

IN THE CASE OF: ██████████

BOARD DATE: 21 March 2024

DOCKET NUMBER: AR20230008663

APPLICANT REQUESTS: Correction of her records to show her service in the U.S. Army Reserve (USAR) was characterized as honorable. Additionally, she requests an appearance before the Board via video or telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- Orders Number 037-28, 99th Regional Support Command, Oakdale, PA, 6 February 1996

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 served from 1994 to 1996. She deserves some type of recognition for that. She was discharged due to a disability (diabetes) that should have disqualified her from service.
3. On 12 July 1994, the applicant underwent a medical examination in preparation for enlistment. The examining provider determined she was physically qualified for enlistment.
4. The applicant enlisted in the USAR on 19 July 1994. She was ordered to initial active duty for training (IADT) for the purpose of completing basic training and advanced individual training, reporting no later than 29 September 1984.
5. A memorandum from U.S. Army Recruiting Battalion, Philadelphia, PA, dated 6 April 1995, shows the applicant did not ship for IADT. Her reservation was cancelled per her unit's request. The Recruiting Battalion recommended the unit initiate discharge action per Army Regulation 135-178 (Enlisted Administrative Separations) or schedule a new IADT date.

6. The available record is void of evidence the applicant was ordered to IADT at any time thereafter.

7. Orders Number 037-28, issued by the 99th Regional Support Command, Oakdale, PA on 6 February 1996, discharged the applicant from the USAR, effective 2 February 1996, under the provisions of Army Regulation 135-176, by reason of entry level separation. Her service was uncharacterized.

8. The applicant was not issued a DD Form 214 (Certificate of Discharge or Release from Active Duty). The USAR does not issue a Report of Separation or Record of Service when a Soldier separates from the USAR, similar to the DD Form 214 or National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service), issued by the Regular Army and the Army National Guard (ARNG), respectively.

9. Soldiers are considered to be in an entry-level status when they are within their first 180 days of active duty service. Entry-level status for members of a Reserve component terminates (a) 180 days after beginning training if the Soldier is ordered to active duty for training (ADT) for one continuous period of 180 days or more; or (b) 90 days after the beginning of the second period of ADT if the Soldier is ordered to ADT under a program that splits the training into two or more separate periods of active duty. The evidence of record shows the applicant was in an entry-level status at the time of her separation, as she did not attend or complete her IADT

10. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

11. 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, the Army Aeromedical Resource Office (AERO), 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 uncharacterized 2 February 1996 discharge and, in essence, a referral to the Disability Evaluation System (DES). She states:

"I am looking to have my Entry Level Discharge upgraded to Honorable. I had service from 1994- 1996. I was discharged as an Entry Level Discharge due to a

Diabetes diagnosis. I was discharged as an entry level due to my diagnosis of diabetes. However, I served nearly two years. I deserve some type of recognition for that. I was discharged due to a disability that should have disqualified me from service.”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. Discharge orders published by Headquarters, 99<sup>th</sup> Regional Support command on 6 February 1996 show the applicant’s type of discharge was “ENTRY LEVEL SPEARTION” and she was discharged with uncharacterized characterization of service on 2 February 1996 under authority provided in AR 135-178, Enlisted Administrative Separations. The orders do not cite the authorizing paragraph or chapter.

d. The applicant’s pre-entrance Report of Medical History and Report of Medical Examination show she was in good health, without significant medical history or conditions.

e. No medical documentation was submitted with the application and her period of service predates the EMR. There are no entries in JLV.

f. Neither the separation packet nor documentation addressing her involuntary administrative discharge from the USAR was in the supporting documentation or iPERMS.

g. There is no evidence the applicant had any service incurred medical condition which would have failed the medical retention standards of chapter 3, AR 40-501 prior to her discharge. Thus, there was no cause for referral to the Disability Evaluation System.

h. The DES compensates an individual only for service incurred condition(s) which have been determined to disqualify him or her from further military service. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career. These roles and authority were granted by Congress to the Department of Veterans Affairs and are executed under a different set of laws.

i. It is the opinion of the ARBA Medical Advisor that neither a discharge upgrade nor a referral of this case to the Disability Evaluation System is warranted.

BOARD DISCUSSION:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.
  
