

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 March 2024

DOCKET NUMBER: AR20230008520

APPLICANT REQUESTS: In effect, correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty) to show her characterization of service as "Under Honorable Conditions (General)" rather than "Uncharacterized."

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored statement
- DD Form 214

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 she was sexually assaulted by a superior on her first day of Basic Combat Training (BCT). She went to sick call and tried to report the assault, but instead of being able to report the assault a false claim was made that she had asthma attacks. The contention that she had asthma was completely without merit. When she reviewed her personnel file it said that she had asthma symptoms that began after increased activity. This is a false statement. First, they were in their first day of BCT and there was no increased activity. Second, she was a distinguished athlete on her high school cross country team and track team where she ran the 800 meter, 1600 meter, and the 4x800 meter relay. She was also on her high school volleyball and softball teams. In addition to her accomplishments in high school, she was also in the Reserve Officers Training Corps prior to going to BCT and passed the Army physical readiness test with zero problems or issues.

a. That said, the contention that she was experiencing a recurrence of her childhood asthma (which she grew out of as she trained to be a distinguished athlete) was false, misleading, and a way to cover up her allegation against a superior. This cover up exacerbated the assault upon her. Not only did it ignore her request for help after her

assault, but she was also branded as a liar who enlisted under false and misleading pretenses.

b. Her whole life fell apart after she was discharged from the Army. Her father was against her going into the Army in the first place because he was worried that she would be assaulted in some way. When she was assaulted, she was too embarrassed to speak to her parents about it because they said it would happen. She went back to college after her discharge from the Army, and really struggled during her sophomore year. In addition to struggling with her studies at college, she developed an eating disorder, started to drink heavily to numb her constant anxiety, and eventually lost her son.

c. She joined the Army during a time of war to serve her country which is more than 98 percent of her peers did. She had every intent to make the Army a career and everything came to a screeching halt on her second day of BCT. She is extremely disheartened by the way the Army covered up her assault and created a strawman (her childhood asthma) to discredit her contentions. The action taken by the leadership at Fort Leonard Wood, MO, was not only a cover-up in the clearest sense of the meaning, but it also dishonored her service to her country.

3. On 21 February 2002, the applicant enlisted in the Illinois Army National Guard (ILARNG) in the rank/pay grade of private/E-1 for a period of 8 years. She was promoted to E-2 on 13 May 2002.

4. An Entrance Physical Standards Board (EPSBD) was conducted to evaluate the applicant's condition on 4 June 2002. Her DA Form 4707 (EPSBD Proceedings) show that after careful consideration of medical records, laboratory findings, and medical examinations, the board found the applicant was unfit for appointment or enlistment in accordance with current medical fitness standards and in the opinion of the evaluating physicians, and by the applicant's mother's admission, the condition existed prior to service (EPTS).

a. She arrived at Fort Leonard Wood, MO on 15 May 2002. She complained of chest tightness, shortness of breath, wheezing, and coughing spells with increased activities. Her symptoms began less than 1 minute at the beginning of increased activity and resolved within 20 to 30 minutes after stopping. She admitted to nocturnal symptoms of shortness of breath, chest tightness, coughing spells, and wheezing.

b. She had a positive history of the same chief complaint, EPTS. She had a child history of asthma and symptoms were controlled with periodic use of Ventolin and Proventil metered dose inhaler. Her past medical history was confirmed by her mother.

c. It was recommended the applicant be separated from the Army and not train in accordance with Army Regulation 40-501 (Standards of Medical Fitness) for failure to meet medical procurement standards due to her EPTS condition. The EPSBD findings were approved on 4 June 2002.

d. On 6 June 2002, the applicant acknowledged the EPSBD findings and further acknowledged that she had been advised legal counsel from an Army attorney was available to her or she could consult civilian counsel at her own expense. She could request discharge from the Army without delay or request retention on active duty. She concurred with the proceedings and requested discharge from the Army without delay.

e. On 7 June 2002, the applicant's commander recommended she be discharged.

f. The separation authority approved the Board's recommendation on 7 June 2002 and directed the applicant's separation from service.

5. Orders and the applicant's DD Form 214 show she was released from active duty training on 13 June 2002, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-11, for failure to meet medical/physical procurement standards, with Separation Program Designator (SPD) code "JFW," and Reentry Eligibility (RE) code "3." She did not complete initial entry training and was not awarded a military occupational specialty. She was credited with completion of 1 month and 10 days of net active service. Her service was uncharacterized.

6. Orders and a National Guard Bureau Form 22 (Report of Separation and Record of Service) show the applicant was discharged from the ARNG and as a Reserve of the Army effective 13 June 2002 under the provisions of National Guard Regulation 600-200 (), paragraph 26j(1) by reason of medically unfit for retention per Army Regulation 40-501. Her service was uncharacterized.

