

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 April 2024

DOCKET NUMBER: AR20230009573

APPLICANT REQUESTS:

- medical retirement instead of discharge for not being medically qualified under procurement medical fitness standards
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 220 (Active Duty Report)
- DA Form 2173 (Statement of Medical Examination and Duty Status)
- DD Form 2808 (Report of Medical Examination)
- Army National Guard (ARNG) separation proceedings
- National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service)
- Department of Veterans Affairs (VA) summary of benefits letter

FACTS:

1. The applicant states she was separated from the ARNG due to a sexual assault which occurred during basic combat training (BCT). She was released from active duty and returned to her State ARNG and separated as not medically qualified, even though her conditions did not exist prior to enlistment. She believes she should have been medically retired from the ARNG due to medical issues that occurred during BCT. She was awarded a 90% disability rating by the VA due to her injuries. She is providing her separation packet along with a line of duty (LOD) determination, which was approved for her injuries. Her application indicates her request is related to PTSD and sexual assault/harassment.

2. The applicant enlisted in the Missouri ARNG (MOARNG) on 23 September 2020. Her DD Form 220 shows she entered initial active duty for training (IADT) on 26 October 2020 and was released from IADT 13 January 2021 prior to completing BCT.

3. A DA Form 2173 shows the applicant was a victim of adult sexual abuse (confirmed) and that she was seeking treatment. The form also shows the injury was considered to have been incurred in LOD.
4. A DD Form 2808 shows a physician indicated on 8 July 2021 that the applicant was admitted to the hospital on 31 December 2020 for suicidal ideation. The form also shows she was found not medically qualified due to suicidality.
5. On 22 March 2022, the applicant was informed by the MOARNG Recruiting and Retention Battalion Executive Officer (XO) that he was initiating action to separate her from the ARNG and as a Reserve of the Army under the provisions of Army Regulation 135-178 (ARNG and Reserve Enlisted Administrative Separations), chapter 6, due to medical disqualification. The XO indicated the reason for the proposed action was that while at BCT, the applicant was involved in a SHARP (Sexual Harassment/Assault Response and Prevention) program incident. Due to the unforeseen situation, she was released from active duty as a non-graduate on 13 January 2021. After undergoing extensive medical care, she provided her medical documents to the Military Entrance Processing Station. Upon review, she had been permanently disqualified as of 8 July 2021 due to a permanent profile for psychiatric reasons. She was also advised of her rights to consult with an appointed counsel and to present written statements in her own behalf.
6. On 23 March 2022, the applicant completed a memorandum, subject: Soldier's Report of Previous Sexual Assault, and indicated she had filed an unrestricted report of sexual assault in which she was a victim within the past 24 months. She also indicated she did not believe that the separation action was a direct or indirect result of her sexual assault, or the filing of an unrestricted report.
7. On 2 August 2022, the applicant acknowledged receipt of the notification of separation proceedings under Army Regulation 135-178, chapter 6. She also acknowledged she had exercised her right to consult with counsel, who advised her of the basis for the contemplated action to separate her for medical disqualification and its effects, of the rights available to her, and the effect of any action taken by her in waiving her rights. She elected not to submit written statements in her own behalf.
8. On 7 January 2023, the separation authority approved the recommendation for separation under the provisions of Army Regulation 135-178, paragraph 6-6 (Not medically qualified under procurement medical fitness standards) and directed the applicant's separation from the MOARNG and as a Reserve of the Army with a characterization of service of uncharacterized.

9. The applicant's NGB Form 22 shows she was discharged from the ARNG on 7 January 2023 by reason of 'not medically qualified under procurement medical fitness standards' with a character of service of uncharacterized.

10. The applicant provided a VA summary of benefits letter showing she is receiving service-connected disability compensation for undisclosed disabilities with a 90% disability rating.

11. MEDICAL REVIEW:

a. The applicant requests medical retirement instead of discharge for not being medically qualified under procurement medical fitness standards. She contends her request is associated with PTSD secondary to MST.

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 into the Missouri Army National Guard (MOARNG) on 23 September 2020. She entered initial active duty for training (IADT) on 26 October 2020 and was released from IADT 13 January 2021 prior to completing BCT; 2) A DA Form 2173 shows the applicant was a victim of adult sexual abuse (confirmed) and that she was seeking treatment. The form also shows the injury was considered to have been incurred in LOD; 3) A DD Form 2808 shows a physician indicated on 8 July 2021 that the applicant was admitted to the hospital on 31 December 2020 for suicidal ideation. The form also shows she was found not medically qualified due to suicidality; 4) On 22 March 2022, the applicant was informed by the MOARNG Recruiting and Retention Battalion Executive Officer (XO) that he was initiating action to separate her from the ARNG and as a Reserve of the Army under the provisions of Army Regulation 135-178 (ARNG and Reserve Enlisted Administrative Separations), chapter 6, due to medical disqualification; 5) On 2 August 2022, the applicant acknowledged receipt of the notification of separation proceedings under Army Regulation 135-178, chapter 6. On 7 January 2023, the separation authority approved the recommendation for separation under the provisions of Army Regulation 135-178, paragraph 6-6, and the applicant's NGB Form 22 shows she was discharged from the ARNG on 7 January 2023 by reason of 'not medically qualified under procurement medical fitness standards' with a character of service of uncharacterized.