2. The Board carefully considered the applicant's request, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of requests for changes to discharges. The Board found the evidence confirms the applicant was in an entry-level status when she was discharged from the USAR and found no evidence of any mitigating factors that would have been a basis for a different type of separation. Based on a preponderance of the evidence, the Board determined the applicant's uncharacterized service is not in error or unjust.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
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:	:	:	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.

6/27/2024

X

[Redacted Signature]

CHAIRPERSON

[Redacted Name]

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, USC, 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, USC, 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 percent.
3. Title 10, USC, Section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating at less than 30 percent.
4. 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.
5. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. 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.
6. Army Regulation 135-178 sets forth the basic authority for the separation of enlisted Reserve Component personnel.
  - a. Paragraph 2-9a provides that an honorable characterization of service is appropriate when the quality of the Soldier'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.

b. Paragraph 2-9b provides that a general (under honorable conditions) characterization of service is warranted when significant negative aspects of the Soldier's conduct or performance of duty outweigh positive aspects of the Soldier's military record.

c. Chapter 5 prescribes criteria and procedures for separation of enlisted soldiers while in an entry level status. This policy applies to Soldiers who voluntarily enlisted in the Army National Guard of the United States or USAR, who have completed no more than 180 days of continuous and creditable active military service on their current enlistment by the date of separation.

7. Army Regulation 635-5 (Separation Documents), paragraph 2-1, provides the instructions for preparing the DD Form 214. This regulation provides that:

a. The DD Form 214 is a summary of a Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of active duty service at the time of release from active duty, retirement, or discharge.

b. The DD Form 214 will be prepared for Reserve Component (RC) members completing initial ADT that results in the award of a military occupational specialty, even when the active duty period was less than 90 days.

c. The characterization or description of service is determined by directives authorizing separation.

8. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) establishes the Physical Disability Evaluation System (PDES) 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 or her office, grade, rank, or rating. It provides for a medical evaluation board that is convened to document a Soldier's medical status and duty limitations insofar as duty is affected by the Soldier's status. A decision is made as to the Soldier's medical qualifications for retention based on the criteria in Army Regulation 40-501 (Standards of Medical Fitness), Chapter 3. 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 who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in service.

a. Paragraph 2-1 provides that the mere presence of 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 member reasonably may be expected to perform because of his or her office, rank, grade, or rating. The Army must find that a service member is physically

unfit to reasonably perform his or her duties and assign an appropriate disability rating before he or she can be medically retired or separated.

b. Paragraph 2-2b (1) provides that when a member is being processed for separation for reasons other than physical disability (e.g., retirement, resignation, reduction in force, relief from active duty, administrative separation, discharge, etc.), his or her continued performance of duty (until he or she is referred to the PDES for evaluation for separation for reasons indicated above) creates a presumption that the member is fit for duty. Except for a member who was previously found unfit and retained in a limited assignment duty status in accordance with chapter 6 of this regulation, such a member should not be referred to the PDES unless his or her physical defects raise substantial doubt that he or she is fit to continue to perform the duties of his or her office, grade, rank, or rating.

c. Paragraph 2-2b (2) provides that when a member is being processed for separation for reasons other than physical disability, the presumption of fitness may be overcome if the evidence establishes that the member, in fact, was physically unable to adequately perform the duties of his or her office, grade, rank, or rating even though he or she was improperly retained in that office, grade, rank, or rating for a period of time and/or acute, grave illness or injury or other deterioration of physical condition that occurred immediately prior to or coincidentally with the member's separation for reasons other than physical disability rendered him or her unfit for further duty.

9. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. It provides that an uncharacterized separation is an entry-level separation. A separation will be described as an entry-level separation if processing is initiated while a member is in an entry-level status (except when the characterization of under other than honorable condition is authorized), or when the Secretary of the Army, on a case-by-case basis, determines that a honorable discharge is clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty.

b. A member of a Reserve component who is not on active duty, or who is serving under a call or order to active duty for 180 days or less, begins entry-level status upon enlistment in a Reserve component. Entry-level status of such a member of a Reserve component terminates (a) 180 days after beginning training if the Soldier is ordered to ADT for one continuous period of 180 days or more; or (b) 90 days after the beginning of the second period of ADT if the Soldier is ordered to ADT under a program that splits the training into two or more separate periods of active duty.

//NOTHING FOLLOWS//