7. The evidence of record shows the applicant was in an entry-level status at the time of her separation processing. An uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It merely means the Soldier did not serve on active duty long enough for his or her character of service to be rated.

8. On 3 November 2023, an agency staff member of the Army Review Boards Agency (ARBA), asked the applicant to provide a copy of medical documents that support her claim. To date, the applicant has not responded to this request.

9. On 6 November 2023, in the processing of this case the U.S. Army Criminal Investigation Division, searched their criminal file indexes, which revealed no Criminal Investigative and/or Military Sexual Assault reports pertaining to the applicant.

## 10. 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 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 applying to the ABCMR requesting an upgrade of her 13 June 2002 uncharacterized discharge. She states:

“I was sexually assaulted by a superior on my first day of basic training. I went to sick call and tried to report the assault, but instead of being able to report the assault a false claim was made that I had asthma attacks.

The contention that I had asthma was completely without merit. When I reviewed my personnel file, it said that I had asthma symptoms that began after increased activity. THIS IS A FALSE STATEMENT. First, there was no increased activity, we were in our first day of basic training and there was no increased activity.

Second, I was a distinguished athlete on my high school cross country team, my high school track team where I ran the 800 meter, 1600 meter and the 4x800 meter relay. I was also on my high school volleyball and softball team. In addition to my accomplishments in high school, I was also in ROTC prior to going to basic training and I passed the army physical readiness test (PRT) with zero problems or issues.

That said, the contention that I was experiencing a recurrence of my childhood asthma ( which I grew out of as I trained to be a distinguished athlete) was false, misleading and was a way to cover up my allegation against a superior; this cover up exacerbated the assault upon me. Not only did it ignore my request for help after my assault, I was also branded as a liar who enlisted under false and misleading pretenses.”

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 Guard Soldier entered the regular Army for basic combat training (BCT) on 14 May 2002 and was discharged on 13 June 2002 under provisions provided by paragraph 5-11 of AR 635-200, Active Duty Enlisted

Administrative Separations (26 June 1996): Separation of personnel who did not meet procurement medical fitness standards.

d. Paragraph 5-11a of AR 635-200:

“Soldiers who were not medically qualified under procurement medical fitness standards when accepted for enlistment or who became medically disqualified under these standards prior to entry on AD or ADT for initial entry training, may be separated. Such conditions must be discovered during the first 6 months of AD. Such findings will result in an entrance physical standards board. This board, which must be convened within the soldier’s first 6 months of AD, takes the place of the notification procedure (para 2–2) required for separation under this chapter.”

e. The applicant denied ever having had or currently having any of the medical conditions, including asthma, listed on her Report of Medical History. This and the accompanying Report of Medical Examination show the applicant to have been in good health, without any significant medical history or conditions.

f. The applicant did not submit medical documentation with her application and there are no entries in the EMR. The same week she entered BCT, the applicant and was referred to an Entry Physical Standards Board (EPSBD) for pre-existing asthma under provisions provided in paragraph 5-11 of AR 635-200.

g. EPSBDs are convened IAW paragraph 7-12 of AR 40-400, Patient Administration. This process is for enlisted Soldiers who within their first 6 months of active service are found to have a preexisting condition which does not meet the enlistment standard in chapter 2 of AR 40-501, Standards of Medical Fitness, but does meet the chapter 3 retention standard of the same regulation. The fourth criterion for this process is that the preexisting condition was not permanently service aggravated.

h. From her 17 May 2002 Entry Physical Standards Board (EPSBD) Proceedings (DA Form 4707):

“HISTORY OF PRESENT ILLNESS: This is an 18-year-old white female who arrived at Fort Leonard Wood on 15 May 2002.

The trainee complains of chest tightness, shortness of breath, wheezing, and coughing spells with increased activities. Her symptoms begin in less than 1 minute at the of beginning increased activity and resolves within 20-30 minutes after stopping. She admits to nocturnal symptoms of shortness of breath, chest tightness, coughing spells and wheezing.

MEDICAL IDSTORY: Positive history of same chief complaint, EPTS. She has a child history of asthma and symptoms were controlled with periodic use of Ventolin and Proventil MDIs (metered dose inhalers)

Past medical history was confirmed by S.A., the patient's mother at (815) XXX-XXXX.

PHYSICAL EXAMINATION: ... Lungs are clear to auscultation bilaterally. Heart has a regular rate and rhythm without murmur, rubs or gallops.

LABORATORY DATA: Not obtained secondary to confirmation of past medical history by patient's mother.

