

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 March 2024

DOCKET NUMBER: AR20230008967

APPLICANT REQUESTS: in effect -

a. correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty) to show/add -

- she was discharged as a result of a medical disability
- her rank/grade as staff sergeant (SSG)/E-6
- an unidentified deployment award

b. a video/telephonic appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- Memorandum, subject: Line of Duty (LOD) Investigation for incident that occurred on 20 March 2010, dated 17 June 2010
- Orders 167-004, dated 15 June 2016
- DD Form 1610 (Request and Authorization for TDY Travel of DoD Personnel), dated 5 July 2016
- medical record (24 pages)

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 received a permanent profile requiring she go through the Medical Evaluation Board (MEB); however, her unit commander did not allow her to extend or reenlist to complete the process. She was then passed over for promotion to SSG/E-6. Days were cut off her deployment order and she did not receive her award. There was a conflict of interest because her first sergeant during deployment had rapport with her unit commander. Her application indicates her request is related to

post-traumatic stress disorder (PTSD), traumatic brain injury (TBI) and reprisal/whistleblower.

3. The applicant underwent a medical examination for enlistment on 30 May 2008. Her DD Form 2808 (Report of Medical Examination) shows she was found qualified for service without significant defect and assigned a physical profile of 111111.

A physical profile, as reflected on a DA Form 3349 (Physical Profile) or DD Form 2808, is derived using six body systems: "P" = physical capacity or stamina; "U" = upper extremities; "L" = lower extremities; "H" = hearing; "E" = eyes; and "S" = psychiatric (abbreviated as PULHES). Each body system has a numerical designation: 1 meaning a high level of fitness; 2 indicates some activity limitations are warranted, 3 reflects significant limitations, and 4 reflects one or more medical conditions of such a severity that performance of military duties must be drastically limited. Physical profile ratings can be either permanent or temporary.

4. On 30 May 2008, the applicant enlisted in the Army National Guard (ARNG) for a period of 8 years and in Texas Army National Guard (TXARNG) for a period of 6 years. She was ordered to initial active duty for training (IADT) and entered active duty on 4 January 2009.

5. A DA Form 2173 (Statement of Medical Examination and Duty Status) shows on 14 January 2009, while attending basic combat training (BCT) at Fort Jackson, SC, the applicant was injured when she fell 2 feet from a drop off of Victory Tower. The nature and extent of her injury was low back pain, Stress fracture of neck of femur (bilateral). Her injury was considered in the line of duty.

6. The applicant received a DD Form 214 showing she was honorably released from active duty on 9 September 2009 and returned to her TXARNG unit.

7. The applicant entered a period of active duty on 1 May 2010.

8. A memorandum, dated 17 June 2010, subject: Line of Duty Investigation, for incident that occurred on 20 March 2010, stating the applicant's diagnosis of closed fracture of two ribs (chest, right) and bilateral cervicalgia were determined in the line of duty.

9. She was honorably released from active duty on 15 July 2011 and returned to her TXARNG unit.

10. The applicant was assigned to full time National Guard Duty and ordered to active duty effective 15 January 2013 and she remained on active duty through a series of orders.

11. The applicant's DA Form 2166-8 (Non-Commissioned Officer (NCO) Evaluation Report) for the period covering 28 March 2013 to 27 March 2014, shows she passed an Army Physical Fitness Test (APFT) on 24 September 2013 and was within height and weight standards. She was rated fully capable by her rater and (2) successful by her senior rater.

12. The applicant's NCO Evaluation for the period covering 28 March 2014 to 27 March 2015, shows she passed an APFT on 27 March 2015 and was within height and weight standards. She was rated fully capable by her rater and (2) successful by her senior rater.

13. Orders 069-017, issued 10 March 2015, show the applicant's extended period of active duty from 1 July 2015 to 30 September 2015.

14. A DA Form 4836 (Oath of Extension of Enlistment or Reenlistment) shows the applicant's enlistment was extended 1 year with a new expiration of term of service of 29 May 2015.

15. Orders 208-019, issued 27 July 2015, amend Orders 069-017 to show the period of active service was amended from 1 July 2015 to 15 August 2015.

