

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 January 2025

DOCKET NUMBER: AR20230010537

APPLICANT REQUESTS: in effect, an upgrade to her character of service from uncharacterized to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Disability Rating
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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 would like an upgrade from a general to an honorable discharge since she has been awarded 100 percent (%) service connected disability rating from the VA due to injuries sustained from her time in service. She sustained injuries while in basic training.
3. The applicant provides her DD Form 214 and her VA rating which reflects she is rated with a 90% service-connected disability, however, she receives 100% compensation for unemployability due to a total and permanently disability, effective 19 December 2021.
4. The applicant's service record shows the following information:
 - a. On 30 January 2007, she enlisted into the Regular Army.
 - b. On 4 March 2007, she received a counseling statement for having missed training during red phase of basic training. She concurred with the counseling and signed the form.

c. On 29 March 2007, she received a Report of Mental Status Evaluation. During her evaluation, it was noted:

- Behavior: passive, aggressive and suspicious
- Level of Alertness: fully alert
- Level of Orientation: fully orientated
- Mood or Effect: anxious, depressed, manic or hypomaniac
- Thinking Process: confused
- Thought Process: abnormal, paranoid ideation
- Memory: fair

d. On 10 April 2007, she received a counseling statement to recommend her for an administrative separation, under Chapter 5-13 of Army Regulation 635-200. It was noted that after consulting with the General Leonard Wood Community Mental Health, and the Battalion Chaplain, and based on the recommendations of her drill sergeants and the commander's observation of her performance over the last three weeks, he is recommending expedient transfer to the rehabilitation holding unit, pending administrative separation. This recommendation was based on the medical community's diagnosis for her mental disorders, bipolar, anxiety disorder, and personality disorder. The applicant agrees with the information and recommendation and signed the form on 11 April 2007.

e. On 11 April 2007, in a memorandum for the commander, the applicant was formally counseled concerning her deficiencies. She acknowledged that she will not overcome her deficiencies and waived her opportunity to do so.

f. On 7 May 2007, the command initiated separation processing against the applicant under the provisions of Army Regulation 635-200, Chapter 5-13 for personality disorder. The command recommended that she receive an entry level separation. On the same date, the applicant acknowledged her rights to consult with appointed counsel, however, she declined the opportunity and waived her rights in writing.

g. On 10 May 2007, the separation authority approved the commander's separation recommendation and directed the applicant to be discharged and be issued an entry level separation (uncharacterized).

h. On 14 May 2007, the applicant was discharged accordingly. Her DD Form 214 shows she did not receive any awards. She completed 3 months and 15 days of active service this period. This document also reflects in:

- Item 23 (Type of Separation) - "Discharge"
- Item 24 (Character of Service) - "Uncharacterized"

- Item 25 (Separation Authority) – “AR 635-200, Para 5-17”
- Item 26 (Separation Code) – “JFV”
- Item 27 (Reentry Code) – “3”
- Item 28 (Narrative Reason for Separation) – “Condition, Not a Disability”

5. The applicant applied to the Army Discharge Review Board (ADRB) in Docket Number AR20190001879. On 13 May 2020, the Board reviewed the applicant's case and all supporting documentation. It appears that in the post-Board proceedings, the Board voted to deny the applicant's request. However, ADRB sent the applicant a letter, which reflects the Board approved her request and granted her an upgrade of her characterization from uncharacterized to a general discharge.

6. The applicant's record is void of any DD Form 214 or DD Form 215 (Correction to DD Form 214) which shows a change in her character of service as a result of the ADRB's decision.

MEDICAL REVIEW:

1. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The applicant requests discharge upgrade to Honorable and medical discharge processing for service-connected disabilities. She contends that she was discharged due to injuries sustained in service and has been service connected by the VA at 100% in 2022. Her case was previously reviewed by ADRB convened 13 May 2020.

2. The ABCMR ROP summarized the applicant's available record and circumstances surrounding her discharge including the ADRB proceedings. The applicant entered service 30Jan2007 and was discharged approximately 3.5 months later on 14May2007. She was discharged under provisions of AR 635-200 para 5-17 for a condition, not a disability. Her service was designated as Uncharacterized. Of note, on 10May2007 communication to the applicant indicated that she was approved separation under para 5-13 for Personality Disorder. She had been evaluated by behavioral health on 29Mar2007 and diagnosed with Bipolar Disorder, Anxiety Disorder and Personality Disorder, NOS (not otherwise specified). She was advised that her prescribed mood stabilizer made her undeployable. Her condition existed prior to service, was not amenable to rehabilitation and did not amount to a disability.

