

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 March 2024

DOCKET NUMBER: AR20230007958

APPLICANT REQUESTS:

- correction of her records to show she was discharged due to a service-connected medical disability
- 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

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 214
- National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service)
- Department of Veterans Affairs (VA) rating decision, summary of benefits letter, and medical records
- 35 pages of medical records
- State of Connecticut Superior Court Memorandum of Decision, dated 28 November 2000

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. She is requesting a change in the characterization she received upon discharge. She does not agree with the characterization as this does not allow her to have access to discounts and access to shopping at the commissary or military stores. She does not have a dishonorable discharge, but the current characterization places her in the same

category with a negative view the Defense Enrollment Eligibility Reporting System (DEERS). Her DD Form 214 and NGB Form 22 shows her service as uncharacterized and the VA has her listed as under honorable conditions. Because of the different characterizations, she was taken out of DEERS after being able to utilize commissary and exchange shopping since 2020.

b. She is requesting a change to a favorable discharge that will allow her to re-enroll in DEERS. She was discharged from active duty before she was able to complete advanced individual training (AIT). She had conditions that were aggravated by her military training. While on active duty, she was accidentally kicked during a training exercise, and she fell off an obstacle landing on her right arm. She was offered medical care and hospitalized due to her dominant right arm. When she overextended the use of her right arm, her shoulders, chest, and back, were pulling strength from her left arm leaving her in pain. The pain was so severe in her chest that the medical providers on the base believed she was having a heart attack. Thankfully, it was just muscle pain. She continued with training, passing physical fitness (PT) tests but she was in pain. The pain began to radiate to the middle of my back and down her right arm where she could not move. She tried everything to pass all the training. One afternoon, after training on the shooting range where she was the first person to qualify, she screamed out in pain and was transported back to the hospital. It was determined that she was suffering from costochondritis and nerve spasms. The pain occurred when she made attempts to fire her training weapon or when she made attempts to complete extensive challenges on the obstacle course. She excelled in PT where her arm was not used for more than five minutes. The moment she had to lift anything heavy or pull objects, she was feeling excruciating pain in her arm, shoulder, and chest. Because of her medical condition, she was not able to finish AIT.

c. As she was placed on medical condition due to not using her right arm, it was determined she was not able to continue training. She was given an uncharacterized discharge with a reentry (RE) code of 3. The RE-3 code states that she is ineligible for continued military service, however, the disqualification is waivable. She is aware that she was able to reenlist with the waiver. She did not have any negative behaviors, write ups, or any other issues that would have prevented her from obtaining a waiver. The idea was for her to heal and reenlist. After extensive medical evaluations, it was determined that she was suffering from a lower back condition (back sprain), cervical strain, degenerative disc disease (muscle spasms and neck stiffness and tension), and radiculopathy right shoulder to arm numbness. She was evaluated and rated immediately after her release from active duty. She has had two right arm surgeries, manipulation of the neck and left arm, and she receives nerve-blocking injections as of this date. As a result of what happened to her, she was not able to sleep. She would go for days without closing her eyes. She was diagnosed with insomnia. It took a toll on her mentally, landing her in the VA psychiatric ward. She was also hospitalized due to other issues that affected her mental health. She sustained a traumatic brain injury and a

neck injury in 1997, which left her a coma with months of rehabilitation. She went to therapy, and it was deemed appropriate to resume daily life activities. Because the conditions were addressed and improved over the years, her previous injuries were not a problem during enlistment, and a waiver was granted. What ended up happening was her previous conditions were pushed to the limit, her body gave up, and she received an uncharacterized discharge.

d. She is asking for Department of Defense Instruction (DoDI) 1332.14 (Enlisted Administrative Separations) to apply to her case. She is requesting a change in characterization because an uncharacterized discharge does not apply to her time of service and an uncharacterized discharge is a barrier to DEERS enrollment. She needs the category of discharge to match all the government matching programs. She is asking for DoDI 1332.14, 27 January 2014, and Change 7, effective 23 June 2002, to apply. She is asking that the Board determined the characterization of her service as honorable as it is clearly warranted by the presence of unusual military duty. She was separated under Enclosure 3 (of DoDI 1332.14) by reason of selected changes in service obligation: disability.

e. On 8 September 2011, the VA determined that the following conditions were related to military service: anxiety disorder; insomnia (sleep disorder), neck pain, bilateral radiculopathy shoulder to arm numbness, cervical strain and degenerative disc disease (muscle spasms, neck stiffness, and pain), and lumbar strain. Based on the injuries she sustained while training, and her previous medical conditions, she believes that she has a strong case for a discharge upgrade as she has shown her discharge is connected to her disabilities.

3. A DD Form 2808 (Report of Medical Examination) shows the applicant underwent a medical examination on 6 December 2010 for the purpose on enlistment in the Army National Guard (ARNG). The DD form 2808 further shows she was found not qualified for service due to high cholesterol.

4. On 20 December 2010, a medical waiver for enlistment was requested and the waiver was approved by NGB ARNG Chief Medical Officer on 1 February 2011.