16. The applicant's DD Form 214 shows she was honorably released from active duty on 15 August 2015 and returned to her TXARNG unit and contains the following entries:

- blocks 4a (Grade, Rate or Rank)/4b (Pay Grade) - Sergeant (SGT)/E-5
- block 12i (Effective Date of Pay Grade) - 28 March 2013
- block 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized) -
 - Army Reserve Component Achievement Medal
 - National Defense Service Medal
 - Noncommissioned Officer Professional Development Ribbon
 - Army Service Ribbon

17. Orders show she was assigned to annual training (AT) on the following occasions:

- 5 - 9 October 2015
- 19 - 23 October 2015
- 26 -30 October 2015
- 2 - 6 November 2015
- 9 - 13 November 2015
- 16 - 20 November 2015
- 7 - 31 March 2016

18. The applicant's NCO Evaluation for the period covering 28 March 2015 to 26 March 2016, shows she was exempt from APFT and height and weight standards in accordance with Army Regulation (AR) 40-501 (Standards of Medical Fitness) and AR 600-9 (The Army Body Composition Program). She was rated qualified. It is noted the applicant refused to sign.

19. Order 088-112 show the applicant was ordered to Full-Time National Guard duty from 1 April 2016 to 15 May 2016.

20. Orders 126-756 show the applicant was ordered to Full-Time National Guard duty from 16 August 2016 to 30 September 2016. The orders were revoked by Orders 162-012.

21. Orders 127-343 show the applicant was ordered to Full-Time National Guard duty from 16 May 2016 to 15 August 2016. The orders were amended by Orders 165-011 to show her duty dates as 16 May 2016 to 15 June 2016.

22. Orders 167-004 show the applicant was ordered to Full-Time National Guard duty from 16 June 2016 to 31 December 2016. The orders were amended by Orders 244-010 to show her duty dates as 16 June 2016 to 7 September 2016.

23. The applicant's NCO Evaluation for the period covering 28 March 2016 to 27 March 2017, shows she was exempt from APFT and height and weight standards in accordance with AR 40-501 and AR 600-9. She was rated not qualified. It is noted the applicant refused to sign.

24. The applicant was ordered to AT from 27 March 2017 to 29 March 2017.

25. The applicant was honorably discharged from the TXARNG and as a Reserve of the Army on 17 May 2017 for expiration of term of service. Her NGB Form 22 (National Guard Report of Separation and Record of Service) shows:

- her rank as SGT
- her pay grade as E-5
- her date of rank as 28 March 2013
- total service for pay of 8 years, 11 months, and 18 days
- the following awards:
 - Army Reserve Components Achievement Medal
 - Noncommissioned Officer Professional Development Ribbon
 - Texas Faithful Service Medal
 - Army Service Ribbon
 - National Defense Service Medal

26. The applicant did not indicate the deployment award she requests. Her record did not contain evidence of any recommendation for additional awards.

27. The applicant's record does not contain evidence she was considered or passed over for SSG/E-6 and she did not provide evidence to support her contention.

28. In response to the applicant's indication that she was the subject of reprisal/whistleblower action, on 6 November 2023, the ABCMR staff requested an unredacted copy of all Inspector General records pertaining to the applicant. The ABCMR was notified there are no records responsive to the request.

29. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. Paragraph 2-11 states applicants do not have a right to a formal hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

30. 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. Medically, the applicant is applying to the ABCMR requesting, in essence, a referral to the Disability Evaluation System (DES). She states:

“My complaint is I received a permanent profile which required me to go through the Army medical evaluation board. However, my unit CMDR (commander) did not allow me to extend or reenlist to complete the process. I believe this to be erroneous and unjust. I request my DD214 be corrected to reflect my medical discharge/disability. My LOD [Line of Duty] and some of my medical history is attached.

Medical discharge. I was then passed for promotion for E6. Days were cut off my deployment in order and I did not receive my award. Conflict of interest played a part as my 1SG in my deployment had rapport with my unit CMDR. Request my promotion be validated to E6 due to the bias treatment from my CMDR and my medical discharge be corrected on my DD214.”

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. Her National Guard Report of Separation and Record of Service (NGB Form 22) for the period of Service under consideration shows she enlisted into the Army National Guard on 30 May 2008 and received an honorable discharge from the Texas Army National Guard (TXARNG) on 17 May 2017 under the separation authority provided by paragraph 6-35a of NGR 635-200, Enlisted Personnel Management (31 July 2009): ETS (expiration – term of service).

d. While the applicant does not clearly identify the condition(s) failing medical retention standards and which should have been cause for referral to DES, the LOD she appears to reference was approved on 17 June 2010 for "CLOSED FRACTURE OF TWO RIBS-Chest, right; CERVICALGIA - Neck, Bilateral."

e. There is also a Statement of Medical Examination and Duty Status from January 2009 for low back pain and bilateral femoral neck stress fractures incurred during basic combat training: "On 14 JAN 09 while attending basic combat training at Ft. Jackson, SC., Soldier was injured when she fell 2 feet from a drop off." of Victory Tower.

