

IN THE CASE OF: ██████████

BOARD DATE: 29 February 2024

DOCKET NUMBER: AR20230008596

APPLICANT REQUESTS: an upgrade of her uncharacterized service to honorable and a personal appearance before the board via video/telephone.

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

- DD Form 149 (Application for Correction of Military Record), 6 April 2023
- DA Form 3349 (Physical Profile), 24 October 2001

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, Section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states, in effect, she was sent to a rehabilitation unit because of injuries to her knees, legs, feet, and having post-traumatic stress disorder (PTSD). She was not educated on the process of a medical separation but believed she received a medical discharge; however, she never appeared before a medical board or had any paperwork stating she was approved or denied a medical discharge. She thought because of disabilities sustained from the Army was the reasoning for her discharge.
3. The applicant enlisted in the Regular Army on 15 August 2001, for a 3-year period.
4. The applicant's official military personnel record is void of the complete facts and circumstances surrounding her discharge processing. However, her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was discharged on 7 November 2001, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-11, by reason of failed medical/physical procurement stands, in the grade of E-1. Her service was uncharacterized character with separation code JFW and reentry code 3. She was credited with 2 months and 23 days of net active service. She was not awarded a military occupational specialty.

5. The applicant provides a DA Form 3349 (Physical Profile) dated 24 October 2001, showing the following:

- Medical Condition – depressive disorder
- Assignment Limitations – No weapons, firearms, or explosive materials. Soldier is relieved of all basic training duties pending medical separation.
- Other – Recommend Soldier be transferred to RHU [Reception Holding Unit] as soon as possible.

6. Soldiers are considered to be in an entry-level status when they are within their first 180 days of active-duty service. The evidence of record shows the applicant was in an entry-level status at the time of her separation. An uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It simply means the Soldier was not in the Army long enough for his or her character of service to be rated as honorable or otherwise.

7. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

8. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a physical disability discharge in lieu of administrative discharge. She contends she experienced mental health conditions including PTSD while on active service, which contribute to her request for a medical disability discharge.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) The applicant enlisted in the Regular Army on 15 August 2001; 2) The applicant's official military personnel record is void of the complete facts and circumstances surrounding her discharge processing. However, her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was discharged on 7 November 2001, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-11, by reason of failed medical/physical procurement standards, in the grade of E-1. Her service was uncharacterized character with separation code JFW and reentry code 3. She was credited with 2 months and 23 days of net active service.

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) and hard copy military medical documentation were also examined.

d. The applicant stated that she experienced mental health conditions while on active service, which should have contributed to a discharge for physical disability in lieu of administrative discharge. The applicant provided a physical profile dated 24 October 2001. This profile was temporary, and she was diagnosed with depressive disorder not otherwise specified. It was noted this condition existed prior to service. There is no available medical record of the treatment the applicant was provided or the events surrounding her discharge from active service related to this condition.

e. A review of JLV provided evidence the applicant has been diagnosed with a service-connected Mood Disorder (70%) in 2017. The applicant was noted to have a history of depression and exposure to trauma prior to her enlistment that was exacerbated by her service-connected physical conditions after her discharge.

f. Based on the available information, it is the opinion of the Agency BH Advisor there is sufficient evidence the applicant was experiencing symptoms of depression due to a pre-existing condition while on active service, which impacted her ability to meet procurement standards. However, the applicant was never placed on a permanent psychiatric profile or required inpatient psychiatric care. Therefore, there is insufficient evidence at this time that the applicant warrants a referral to IDES from a behavioral health perspective.

#### Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? No, based on the available information, it is the opinion of the Agency BH Advisor there is sufficient evidence the applicant was experiencing symptoms of depression due to a pre-existing condition while on active service, which impacted her ability to meet procurement standards. However, the applicant was never placed on a permanent psychiatric profile or required inpatient psychiatric care. Therefore, there is insufficient evidence at this time that the applicant warrants a referral to IDES from a behavioral health perspective.

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

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

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the regulatory guidance on separations initiated within the 180 days of service and the findings and recommendation of the medical advisor, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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.

5/20/2024

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CHAIRPERSON

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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. 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 Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.
3. AR 15-185 (ABCMR), the regulation governing this Board, states applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.
4. AR 635-200 sets forth the basic authority for the separation of enlisted personnel.
  - a. Chapter 3 provides that a separation will be described as entry level with uncharacterized service if the Soldier has less than 180 days of continuous active duty service at the time separation action is initiated.
  - b. Paragraph 3-7a provides that 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. Paragraph 3-9, in effect at the time of the applicant's separation, provided that 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) a discharge under other than honorable conditions was authorized, due to the reason for separation and was warranted by the circumstances of the case; or

(2) the Secretary of the Army, on a case-by-case basis, determined a characterization of service as honorable was clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty. This characterization was authorized when the Soldier was separated by reason of selected changes in service obligation, for convenience of the government, and under Secretarial plenary authority.

d. Paragraph 5-11 provides that Soldiers who are not medically qualified under procurement medical fitness standards when accepted for enlistment or who become medically disqualified under these standards prior to entrance on active duty, active duty for training, or initial entry training will be separated. A medical proceeding, regardless of the date completed, must establish that a medical condition was identified by appropriate medical authority within 6 months of the Soldier's initial entrance on active duty, that the condition would have permanently or temporarily disqualified the Soldier for entry into military service had it been detected at that time, and the medical condition did not disqualify the Soldier from retention in the service. 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.

5. 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; traumatic brain injury; sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences.

6. 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. 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//