c. The electronic military medical record (AHLTA), VA electronic medical record (JLV), ROP, and casefiles were reviewed. A review of AHLTA shows the applicant initial BH encounter, during service, occurred on 29 December 2020 whereby she presented as a self-referral, while on leave from BCT, with complaints of suicidal ideation. The provider noted that during the session the applicant was guarded in her response but

reported a history of at least two concussions during basic training that resulted in memory and concentration problems, being pressured not to seek medical treatment by a DS who informed her that whatever activities they engaged in were requirements for graduation, and that she had issues with her vagina and breast. She also reported being fearful, and when queried further she asked what would happen if you “forgot to disclose something to MEPS”. The provider further noted the applicant endorsed a history of SI on the C-SSRS (a suicide rating scale). The applicant reportedly would not provide additional information except to say the SI was related to recent head injuries. The provider and applicant agreed the applicant should be transported to the ED for further evaluation and medical rule-outs. The applicant was escorted by her recruiter and seen by another provider on the same day. The recruiter shared that the applicant came to the recruiter station crying and mentions SHARP, Gynecologist, hitting her head, and fear of returning to BCT. The recruiter also shared that she had known the applicant to be bubbly and that she had never seen her as she was in the current state.

d. Encounter noted dated 30 December 2020 shows the applicant was evaluated at the Memorial Hospital ED the day before, secondary to reported SI and exaggerated symptoms of cognitive impairment. The ED documentation was not available for review. Records suggest the applicant was discharged on same day, however, due to HIPAA restrictions, the military provider was unable to get any additional information regarding the evaluation, discharge plan, or follow-up. Encounter note dated 31 December 2020 shows providers from the AF-C-375th MED GROUP communicated with the applicant’s BCT command and informed him they applicant had been under the clinic’s care with multiple concerns and that it was likely the applicant would not report back to BCT. Encounter note dated 6 January 2021 shows the provider was contacted by the applicant’s command and was informed of the commander’s intent to administratively separate the applicant under provisions of Chapter 11 of AR 135-178 without requiring the applicant to return to Fort Jackson. AHLTA was void of any additional BH-related treatment encounters. Included in the applicant’s case file was a DA Form 2173 dated 15 September 2021 that shows the applicant was the victim of sexual assault determined to be a LOD yes. Also included in the casefile was a Report of Medical Examination, originally dated 1 September 2020 that appears to show the applicant met qualification for enlistment. The same form appears to have been amended on 13 July 2021 to show the applicant was no longer medically qualified due to suicidality. The note appears to show the applicant was assessed with a S3 profile on that date. The comment section reflects the applicant attended BCT October 2020 had a hospital admission on 31 December 2021 with SI with plan to buy a gun. It was further noted that no final diagnosis was included in the records, and that considerations diagnostic considerations were PTSD vs Depression. The examiner (Report of Medical Examination) noted his own initial consideration of Acute Stress Disorder Related to BCT.

e. A review of JLV shows the applicant 70 percent SC for PTSD secondary to MST. Initial PTSD DBQ dated 19 October 2021 shows the applicant reported being the victim

of almost daily MST during basic training, perpetrated by another service-member, leading to the applicant being psychiatrically hospitalized for suicidal ideation. The examiner deemed the applicant endorsed sufficient symptoms to meet criteria for PTSD and noted the disorder secondary to military service. The examiner also noted the applicant with a reported history of childhood physical and emotional abuse during childhood and two reported instances of sexual assault during college, however, the provider further noted, however, that the applicant did not have a previous history of BH diagnosis or treatment, and reported functioning successfully prior to repeated MST experienced during BCT. Records shows the applicant with a history of BH care at the VA, since 2021 with diagnosis of PTSD, GAD, MDD, Anxiety Disorder Unspecified, and Depression Unspecified all with onset reportedly occurring after MST. Records show the applicant engaged in treatment, intermittently, through October 2023 with fair results.