f. The EMR shows the diagnostic evaluations and treatments for back pain and bilateral femoral neck stress fractures while she was in basic combat training. The only other DoD record was an encounter on 30 January 2017 for dysuria treated as an acute urinary tract infection.

g. Review of the applicant's records in MEDCHART shows only one permanent physical profile which was issued in 2013 to make administrative corrections for prior changes, likely from a prior Periodic Health Assessment. There are no medical conditions listed and the applicant was fully mission capable. The profiling officer wrote in the comments section (block 8): "Administrative change of PULHES from L2/H2 to L1/H1 [Normal, fully mission capable]. Ortho issues resolved and never had hearing concerns. Current Audiogram WNL [within normal limits] with no STS [standard threshold shift]."

h. MEDCHART shows the applicant had several temporary profiles in 2011. The next most recent and final profile was in pregnancy profile in 2015.

i. No evidence was identified or submitted showing the applicant had a duty limiting permanent physical profile for a duty incurred medical condition, that she had ever been referred to the DES, or that she had requested and subsequently been denied an ETS extension for the purpose of completing the DES.

j. The only Army Physical Fitness Test (APFT) Scorecard (DA Form 705) in iPERMS shows she passed her APFT on 27 March 2015. There are no APFTs on her

subsequent NCOERs because she was on a pregnancy profile which was likely followed by a post-partum profile. These profiles would have covered her almost to her date of separation.

k. There is insufficient probative evidence the applicant had any medical condition which would have failed the medical retention standards of chapter 3, AR 40-501 prior to his voluntary discharge; or that prevented her from reenlisting. 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 her essentially voluntary discharge.

l. JLV shows she has been awarded numerous VA service-connected disability ratings. However, the DES compensates disabilities when they cause or contribute to career termination, compensating an individual only for service incurred medical 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 authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

m. It is the opinion of the ARBA medical advisor that a referral of her case to the DES is not warranted.

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 Board carefully considered the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition and available military records, the Board determined there was insufficient evidence to support correction of her DD Form 214 to show a physical disability retirement. The Board noted and concurred with the medical review finding that referral to the IDES was not warranted.
2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance is not necessary to serve the interest of equity and justice in this case.

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. Army Regulation (AR) 135-178 (Army National Guard and Army Reserve - Enlisted Administrative Separations) establishes policies, standards, and procedures governing the administrative separation of certain enlisted soldiers of the Army National Guard of the United States and the United States Army Reserve as directed by Department of Defense Directive 1332.14, December 1993 Subject: Enlisted Administrative Separations.
3. National Guard Regulation (NGR) 600-200 (Enlisted Personnel Management), in effect at the time established standards, policies, and procedures for the management of Army National Guard (ARNG) enlisted Soldiers in several the functional areas, including Discharge.
4. Title 10, USC, 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 Physical Disability Agency is responsible for administering the Army physical disability evaluation system 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 (Physical Evaluation for Retention, Retirement, or Separation).
 - a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in an MEB; when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an MOS Medical Retention Board; and/or they are command-referred for a fitness-for-duty medical examination.
 - b. The mere presence of a 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.

5 Title 38 USC, section 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.

6. Title 38 USC, section 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.

7. AR 635-40 (Personnel Separations-Disability Evaluation for Retention, Retirement, or Separation) establishes the Army Disability Evaluation System 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 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. 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 military service.

b. Soldiers who sustain or aggravate physically unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

(1) The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

(2) The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

8. AR 40-501 (Standards of Medical Fitness) governs medical fitness standards for enlistment, induction, appointment (including officer procurement programs), retention, and separation (including retirement). The Department of Veterans Affairs Schedule for Rating Disabilities (VASRD). VASRD is used by the Army and the VA as part of the process of adjudicating disability claims. It is a guide for evaluating the severity of disabilities resulting from all types of diseases and injuries encountered as a result of or incident to military service. This degree of severity is expressed as a percentage rating which determines the amount of monthly compensation.

9. 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.

10. AR 600-8-19 (Enlisted Promotions and Reductions) prescribes the enlisted promotions and reductions function of the military personnel system. It is linked to the AR 600-8 series and provides principles of support, standards of service, policies, tasks, rules, and steps governing all work required in the field to support promotions and reductions. It provides the objectives of the Army's Enlisted Promotions System, which include filling authorized enlisted spaces with the best qualified Soldiers. Chapter 7 provides for Enlisted Promotion and Reduction of Army National Guard Personnel.

//NOTHING FOLLOWS//