5. The applicant enlisted in the ARNG on 14 February 2011. She entered initial active duty for training on 7 June 2011.

6. On 2 August 2011, the applicant was counseled by her drill sergeant based on her basic rifle marksmanship (BRM) failures to qualify.

7. On 15 August 2011, she was counseled by her first sergeant and by her company commander based on her inability to qualify with her assigned weapon. The counseling forms show she was given several chances to qualify but without success. The forms

also show she was informed that she was being recommended for separation under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), chapter 11 (Entry Level Performance and Conduct).

8. On 29 August 2011, the applicant was notified by her commander that she was initiating action to discharge her from the Army under the provisions of Army Regulation 635-200, chapter 11. The commander stated the reason for the proposed separation action was the applicant's inability to qualify with her assigned weapon. The commander indicated she was given several opportunities to qualify on four different ranges with several chances on each range but failed to meet the standard. The applicant was also advised of her rights to consult with legal counsel and to submit statements in her own behalf.

9. On 29 August 2011, the applicant acknowledged she had been afforded the opportunity to consult with appointed counsel but that she declined the opportunity. She elected not to submit statements in her own behalf, and she did not request a medical examination before her discharge.

10. On an unspecified date, the applicant's medical records were reviewed by the Consolidated Troop Medical Clinical Physician Assistant under the provisions of Army Regulation 40-501 (Standards of Medical Fitness) and determination was made that a medical examination was not required for separation.

11. On 30 August 2011, the separation authority approved the applicant's separation and directed she received a character of service of "uncharacterized."

12. The applicant's DD Form 214 shows he was discharged from active duty and transferred to her State ARNG on 7 September 2011 under the authority of Army Regulation 635-200, chapter 11, by reason of entry level performance and conduct with a character of service of "uncharacterized." The DD Form 214 also shows she was credited with 3 months and 1 day of active service.

13. The applicant's NGB Form 22 shows she was discharged from the ARNG on 8 September 2011 with a character of service of "uncharacterized."

14. The applicant's records within the Army Review Boards Agency (ARBA) show she applied to the Army Discharge Review Board (ADRB) requesting a change of the character of her service to honorable. On 15 July 2020, the ADRB denied her request upon finding her separation was both, proper and equitable.

14. The applicant provided:

a. VA documents showing she was granted service-connected disability compensation for a various medical conditions with a combined disability rating of 70%.

b. a State of Connecticut Superior Court Memorandum of Decision, dated 28 November 2000, indicating she suffered serious injuries as a result of a physical assault in October 1997.

15. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the applicant's previous ABCMR denial, the military electronic medical record (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is again applying, this time to the ABCMR, requesting an upgrade of her 16 December 2016 uncharacterized discharge and, in essence, a referral to the Disability Evaluation System. On her DD form 293, she indicated the TBI and other mental health issues are related to her request. She states:

“Mentally, I am stable as long as I am on medication. I take it daily. I did not know I had underlying problems that were not addressed accordingly prior to enlisting in the military. I had a TBI in 1997 and bruised shoulder as a result of being attacked. I was on medication and returned to my normal life in society. As the years passed, I stopped medication and believed without a doubt that I was well. I never tried to mislead anyone or ignore my previous conditions. I was discharged from Active Duty as I was not able to complete training. I was found to have mental health and other physical disabilities that prevented me from completing my obligations.

I am requesting a change in the characterization I received upon discharge. I do not agree with the characterization as this does not allow me to have access to shopping at the commissary or military stores. I do not have a dishonorable discharge, but the current characterization places me in the same category with a negative view by DEERS.”

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 for the period of Service under consideration shows the former Army National Guard Soldier entered the Regular Army for training on 7 June 2011 and received an uncharacterized discharge on 7 September

2011 under provisions provided in chapter 11 of AR 635-200, Personnel Separations – Enlisted Personnel (17 December 2009), for falling below entry level performance and conduct standards.

d. A Report of Separation and Record of Service (NGB Form 22) shows the applicant entered the Tennessee Army National Guard on 14 February 2011 and was discharged with an uncharacterized characterization of service on 8 September 2011 under provisions provided in paragraph 6-35e of NGR 600-200, Enlisted Personnel Management (31 July 2009): Entry level performance and conduct.

e. The request for a discharge upgrade was denied by the ADRB on 14 August 2018 (AR20180008830). Rather than repeat their findings here, the board is referred to the case report for that case. Because this denial was before the institution of liberal consideration polices, this review will concentrate on evidence of a potentially mitigating mental health condition as well as new evidence submitted with this application.

f. No contemporaneous medical documentation was submitted with the application.

g. The EMR shows she was evaluated and treated for a variety of musculoskeletal issues, including a left ankle sprain, low back, neck pain, and costochondritis. There are no behavioral health encounters.

h. On 29 August 2011, her company commander notified her of his initiation of action to separate her under paragraph 11-3 of AR 635-200:

“The reasons for my proposed action are: Your inability to qualify with your assigned weapon. You were zeroed twice by your Drill Sergeants and were given several opportunities to qualify on four different ranges with several chances on each range and failed to meet the standard of 23 out of 40. You have been provided with the counseling required by paragraph 11-4.”