DIAGNOSIS: Asthma. EPTS [Existed prior to service]

RECOMMENDATIONS: Servicemember should be discharged from the military and not train in accordance with AR 40-501, 2-23d ... “

i. Paragraph 2-23d of AR 40-501 (30 August 1995) states that a cause for rejection to enlistment is “Asthma, including reactive airway disease, exercise induced bronchospasm or asthmatic bronchitis, reliably diagnosed at any age.”

j. The board recommended she be discharged for this pre-existing condition which failed the induction medical standards in AR 40-501, had not been permanently aggravated by her brief period of service, and was not compatible with continued service. The applicant concurred with the board's findings on 6 June 2002, initialing and selecting “I concur with these proceedings and request to be discharged from the US Army without delay.”

k. There are no entries in JLV.

l. An uncharacterized discharge is given to individuals on active duty who separate prior to completing 180 days of military service, or when the discharge action was initiated prior to 180 days of service. For the reserve components, it also includes discharges prior to completing initial entry training (IET). There are two phases - Basic Combat Training (BCT) and Advanced Individual Training (AIT). Because the applicant did not complete BCT, he was in an entry level status at the time of his discharge and so received an uncharacterized discharge. This type of discharge does not attempt to characterize service as good or bad. Through no fault of her own, he simply had a medical condition which was, unfortunately, not within enlistment standards.

## Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Applicant claims military sexual assault.

(2) Did the condition exist or experience occur during military service? Applicant claims military sexual assault.

(3) Does the condition or experience actually excuse or mitigate the discharge? There was no probative evidence submitted, found in AHLTA or other electronic records, or in JLV (to include VA endorsement), for military sexual trauma (MST) or a behavioral health disorder of any kind. Under liberal consideration, however, the applicant's self-assertion of MST is sufficient to establish that MST occurred. As such, it is the recommendation of the ARBA medical advisor the applicant's discharge be upgraded to Honorable with a narrative reason code of Secretarial Authority.

**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 applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence of record shows the applicant was released from active duty training under the provisions of AR 635-200 for failure to meet medical/physical procurement standards. She did not complete initial entry training and was not awarded a military occupational specialty. She completed 1 month and 10 days of net active service. Her service was uncharacterized. An uncharacterized discharge is given to individuals on active duty who separate prior to completing 180 days of military service, or when the discharge action was initiated prior to 180 days of service. The Board also reviewed the medical reviewer's finding that she was discharged for this pre-existing condition which failed the induction medical standards in AR 40-501, had not been permanently aggravated by her brief period of service, and was not compatible with continued service. The Board found relief is not warranted.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, Section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Title 10, U.S. Code, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of



the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.

3. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. A separation would be described as entry level with uncharacterized service if the Soldier had less than 180 days of continuous active duty service at the time separation action was initiated.

b. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

c. A general discharge is a separation from the Army under honorable conditions. When authorized, it was issued to a Soldier whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. Soldiers separated in an entry-level status receive an uncharacterized character of service. A separation is an entry level status separation if its processing is initiated during the Soldier's first 180 days of continuous active duty. The Secretary of the Army could, on a case-by-case basis, issue an honorable character of service to entry-level Soldiers when clearly warranted by unusual circumstances involving personal conduct or duty performance.

e. Paragraph 5-11 specifically provided that Soldiers who were not medically qualified under procurement medical fitness standards when accepted for enlistment were to be separated. EPSBD proceedings were required to be convened within the Soldier's first 6 months of active duty service, and had to establish the following: that medical authority identified the disqualifying medical condition(s) within 6 months of the Soldier's initial entrance on active duty; that the condition(s) would have permanently disqualified the Soldier from entry into military service, had it been detected earlier; and that the medical condition did not disqualify him/her for retention in military service. A Soldier disqualified under this provision could request retention on active duty; the separation authority made the final determination.

f. The character of service for Soldiers separated under this provision would normally be honorable but would be uncharacterized if the Soldier was in an entry-level status. An uncharacterized discharge is neither favorable nor unfavorable; in the case of

Soldiers issued this characterization of service, an insufficient amount of time would have passed to evaluate the Soldier's conduct and performance.

4. Army Regulation 635-5-1 (SPD Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. This regulation prescribed that the separation code "JFW" was an appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, paragraph 5-11, by reason of failure to meet procurement medical fitness standards. Additionally, the SPD/ RE Code Cross Reference Table established that RE code "3" was the proper reentry code to assign to Soldiers separated under this authority and for this reason.

5. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), in effect at the time, governed the evaluation for physical fitness of Soldiers who might be unfit to perform their military duties due to a disability. It states the mere presence of an impairment did not, of itself, justify a finding of unfitness due to physical disability. In each case, it was necessary to compare the nature and degree of the physical disability with the duty requirements of the soldier, based on his or her office, grade, rank, or rating; and a Soldier was presumed to be in sound physical and mental condition upon entering active duty.

6. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder (PTSD); traumatic brain injury; sexual assault; or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//