3. Summary of behavioral health conditions

a. 22Feb2007 and 14Mar2007 Community Mental Health Leonard Wood ACH. The applicant reported that her prior psychiatric history included Bipolar Disorder diagnosis and use of Lithium and Seroquel for 3 years, Depakote and Risperdal x 2 months, Xanax for 3 years, Adderall x 2.5 years, Clozapine x 2.5 years, Geodon x 4 months, and Ambien for 1 week. She also reported a prior suicide attempt in November 2005 (hospitalized) by taking half a bottle of pills. She endorsed that it was not an attempt but an effort to show stalker ex-boyfriend he had caused her to try to kill herself. She also had a history of self-mutilation (cutting) on arms and abdomen and showed the old scars present on both arms. She shared a history of physical abuse by her mother's boyfriend ages 5-11 years and repeated childhood sexual abuse by him, a cousin, grandfather, and a babysitter's son. She reported a history of fighting in younger years although she was never expelled. She reported a significant polysubstance abuse history (alcohol, cocaine, meth, pot and Ex and experimentation with acid, mushrooms, and heroine) starting at age 13. And finally, she reported a sporadic work history: Hotel front desk for 2 months, a shift manager for dairy queen for 5 months, and at O' Charley's for 1 month. Currently, her mood was happy, and affect was full range. She reported auditory hallucinations and peripheral visual shadow hallucinations. Diagnoses: Cocaine and Alcohol Dependence; Polysubstance Abuse; Bipolar Disorder, Mixed Type; Rule Out Psychotic Features; Anxiety Disorder NOS; Rule Out Bipolar Disorder; and Personality Disorder, NOS. She was placed back on Lithium and Seroquel.

b. 29Mar2007 Report of Mental Status Evaluation: Several abnormalities were noted during the exam: Passive, aggressive and suspicious behavior; anxious, depressed, and manic or hypomanic mood/affect; confused thinking; thought content containing abnormal and paranoid ideation; and fair memory. She was diagnosed with Bipolar Disorder, Anxiety Disorder and Personality Disorder. Currently, her disorder was manifesting as disturbance of thought patterns, emotional control, and behavior sufficiently severe to impair performance of duty. She could understand and had the mental capacity to participate in Board proceedings; and she was mentally responsible. She did not meet criteria for separation under medical channels under AR 40-501. She was psychiatrically cleared for any administrative action deemed by command. She was recommended expeditious discharge and restriction from training and weapons. She was psychiatrically admitted 23Apr2007 until 26Apr2007 due to increased symptomology and suicide ideation. Her lithium level was at the very low end of therapeutic and therefore her dosing of that medication was increased. Upon discharge from the hospital, it was recommended for medications to be controlled by command. She was also restricted from training and weapons access. The plan was for administrative separation in accordance with AR 635-200, chapter 5-17.

c. 07May2007 Community Health Leonard Wood ACH. The applicant was seen in follow up after an emergency room visit for cutting. She denied suicide intent. She endorsed her use of cutting as a coping mechanism when something is on her mind.

Currently, she was worried about husband going to Iraq and she may not be home in time to see him off. Diagnosis: Adjustment Disorder with Depressed Mood. She was pending chapter 5-17 discharge.

d. 17Nov2008 Psychiatry [REDACTED] ACH. This visit was approximately 18 months after discharge from service. She was seen as military spouse. Her Bipolar symptoms were currently stable, by her report except for the active issue of insomnia. She was prescribed Lunesta for the insomnia which had helped before, and she was advised to continue with Abilify and Seroquel at current dosages. Diagnosis: Bipolar Disorder, by history only.

4. Summary of pertinent medical records for physical conditions

a. 28Feb2007 CTMC-Fort Wood. The applicant was seen in follow up after an emergency room visit for left hip pain after falling approximately 3-4 feet on obstacle course landing on the hip the week prior. X-ray evaluation was reportedly negative.

b. 14May2007 bone scan revealed left sacrum stress fracture. The applicant was treated by physical therapy and profiling from 26Feb2007 to 05 Mar2007 and from 26Mar2007 to 16Apr2007. By 02Apr2007, the left hip series was normal.

c. Approximately 16 months after discharge, in 2008 (05Sep2008 Family Practice [REDACTED] ACH). The applicant was seen (as a military spouse) for an intake visit for back and left hip pain. She reported having past history of degenerative disc disease (age 21) prior to active duty status. She had a civilian MRI (Florida, 2003) which reportedly mentioned herniated disk to L4-5 region. She also mentioned that she had been advised she may need a lumbar fusion. The note indicated there was right pelvic girdle pain and tenderness with ambulation. Otherwise, documentation concerning hip complaints was scant in that note. Moreover, review of records post military showed treatment for persistent chronic pain for the back condition. It should be noted that records did not show treatment for the preexisting back condition while in service.

d. 22Oct2008 MRI Leesville Diagnostic Center of sacrum and coccyx was normal.

e. 03Dec2008 Family Practice [REDACTED] ACH. She was seen for chief complaint of chronic back pain. She reported that her occupation was dancer and did have limitations.