i. The applicant declined appointed counsel, the opportunity to submit a statement on her behalf, and to undergo a separation medical examination.

j. On 30 August 2011, the battalion commander directed she be discharged with an entry-level separation.

k. There is insufficient medical evidence the applicant had any duty incurred medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to her discharge; or which prevented her from qualifying with her weapon. Thus, there was no cause for referral to the Disability Evaluation System. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge.

l. A 19 September 2023 "To Whom it May Concern Memorandum" from her psychiatric provider states the applicant has four mental health conditions:

"Ms.[Applicant] began care with this psychiatric provider on 12/17/12 and continues in regular psychiatric care with this provider. Her current psychiatric diagnoses are as follows:

- Unspecified Mental Disorder
- Post-Traumatic Stress Disorder
- Unspecified Anxiety Disorder
- Unspecified Eating Disorder

m. Additional post-service medical documentation shows that in addition to her mental health conditions, she is treated for gastrointestinal conditions, bilateral cubital tunnel syndrome, neck pain, and costochondritis.

n. JLV shows she has been awarded several VA service-connected disability ratings: Anxiety disorder (70%), Lumbosacral of Cervical Strain (40%), Interverbal Disc Syndrome (20%), and bilateral upper extremity radiculopathies (10% each). She has been diagnosed with non-service-connected PTSD.

o. The applicant states she sustained a TBI and had mental health issues for which she had been taking medication prior to entering the Army and that she was not forthcoming during her accession physical. If she informed the provider of her prior treatment for a mental health condition, she would not have been medically indelible to enlist. Paragraph 2-27d(1) of AR 40-501, Standards of Medical Fitness (14 December2007):

"(1) History of mood disorders requiring outpatient care for longer than 6 months by a physician or other mental health professional (V65.40), or inpatient treatment in a hospital or residential facility is disqualifying."

p. There is insufficient evidence the applicant had any duty incurred medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System.

q. It is the opinion of the ARBA medical advisor that neither a discharge upgrade nor a referral of her case to the DES is warranted.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? NO

- (2) Did the condition exist or experience occur during military service? N/A
- (3) Does the condition or experience actually excuse or mitigate the discharge? N/A

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.
2. The Board reviewed and concurred with the medical advisor's review finding insufficient evidence the applicant had any duty incurred medical condition which would have failed medical procurement standards. The Board determined there was no error on injustice in the applicant's separation proceedings.
3. The Board noted the applicant did not complete training and was not awarded a military occupational specialty and after 3 months and 1 day, the applicant properly received an uncharacterized discharge.

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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█ 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; or

(3) The Soldier has less than 181 days of continuous active military service, has completed initial entry training, has been awarded a military occupational specialty, and has reported for duty at a follow-on unit of assignment.

b. Chapter 11 provides for the separation of personnel due to unsatisfactory performance or conduct, or both, while in an entry-level status. The separation policy applied to Soldiers who could not meet the minimum standards prescribed for successful completion of training because of lack of aptitude, ability, motivation, or self-discipline. Separation under this chapter applied to Soldiers who were in an entry-level status (i.e., had completed no more than 180 days of continuous active duty before the date of the initiation of separation action). This provision also applied to individuals who had demonstrated they were not qualified for retention because they:

- could not adapt socially or emotionally to military life
- lacked the aptitude, ability, motivation, or self-discipline for military service
- demonstrated characteristics not compatible with satisfactory continued service

c. Section II (Terms), for Regular Army members, entry level status is defined as the first 180 of continuous active duty.

3. Title 10, U.S. 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 Disability Agency is responsible for administering the Army physical disability evaluation system (DES) 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 (Disability Evaluation for Retention, Retirement, or Separation). Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501, chapter 3.

4. Army Regulation 635-40 establishes the DES. It 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. If a Soldier is found unfit because of physical disability, this regulation provides for disposition of the Soldier according to applicable laws and regulations. The regulation in effect at the time states in:

a. Paragraph 3-1, the mere presences of an 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 Soldier reasonably may be expected to perform because of their office, grade, rank, or rating.

b. Paragraph 3-2, disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted, and they can no longer continue to reasonably perform because of a physical disability incurred or aggravated in service.

c. Paragraph 3-2, when a Soldier is being processed for separation or retirement for reasons other than physical disability, continued performance of assigned duty commensurate with his or her rank or grade until the Soldier is scheduled for separation or retirement, creates a presumption that the Soldier is fit. The presumption of fitness may be overcome if the evidence establishes that:

(1) The Soldier was, in fact, physically unable to perform adequately the duties of his or her office, grade, rank or rating for a period of time because of disability. There must be a causative relationship between the less than adequate duty performance and the unfitting medical condition or conditions.

(2) An acute, grave illness or injury or other significant deterioration of the Soldier's physical condition occurred immediately prior to, or coincident with processing for separation or retirement for reasons other than physical disability and which rendered the Soldier unfit for further duty.

5. 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//