

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 April 20204

DOCKET NUMBER: AR20230009706

APPLICANT REQUESTS:

- in effect, correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty), to show:
 - her service was characterized as under honorable conditions (general)
 - her narrative reason for separation changed from entry level performance and conduct to medical discharge

- a personal appearance before the Board.

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

DD Form 149 (Application for Correction of Military Record)

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 she was told she would get a medical discharge under honorable conditions (general) due to her recruiter telling her to hide her pre-existing medical condition. She followed the recruiter's instructions and did the best she could with her medical condition, which caused her to develop severe depression. The applicant notes other mental health as a condition related to her request.

3. Prior to her enlistment, the applicant underwent a medical examination on 26 May 2000. The relevant Standard Form 88 (Report of Medical Examination) shows her clinical examination was unremarkable, and the examining provider determined she was medically qualified for enlistment.

4. The applicant enlisted in the Regular Army on 20 November 2000 for a 4-year period. She subsequently reported to initial entry training at Fort Jackson, SC.
5. A Personnel Data Form, completed at the beginning of the applicant's first phase of training, shows she reported esophageal shrinking, suicidal thoughts, and problems at home as issues that should be brought to the command's attention.
6. On 30 January 2001, the applicant was referred for a mental health evaluation. The commander noted, the applicant seemed depressed about her health condition and problems at home. She made suicidal threats to her peers and cadre members. She kept to herself and had trouble coping in stressful situations.
7. On that same date, the applicant underwent a mental status evaluation. The examining provider noted a diagnosis of adjustment disorder with depressed mood, and further stated treatment was not deemed necessary. The provider recommended increased supervision for her and that she be processed for expeditious administrative separation. The [applicant's] problems were not likely to respond to command efforts at rehabilitation.
8. Subsequently, the applicant was counseled by her Drill Sergeant and Commander on the mental health provider's recommendation that she be separated from service. The commander noted the [applicant] was not motivated to continue training. In an attached questionnaire, the applicant stated she felt she was incapable of performing her duty due to medical, family, and emotional problems. It was too stressful for her to be away from her family.
9. The applicant's immediate commander notified the applicant on 5 February 2001 of her intent to initiate action to separate her from service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 11, for entry level status performance and conduct. As the specific reason, the commander cited the applicant's diagnosis of adjustment disorder. The applicant acknowledged receipt of the proposed separation notification.
10. On that same date, the applicant was advised of the basis for the contemplated action, its effects, the rights available to her, and the effects of waiving her rights. She waived the opportunity to consult with counsel and elected not to submit a statement in her own behalf. She acknowledged understanding that, if discharged, she would receive an entry level separation with an uncharacterized discharge.
11. The applicant's immediate commander formally recommended the applicant's separation under the provisions of AR 635-200, Chapter 11.
12. On 5 February 2011, the separation authority approved the recommended separation action and directed the issuance of an uncharacterized discharge.

13. The applicant was discharged on 9 February 2001, under the provisions of AR 635-200, Chapter 11, by reason of entry level performance and conduct. Her DD Form 214 confirms her service was uncharacterized, with separation code JGA and reentry code 3. She was credited with 2 months and 20 days of net active service. She did not complete her first term of service and was not awarded a military occupational specialty.

14. 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 processing.

15. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

16. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a change to her DD214 to show her service was characterized as under honorable conditions (general), and her narrative reason for separation changed from "entry level performance and conduct" to "medical discharge." She contends she was experiencing mental health conditions that mitigates her 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 20 November 2000; 2) The applicant was discharged on 9 February 2001, Chapter 11, by reason of entry level performance and conduct. Her DD Form 214 confirms her service was uncharacterized, with separation code JGA and reentry code 3. She was credited with 2 months and 20 days of net active service.

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical records were provided.

d. The applicant asserts she was experiencing mental health conditions while on active service, which mitigates her discharge and warrants a medical discharge. There was evidence the applicant was experiencing difficulty adjusting to her military training. She reported depressive and suicidal thoughts to her fellow trainees and cadre. On 30 January 2001, the applicant was referred for a mental health evaluation. The commander noted, the applicant seemed depressed about her health condition and problems at home. The results of the mental status exam found the applicant met criteria for an Adjustment Disorder with depressed mood. She was found to not likely respond to command efforts at rehabilitation and was recommended for administrative separation. A review of JLV provided insufficient evidence the applicant has been

diagnosed or treated for a service-connected mental health condition by the VA. The applicant receives no service-connected disability.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence to support the applicant had condition or experience that mitigates her separation. In addition, there is insufficient evidence the applicant warrants a referral to DES from a behavioral health perspective at this time.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends she was experiencing mental health conditions while on active service. There was sufficient evidence she was having difficulty adjusting to military training, and she was diagnosed with an Adjustment Disorder and administratively discharged.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends she was experiencing mental health conditions while on active service. There was sufficient evidence she was having difficulty adjusting to military training, and she was diagnosed with an Adjustment Disorder and administratively discharged.

(3) Does the condition or experience actually excuse or mitigate the discharge? No, there is sufficient evidence the applicant was experiencing difficulty adjusting to her military training. She was identified as having difficulty by her command, evaluated by a military provider, and recommended for an administrative separation. She was never found to not meet retention standards, never placed on a permanent psychiatric profile, require inpatient psychiatric treatment, or attend consistent six months of treatment. Therefore, there is insufficient evidence the applicant warrants a referral to DES from a behavioral health perspective at this time.

BOARD DISCUSSION:

1. The Board determined 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.

2. 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 separated by reason of entry level performance and conduct. She did not complete initial entry training and was not awarded a military occupational specialty. She completed 2 months and 20 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 found no error or injustice in her separation processing. The Board also reviewed and agreed with the medical reviewer’s finding that there is insufficient evidence to support the applicant had condition or experience that mitigates her separation. In addition, there is insufficient evidence the applicant warrants a referral to disability evaluation system from a behavioral health perspective at this time. The Board found relief is not warranted.

BOARD VOTE:

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

■

■

■

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 1556, 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) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR has the discretion to hold a hearing; applicants do not have a right to appear personally before the Board. The Director or the ABCMR may grant formal hearings whenever justice requires.
4. AR 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.
5. AR 635-200 sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.
 - 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 3-7b states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. Paragraph 3-9 provides 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.

e. Chapter 11 provides for the separation of personnel because of unsatisfactory performance or conduct (or both) while in an entry-level status. When separation of a Soldier in an entry-level status is warranted by unsatisfactory performance or minor disciplinary infractions (or both) as evidenced by inability, lack of reasonable effort, or failure to adapt to the military environment, he or she will normally be separated per this chapter. Service will be uncharacterized for entry-level separation under the provisions of this chapter.

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; 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.

7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and Service 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, BCM/NRs 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//