f. The applicant requests medical retirement instead of discharge for not being medically qualified under procurement medical fitness standards. She contends her request is associated with PTSD secondary to MST. A review of the records shows the applicant was briefly psychiatrically hospitalized on 31 December 2020 secondary to Suicidal Ideation. Additionally, a LOD dated 15 September 2021 shows the applicant was the victim of a sexually assault that: the form suggests at least one of the incidents occurred on 5 November 2020, at Fort Jackson. Further, a Report of Medical Examination, appears to show the applicant was medically qualified for enlistment on 1 September 2020 but not medically qualified on 13 July 2021 due to suicidal ideation. Finally, memorandum from the MOARNG, dated 22 March 2022, shows the applicant was released from Active Duty after being involved in a SHARP incident that prevented her from completing BCT and after undergoing extensive medical care, it was determined that she was permanently disqualified under provisions of Chapter 6 of AR 135-178. Post service records shows the applicant 70 percent SC for PTSD secondary to MST and additional diagnoses of MDD, GAD, Anxiety Unspecified, and Depression Unspecified. Although the MOARNG memorandum reference MEPS finding of a pre-existing medical condition that failed procurement standards, records are void of evidence the applicant was diagnosed or treated for a BH condition prior to the MST that occurred during BCT and ultimately resulted in a S# profile. Additionally, the applicant denied a history of BH diagnosis or treatment history prior to the MST. Also, although the applicant reported history of physical and verbal abuse during childhood, and two instance of sexual assault during college, there is no evidence the incidents resulted in BH diagnoses and the applicant's initial Report of Medical Examination appeared void of indication of BH conditions, prior to enlisting. Given the applicant was assigned P3 profile for a psychiatrically unfitting diagnosis (suicidality), and in absence of evidence of a preexisting condition, it is the belief of this advisor that the applicant should have been referred to a MEB for disposition prior to being terminated for service. Therefore, it is the recommendation of this advisor that the Board considers referral to IDES for further review.

g. After reviewing the available evidence, it is the opinion of this medical advisor that the applicant had a condition or experience during her time in service that warrants a referral to IDES for further consideration.

Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes. The applicant is 70 percent SC for PTSD.

(2) Did the condition exist or experience occur during military service? Yes.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. A review of the records shows the applicant was briefly psychiatrically hospitalized on 31 December 2020 secondary to Suicidal Ideation. Additionally, a LOD dated 15 September 2021 shows the applicant was the victim of a sexually assault that: the form suggests at least one of the incidents occurred on 5 November 2020, at Fort Jackson. Further, a Report of Medical Examination, appears to show the applicant was medically qualified for enlistment on 1 September 2020 but not medically qualified on 13 July 2021 due to suicidal ideation. Finally, memorandum from the MOARNG, dated 22 March 2022, shows the applicant was released from Active Duty after being involved in a SHARP incident that prevented her from completing BCT and after undergoing extensive medical care, it was determined that she was permanently disqualified under provisions of Chapter 6 of AR 135-178. Post service records shows the applicant 70 percent SC for PTSD secondary to MST and additional diagnoses of MDD, GAD, Anxiety Unspecified, and Depression Unspecified. Although the MOARNG memorandum reference MEPS finding of a pre-existing medical condition that failed procurement standards, records are void of evidence the applicant was diagnosed or treated for a BH condition prior to the MST that occurred during BCT and ultimately resulted in a S# profile. Additionally, the applicant denied a history of BH diagnosis or treatment history prior to the MST. Also, although the applicant reported history of physical and verbal abuse during childhood, and two instance of sexual assault during college, there is no evidence the incidents resulted in BH diagnoses and the applicant's initial Report of Medical Examination appeared void of indication of BH conditions, prior to enlisting. Given the applicant was assigned P3 profile for a psychiatrically unfitting diagnosis (suicidality), and in absence of evidence of a preexisting condition, it is the belief of this advisor that the applicant should have been referred to a MEB for disposition prior to being terminated for service. Therefore, it is the recommendation of this advisor that the Board considers referral to IDES for further review.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was 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, available military records, and the medical review, the Board concurred with the advising official finding that given she was assigned a P3 profile for a psychiatrically unfitting diagnosis (suicidality) and in absence of evidence of a preexisting condition, it is the belief of the advisor that the applicant should have been referred to a medical evaluation board for disposition prior to being terminated for service. Based on this, the Board granted partial relief of referral of her case to the Disability Evaluation System.

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 hearing 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:

1. The Board determined that the evidence presented was sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by directing the applicant be entered into the DES and a MEB convened to determine whether the applicant's condition(s) met medical retention standards at the time of service separation.

a. In the event that a formal physical evaluation board (PEB) becomes necessary, the individual concerned may be issued invitational travel orders to prepare for and participate in consideration of his case by a formal PEB if requested by or agreed to by the PEB president. All required reviews and approvals will be made subsequent to completion of the formal PEB.

b. Should a determination be made that the applicant should have been separated under the DES, these proceedings will serve as the authority to void his administrative separation and to issue him the appropriate separation retroactive to his original separation date, with entitlement to all back pay and allowances and/or retired pay, less any entitlements already received.

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to a medical retirement.