5. Summary/Opinion

a. Of pertinence, the applicant was service connected by the VA for Mood Disorder at 50%; Limited Flexion of Thigh 20%; Thigh Condition 10% and Limited Extension of Thigh 0%. It should be noted that ratings for the hip are under the thigh joint. At the

time of discharge, a separation exam was completed 04Apr2007. The physical therapy and behavioral health notes were referenced, and the applicant was released without limitations. The left hip stress fracture had healed. Behavioral health had established that the applicant's behavioral health condition did not currently fail retention standards of AR 40-501. The applicant was discharged on the basis of the Personality Disorder which existed prior to service and was significantly impacting performance. In addition, the applicant reported a prior significant history of Bipolar Disorder diagnosis and treatment including psychiatric hospitalization not disclosed during entrance medical processing (03Nov2006 Report of Medical History, DD Form 2807-1). There was insufficient evidence to support that her behavioral health condition was permanently worsened by military service beyond natural progression. Based on available records, chapter separation was appropriate and referral into the DES is not recommended.

b. Concerning the applicant's request for discharge upgrade from uncharacterized, Liberal Consideration guidance policy was considered. However, there were no UCMJ actions or misconduct that that served as the basis for or contributed to her separation from service. On 31Mar2007, command indicated the applicant's overall performance was deemed 'below average'. The Board may consider discharge upgrade to Honorable based on symptoms of psychosis and disordered thinking that she was manifesting while in service that likely impacted the level of her participation/performance.

BOARD DISCUSSION:

1. After reviewing the application and all supporting documents, 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 review based on law, policy and regulation. The governing regulation provides that a separation will be described as an entry-level separation, with service uncharacterized, if the separation action is initiated while a Soldier is in entry-level status. The applicant did not complete training and was released from active duty due to condition, not a disability. The Board determined her DD Form 214 properly shows the appropriate characterization of service as uncharacterized.

2. An uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It merely means the Soldier has not been in the Army long enough for his or her character of service to be rated as honorable or otherwise. As a result, there is no basis for granting the applicant's request.

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.

X//Signed//

CHAIRPERSON

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. Title 10, USC, section 1556 (Ex Parte Communications Prohibited) 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 applicant's (and/or their counsel) prior to adjudication.

3. Army Regulation 635-200 (Personnel Separations-Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.

a. 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.

b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to Soldiers whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 5-17 (Other designated physical or mental conditions) states Commanders specified in paragraph 1-19 may approve separation under this paragraph on the basis of other physical or mental conditions not amounting to disability (AR 635-40) and excluding conditions appropriate for separation processing under paragraph 5-11 or 5-13 that potentially interfere with assignment to or performance of duty.

(1) When a commander determines that a Soldier has a physical or mental condition that potentially 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 AR 40–501. Command-directed mental status evaluations will comply with paragraph 1–32e. A recommendation for separation must be supported by documentation confirming the existence of the physical or mental condition.

(2) Separation processing may not be initiated under this paragraph until the Soldier has been counseled formally concerning deficiencies and has been afforded ample opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records.

f. Chapter 6-11 (Characterization or description of service) states:

(1) If the Soldier is still in entry-level status, service will be described as uncharacterized.

(2) If the Soldier is beyond entry-level status, service will be characterized as honorable or under honorable conditions as set forth in chapter 3, section II.

(3) Before service is characterized as under honorable conditions, the Soldier will be notified of the specific factors in the service record that warrant such characterization. The notification procedure (see chap 2, sec I) will be used.

4. 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.

5. 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.

6. Army Regulation 635-8 (Personnel Separations-Separation Documents) prescribed the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It established the standardized policy for the preparation of the DD Form 214. The DD Form 214 is a synopsis of the Soldier's most recent period of continuous active service. The information entered thereon reflects the conditions as they existed at the time of separation.

7. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities and reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214 (Certificate of Release or Discharge from Active Duty). The Separation Program Designator (SPD) "JFV" (is to be used for RA Soldiers discharged for a condition, not a disability).

8. The SPD/RE Code Cross Reference Table provides instructions for determining the RE Code for Active Army Soldiers and Reserve Component Soldiers. This cross-reference table shows the SPD code and a corresponding RE Code. The table in effect at the time of his discharge shows the SPD "JFV" has a corresponding RE Code of "3."

9. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes:

- RE-1 Applies to persons immediately eligible for reenlistment at time of separation
- RE-2 Applies to persons not eligible for immediate reenlistment
- RE-3 Applies to persons who may be eligible with waiver-check reason for separation
- RE-4 Applies to persons who are definitely not eligible for reenlistment

10. Army Regulation 635-40, in effect at the time, 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. Once a determination of physical unfitness is made, all disabilities are rated using the Department of Veterans Affairs Schedule for Rating Disabilities (VASRD).

- a. Chapter 3-2 states 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. Chapter 3-4 states 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.

c. The percentage assigned to a medical defect or condition is the disability rating. The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting, or ratable condition, is one, which renders the Soldier unable to perform the duties of their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. 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.

11. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations, and mitigating factors, when taking action on applications from former service members administratively discharged under other than honorable conditions, and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

12. On 25 August 2017, the Office of the Under Secretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole, or in part, to: mental health conditions, including PTSD; TBI;

sexual assault; and sexual harassment. Boards were directed to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria, and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for that misconduct which led to the discharge.

13. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and Service BCM/NRs on 25 July 2018 [Wilkie Memorandum], 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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, 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//