

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 June 2024

DOCKET NUMBER: AR20230010582

APPLICANT REQUESTS:

- correction of her records to show she was discharged due to a service-connected medical disability
- correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty) to show the character of her service as honorable instead of uncharacterized

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

- DD Form 149 (Application for Correction of Military Record)
- medical record (1 page)
- Department of Veterans Affairs (VA) summary of benefits letter

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 was recommended for separation by a medical professional due to service-connected disabilities.
3. The applicant enlisted in the Army National Guard (ARNG) on 1 June 2015. She entered initial active duty for training (IADT) on 26 October 2015.
4. On an unspecified date, the applicant was notified by her commander that he was initiating action to separate her from the Army under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), chapter 11, for entry level performance and conduct. The commander stated the reason for the proposed separation action was the applicant's inability to adapt to the military environment. The applicant was also advised of her rights to consult with legal counsel and to submit statements in her own behalf.

5. On 1 February 2016, the applicant acknowledged receipt of notification of the proposed separation action. She elected not to consult with legal counsel and did not submit statements in her own behalf.
6. The separation authority approved the applicant's separation under the provisions of Army Regulation 635-200, chapter 11, and directed she received a character of service of "uncharacterized."
7. Orders issued on 8 February 2016 directed the applicant's release from IADT, discharge from the Reserve of the Army, and her return to her ARNG unit effective 9 February 2016.
8. The applicant's DD Form 214 shows she was released from active duty and transferred to her State's ARNG on 9 February 2016 under the provisions of Army Regulation 635-200, chapter 11, by reason of entry level performance and conduct with a character of service of "uncharacterized." The DD Form 214 further shows she was credited with 3 months and 14 days of active service, and she was assigned a separation code of JGA and a reentry eligibility code of 3.
9. The applicant's National Guard Bureau Form 22 (National Guard Report of Separation and Record of Service) shows she was discharged from the ARNG on 10 February 2016 by reason of discharge of Soldiers who were previously discharged from Reserve of the Army by the active component of the U.S. Army.
10. The applicant provided:
 - a. A medical record showing she was examined on 8 January 2016 for a chief complaint of bilateral hip and knee pain. The examining physician indicated the applicant showed signs and symptoms most consistent with trochanteric bursitis R>L hip and bilateral groin strain. The physician recommended her separation and indicated she was clear to separate.
 - b. A VA summary of benefits letter showing she is receiving service-connected disability compensation for unspecified conditions with an 80% disability rating.
11. The Army rates only conditions determined to be physically unfitting at the time of discharge, which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career. The VA does not have authority or responsibility for determining physical fitness for military service. The VA may compensate the individual for loss of civilian employability.

12. 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. The applicant is applying to the ABCMR requesting an upgrade of her 9 February 2016 uncharacterized discharge and, in essence, a referral to the Disability Evaluation System. She states:

“Separation reason should be medical. Character of service should be honorable. I was recommended for separation due to service-connected disabilities by medical professional.”

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 for the period of Service under consideration shows the former Army National Guard Soldier entered the Regular Army for basic combat training on 26 October 2015 and received an uncharacterized discharge on 9 February 2016 under provisions provided in chapter 11 of AR 635-200, Personnel Separations – Enlisted Personnel (17 December 2009), for falling below entry level performance and conduct standards.

d. The EMR shows she was first seen for hip pain on 7 November 2015. A 13 November 2015 MRI of her pelvis was negative. She was evaluated and treated for bilateral hip and knee pain over the next two months. Though she was treated conservatively with rest, non-steroidal anti-inflammatory medications, and physical therapy, her symptoms failed to resolve to a point where she could return to full training. From her 8 January 2016 follow-up physical therapy encounter:

“MOI [mechanism of injury]: SM [service member] reports she noticed pain while running. SM reports she was doing high knees when noticed pain in the hips.

ASSESSMENT: Patient with signs and symptoms most consistent with trochanteric bursitis Right >Left hip and bilateral groin strain. SM returns after HBL [holiday block leave] with increased pain despite recent rest. SM is independent with HEP [home exercise program] and is not progressing with conservative care. Recommend separation at this time. SM is clear to Chapter.

PROGNOSIS: Guarded for RTD [Return to Duty]

e. There are no behavioral health encounters.

f. In an undated memorandum, her company commander notified her of his initiation of action to separate her under paragraph 11-3 of AR 635-200: "The reasons for my proposed action are: You failed to adapt to the military environment."

g. A better separation authority may have been paragraph 5-11 of AR 635-200. Paragraph 5-11a:

““a. Soldiers who were not medically qualified under procurement medical fitness standards when accepted for enlistment or who became medically disqualified under these standards prior to entry on AD [active duty] or ADT [active duty for training] for initial entry training, may be separated. Such conditions must be discovered during the first 6 months of AD. Such findings will result in an entrance physical standards board [EPSBD]. This board, which must be convened within the soldier’s first 6 months of AD, takes the place of the notification procedure (para 2–2) required for separation under this chapter.”

