, 11 months, and 9 days active service.

c. Review of Available Records Including Medical:

The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, ABCMR Record of Proceedings (ROP), VA progress note dated 26 October 2016, and DD Form 214. The VA electronic medical record, IPERMS, and DoD health record available for review through Joint Longitudinal View (JLV). Lack of citation or discussion in this section should not be interpreted as lack of consideration.

The applicant states a local national attempted to rape her while in theater in Saudi Arabia. As soon as she opened the door, she struggled while he continued trying to force her towards the bed. She was in shock and could not even scream. However, at one point she was able to tell him she would scream, and he loosened his grip and ran out. She was still distraught and shaken and did not know how this incident would become a detriment to her future. She had nightmares, anxiety, and social withdrawal. To this day, she still has issues such as locking all doors, including her bedroom. When she wakes up in the morning, she opens the door thinking there is someone on the

other side. She also jumps at the ring of her doorbell and hardly goes out unless someone is with her. She is always on alert, and this led to a lack of confidence. At the time of her service, PTSD (post-traumatic stress syndrome) was unknown. Later, when she went for her PTSD evaluation, her situation was ignored. She was discharged in 1997 due to her back with a 10% disability rating. She appealed it but her appeal was denied. At the time, she thought she was not healthy enough to stay but also not retired. She could not see the MST (military sexual trauma) as an obstacle. She would also like her records to correctly reflect she served in Saudi Arabia, from December 1990 to May 1991. Her mother passed while she was in theater, and she was granted emergency leave. None of that is indicated on her DD Form 214. She did not know until recently of this resource to correct her records. She is almost 65 years of age, and she is seeking some justice.

d. Due to the period of service, the applicant's electronic medical record is void of active-duty documentation. However, the applicant submitted hardcopy documentation of her MEB proceedings. The DA Form 3349 Physical Profile indicates the applicant was assigned a physical profile of P1 U1 L3 H1 E1 S1, "S" is psychiatric and the designation of 1 indicates "a high level of fitness". The applicant's service record available for review did not contain any medical documentation reflecting diagnosis of a mental health condition while in service or that she suffered from a behavioral health condition that affected her ability to perform her duties, failed retention standards, or rendered her unfit for military service. A MEB physical, dated 23 December 1996, indicates the applicant denied any mental health concerns including symptoms of anxiety, depression, or disrupted sleep and she was not treated for any behavioral health concerns while in-service nor did she indicate any limiting/unfit behavioral health concerns during her extensive MEB process.

e. The VA electronic record indicates the applicant is 70% service connected including 50% for PTSD. The applicant provided medical documentation of a VA progress note dated 26 October 2016, indicating her experience of MST. Per the available VA electronic record, the applicant has received behavioral health services via the VA since 2008.

f. Based on all available information, it is the opinion of this Agency Behavioral Health Advisor that there is insufficient evidence to support a referral to the IDES process at this time. Although the applicant has been 50% service connected for PTSD, VA examinations are based on different standards and parameters; they do not address whether a medical condition met or failed Army retention criteria or if it was a ratable condition during the period of service. Therefore, a VA disability rating would not imply failure to meet Army retention standards at the time of service. A subsequent diagnosis of PTSD through the VA is not indicative of an injustice at the time of service. Furthermore, even an in-service diagnosis of PTSD is not automatically unfitting per AR 40-501 and would not automatically result in the medical separation processing. Based

on the documentation available for review, there is no indication that an omission or error occurred that would warrant a referral to the IDES process. In summary, her separation process appears proper, equitable and free of error, and insufficient new evidence has been provided to determine otherwise.

Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Not applicable.

(2) Did the condition exist or experience occur during military service? Not applicable.

(3) Does the condition or experience actually excuse or mitigate the discharge? Not applicable.

BOARD DISCUSSION:

1. The Board carefully considered the applicant's request for correction of her records to show she was medically retired from active duty in 1997 versus separated with entitlement to severance pay.

a. The Board determined, based on all available information, to include the opinion of the Agency Behavioral Health Advisor, that there is insufficient evidence to support a referral to the IDES process at this time.

b. Although the applicant has been 50% service connected for PTSD, VA examinations are based on different standards and parameters; they do not address whether a medical condition met or failed Army retention criteria or if it was a ratable condition during the period of service.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted regarding the request for correction of her DD Form 214 to show she served in Saudi Arabia from December 1990 to May 1991. The evidence of record did not confirm, nor did the applicant provide evidence to show she served in Saudi Arabi from December 1990 to May 1991. However, her DA Form 2-1 shows she served in Saudi Arabia from 8 January 1991 to 4 May 1991, and her DD Form 214 shows she served in Southwest Asia from 18 January 1991 to 4 May 1991. Based on the foregoing, the Board determined her DD Form 214 should be corrected to show she served in Saudi Arabia instead of Southwest Asia.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:            :            :            GRANT FULL RELIEF

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:            :            :            GRANT FORMAL HEARING

:            :            :            DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to correcting her record to show she was medically retired from active duty in 1997 vice being separated with entitlement to severance pay.

2. The Board further determined the evidence presented is sufficient to warrant a portion of the requested relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by correcting block 18 (Remarks) of her DD Form 214, ending 25 June 1997 to:

- delete the entry -"SERVICE IN SOUTHWEST ASIA 19910118 - 19911004"
- add the entry "SERVICE IN SAUDI ARABIA 19910118 - 19911004"

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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. Title 10, U.S. Code, section 1201, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30%. Title 10, U.S. Code, section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating of less than 30%.

3. 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 USAPDA, under the operational control of the Commander, U.S. Army Human Resources Command (HRC), was at the time responsible for administering the physical disability evaluation system & executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directives and AR 635-40. This regulation establishes the Army disability evaluation system and sets forth policies 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.

a. Soldiers are referred to the PDES when they no longer meet medical retention standards in accordance with AR 40-501, chapter 3, as evidenced in an MEB; receive a permanent medical profile rating of "3" or "4" and are referred by an MOS/Medical Retention Board; are command-referred for a fitness-for-duty medical examination; or are referred by the Commander, HRC.

b. The physical disability system assessment process at the time of the applicant's separation involves two distinct stages: the MEB and the 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 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 are either 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 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, U.S. Code 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 U.S. Code 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. Army Regulation 635-5 (Separation Documents) in effect at the time established standardized policy for preparing and distributing the DD Form 214. The instructions stated for:

- item 12f, enter the total amount of foreign service completed during the period covered by the DD Form 214
- item 13, enter all awards, decorations, and badges
- item 18 for an active duty Soldier deployed with his/her unit during their continuous period of active service, enter the statement "SERVICE IN (name of country deployed) FROM (YYYYMMDD-YYYYMMDD)"

//NOTHING FOLLOWS//