[REDACTED]

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. Army Regulation 135-178 (Army National Guard and Reserve Enlisted Administrative Separations) prescribed policies, standards, and procedures for the orderly administrative separation of Army National Guard of the United States (ARNGUS) and U.S. Army Reserve (USAR) enlisted Soldiers.

a. Paragraph 6-6 (Not medically qualified under procurement medical fitness standards) states discharge will be accomplished on determination that a Soldier was not medically qualified under procurement medical fitness standards when accepted for enlistment, or who became medically disqualified under these standards prior to entry on initial active duty for training (IADT). A Soldier found to be not medically qualified under procurement medical fitness standards will be discharged on the earliest practicable date following such determination and prior to entry on IADT. A basis for discharge exists when a medical finding of the staff surgeon that the Soldier has a medical condition that would have permanently disqualified them from entry in the Army had it been detected or had it existed at the time of enlistment; and does not disqualify them from retention This paragraph is not to be used in personality disorder cases. Such cases will be processed under paragraph 6-7.

b. Paragraph 6–7 (Other designated physical or mental conditions) provides, the separation authority may approve discharge under this paragraph on the basis of other physical or mental conditions not amounting to disability that interfere with assignment to or performance of military duty. Such conditions may include, but are not limited to—

- airsickness, motion, and/or travel sickness.
- Phobic fear of air, sea, and submarine modes of transportation.
- Attention-deficit/hyperactivity disorder.
- Sleepwalking.
- Enuresis.
- Adjustment disorder (except chronic adjustment disorder)
- Personality disorder

(1) Soldiers recommended for separation under this paragraph based upon a diagnosis of adjustment disorder must meet the following criteria: Soldier experiences one or more incident(s) of acute adjustment disorder and does not respond to treatment (or refuses treatment) when one or more treatment modalities have been offered and/or attempted. Even after the attempted treatment, the condition must continue to interfere with assignment to or performance of duty. The duration of adjustment disorder episode must be less than 6 months when separation procedures are initiated. The provider must clearly document in the medical record how the condition interferes with assignment to or performance of duty. When an adjustment disorder has persisted for

longer than 6 months and continues to interfere with assignment to or performance of duty, the Soldier must be referred to Integrated Disability Evaluation System (IDES).

(2) A Soldier may be separated under this paragraph for personality disorder (not amounting to a physical disability) that interferes with assignment to or performance of duty. A personality disorder is an enduring pattern of inner experience and behavior that deviates markedly from cultural expectations, is stable and of long duration, inflexible and pervasive across a broad range of situations, and leads to clinically significant distress or impairment in functioning. The onset of personality disorder is frequently manifested in the early adult years and may reflect an inability to adapt to the military environment as opposed to an inability to perform the requirements of specific jobs or tasks or both. As such, observed behavior of specific deficiencies should be documented in appropriate counseling or personnel records, and should establish that the behavior is persistent, interferes with assignment to or performance of duty, and has continued after the Soldier was counseled and afforded an opportunity to overcome the mental condition.

c. When a commander is concerned that a Soldier may have a physical or mental condition that interferes with assignment to or performance of duty, the commander will refer the Soldier for a medical examination and/or mental status evaluation in accordance with DoDI 1332.14 and DoDI 6490.04. Mental status evaluations are only required for separation on the basis of mental disorders (not physical conditions), including personality disorders, not amounting to a disability.

(1) The evaluation will assess whether PTSD, TBI, depression, reaction to sexual assault, or other medical issues/behavioral health conditions may be contributing factors to the basis for administrative separation.

(2) The behavioral health provider will document in the electronic medical record the specific diagnostic criteria for the condition used as the basis for the Soldier's separation action in accordance with the most current edition of the Diagnostic and Statistical Manual of Mental Disorders. A statement indicating that the Soldier's disorder is of sufficient severity to interfere with the Soldier's ability to function in the military must be included. A privileged mental health provider must establish the diagnosis as defined in DoDI 6490.04. The installation director of psychological health, or their designee, will corroborate the diagnosis and sign DA Form 3822 (Report of Mental Status Evaluation).

d In accordance with paragraph 1-10, Soldiers will not be processed for administrative separation under this paragraph if PTSD, TBI, depression, reaction to sexual assault, and/or other medical issues/behavioral health conditions are significant contributing factors to the basis for separation but will instead be processed under the IDES in accordance with AR 635-40.

e In accordance with paragraph 1-11, Soldiers determined to have a medical condition that may not meet medical fitness standards for retention under AR 40 – 501 will be processed under IDES. Processing under IDES takes precedence over administrative separation.

2. Army Regulation 15-185 (ABCMR) provides Department of the Army policy, criteria, and administrative instructions regarding an applicant's request for the correction of a military record. Paragraph 2-11 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.

3. Section 1556 of Title 10, U.S. Code, 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 ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//