h. However, both separation authorities yield an uncharacterized discharge. 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. For the reserve components, it also includes discharges prior to completing initial entry training (IET). There are two phases - Basic Combat Training (BCT) and Advanced Individual Training (AIT). Because the applicant did not complete BCT, she was in an entry level status at the time of his discharge and so received an uncharacterized discharge. This type of discharge does not attempt to characterize service as good or bad. Through no fault of her own, she simply developed a medical condition which was, unfortunately, not within enlistment standards.

i. Her bursitis would not have constituted a permanent disability IAW AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (19 January 2017), and so not required entrance into the DES. Given the nature and onset of the and the treatment thereof in a healthy individual, it would be expected to continue to heal once removed from the rigors of military training. It would be highly unlikely to have gone on to fail the medical retention standards of chapter 3, AR 40-501 prior to her discharge. Thus, there was no cause for referral to the Disability Evaluation System.

j. JLV shows she has been awarded multiple VA service-connected disability ratings related to her lower extremities. However, the DES only compensates an individual for service incurred medical condition(s) which have been determined to disqualify him or her from further military service and consequently prematurely ends their career. 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. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

k. It is the opinion of the ARBA medical advisor that neither a discharge upgrade nor a referral of her case to the DES is 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. 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. Upon review of the applicant's petition, available military records and medical review, the Board determined Soldiers in the USAR and ARNG are authorized and honorable discharge while in entry-level status only if they complete their active-duty schooling and earn their MOS. Evidence in the record show the applicant did not complete training.
2. The Board concurred with the advising official finding that neither a discharge upgrade nor a referral of her case to the DES is warranted. The Board noted the applicant completed 3 months and 14 days of active service and was released from active duty by reason of entry level performance and conduct. 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 for upgrade of her uncharacterized character of service or referral of her case to the DES. Therefore, the Board denied relief.
3. Referral to the IDES occurs when a Soldier has one or more conditions which appear to fail medical retention standards as documented on a duty limiting permanent physical profile. The DES compensates 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.

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.



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 635-200 sets forth the basic authority for the separation of enlisted personnel. The regulation in effect at the time states in:

a. Paragraph 3-9 (Uncharacterized separations), a separation would be described as entry level with uncharacterized service if processing were initiated while a Soldier was in an entry-level status, except when:

(1) Characterization under other than honorable conditions is authorized under the reason for separation and is warranted by the circumstances of the case.;

(2) Headquarters, Department of the Army, on a case by case basis, determined a characterization of service as honorable is clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty. This characterization is authorized when the Soldier is separated by reason of selected changes in service obligation, for convenience of the government, and under Secretarial plenary authority; or

(3) The Soldier has less than 181 days of continuous active military service, has completed initial entry training, has been awarded a military occupational specialty, and has reported for duty at a follow-on unit of assignment.

b. Chapter 11 provides for the separation of personnel due to unsatisfactory performance or conduct, or both, while in an entry-level status. This provision applied to individuals who had demonstrated they were not qualified for retention because they:

- could not adapt socially or emotionally to military life
- lacked the aptitude, ability, motivation, or self-discipline for military service
- demonstrated characteristics not compatible with satisfactory continued service

The separation policy applied to Soldiers who could not meet the minimum standards prescribed for successful completion of training because of lack of aptitude, ability, motivation, or self-discipline. Separation under this chapter applied to Soldiers who were in an entry-level status (i.e., had completed no more than 180 days of continuous active duty before the date of the initiation of separation action).

c. Section II (Terms), for Regular Army members, entry level status is defined as the first 180 of continuous active duty.

3. Title 10, U.S. 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 Disability Evaluation System (DES) 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 (Disability Evaluation for Retention, Retirement, or Separation). 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.

4. Army Regulation 635-40 establishes the DES. It sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his or her office, grade, rank, or rating. If a Soldier is found unfit because of physical disability, this regulation provides for disposition of the Soldier according to applicable laws and regulations. The regulation in effect at the time states in:

a. Paragraph 3-1, the mere presences of an impairment does not, of itself, justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier reasonably may be expected to perform because of their office, grade, rank, or rating.

b. Paragraph 3-2, 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 they can no longer continue to reasonably perform because of a physical disability incurred or aggravated in service.

c. Paragraph 3-2, when a Soldier is being processed for separation or retirement for reasons other than physical disability, continued performance of assigned duty commensurate with his or her rank or grade until the Soldier is scheduled for separation or retirement, creates a presumption that the Soldier is fit. The presumption of fitness may be overcome if the evidence establishes that:

(1) The Soldier was, in fact, physically unable to perform adequately the duties of his or her office, grade, rank or rating for a period of time because of disability. There must be a causative relationship between the less than adequate duty performance and the unfitting medical condition or conditions.

(2) An acute, grave illness or injury or other significant deterioration of the Soldier's physical condition occurred immediately prior to, or coincident with processing for separation or retirement for reasons other than physical disability and which rendered the Soldier unfit for further duty.

5. Title 38, United States Code, Sections 1110 and 1131, permit the VA to award compensation for disabilities which were incurred in or aggravated by active military service. However, an award of a VA rating does not establish an error or injustice on the part of the Army.

6. Title 38, Code of Federal Regulations, Part IV is the VA Schedule for Rating Disabilities. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge. As a result, the VA, operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform his duties. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

7. 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//