

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 May 2024

DOCKET NUMBER: AR20230011014

APPLICANT REQUESTS: honorable physical disability separation in lieu of uncharacterized administrative discharge due to entry level status performance and conduct.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty) covering the period ending 27 June 1984
- Department of Veterans Affairs (VA) Rating Decision, dated 10 May 2022
- VA letter, dated 7 February 2023

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:

a. She was not made aware of the time limit for requesting records corrections. Her DD Form 214 did not clearly specify this. She was advised to submit a DD Form 149 in order to get an honorable characterization of service for a medical injury she sustained while on active duty.

b. She has submitted documentation specifying details of her injuries in order to correct her records to reflect honorable medical discharge or service-connected disability.

3. The applicant enlisted in the Regular Army on 1 May 1984. Her available service records do not contain a Standard Form 88 (Report of Medical Examination) detailing her physical status at the time of her enlistment.

4. The applicant's records contain multiple DA Forms 4856-R (General Counseling Form), reflecting the following counseling:

a. The applicant was counseled on 6 June 1984, informing her she was being considered for discharge under the Trainee Discharge Program based on her lack of motivation and self-discipline, and not applying herself to successfully complete initial entry training (IET). She has not yet passed a diagnostic Army Physical Fitness Test (APFT) in any of the events and received 6 "Gos" out of 15 on the Phase Testing. She fails to apply herself and her discharge is strongly recommended.

b. She was again counseled on 8 June 1984, on her inability to adjust to the military and the implications of her discharge under the Trainee Discharge Program. She is in the 4th week of training and has still failed to correctly execute 1 pushup. Emotionally, she would not be able to be "new started" as she has lost all motivation and determination to continue with the military. Her discharge under the Trainee Discharge Program is strongly recommended.

c. She was again counseled on 9 June 1984. After four diagnostic APFTs, she has still not been able to execute a correct pushup. She states she cannot handle the stress of physical training and is unable to keep up. She has not met the standards of Phase I skills and physical training and is not motivated or expressed a commitment to succeed in IET.

5. On 12 June 1984, the applicant's immediate commander notified her of his initiation of action to separate her under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) chapter 11, Trainee Discharge Program. The reasons for his proposed action were her poor physical condition, lack of motivation, and lack of commitment. She was advised of her right to consult with counsel, submit statements in her own behalf, and request a separation physical.

6. On 12 June 1984, the applicant acknowledged notification of her proposed separation under the provisions of Army Regulation 635-200, due to entry level status – performance and conduct. She understood if approved, she would receive an entry-level separation with uncharacterized service. She was afforded the opportunity to consult with counsel but did not desire to exercise this right. She also did not submit statements in her own behalf or request a separation physical.

7. On 14 June 1984, the applicant's battalion commander recommended her uncharacterized discharge under the provisions of Army Regulation 635-200, due to substandard performance and recommended approval of the waiver of rehabilitation. He included a statement showing he counseled the applicant on 14 June 1984, and she cannot handle the physical aspect of Basic Combat Training (BCT). She was on profile

for most of the cycle and will not be productive Soldier. He recommended her discharge based on her lack of motivation and poor physical condition.

8. On 20 June 1984, the approval authority directed the applicant's uncharacterized discharge under the provisions of the Trainee Discharge Program in Army Regulation 635-200.

9. Headquarters, U.S. Army Training Center and Fort Jackson Order 122-154, dated 22 June 1984, discharged the applicant effective 27 June 1984, with no disability rating.

10. The applicant's DD Form 214 shows she was given an uncharacterized/entry-level status discharge on 27 June 1984, under the provisions of Army Regulation 635-200, chapter 11, due to entry level status – performance and conduct, with corresponding separation code JGA.

11. The applicant's available service records do not show:

- she was issued a permanent physical profile rating
- she suffered from a medical condition, physical or mental, that affected her ability to perform the duties required by her Military Occupational Specialty (MOS) and/or grade or rendered her unfit for military service
- she was diagnosed with a medical condition that warranted her entry into the Army Physical Disability Evaluation System (PDES)
- she was diagnosed with a condition that failed retention standards and/or was unfitting

12. A VA Rating Decision, dated 10 May 2022, shows the applicant's service-connected disability evaluation of left lower extremity calf strain, gastric, muscle injury, group XI, which was currently 20 percent disabling, was increased to 30 percent effective 22 November 2021.

13. A VA letter, dated 7 February 2023, shows the applicant has a combined service-connected disability evaluation of 30 percent effective 1 December 2022.

14. 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.

15. 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 (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and 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 27 June 1984 uncharacterized discharge, mentioning she had a medical injury while on active duty.

c. The Record of Proceedings outlines the applicant's military service and the circumstances of the case. The applicant's DD 214 shows she entered the Regular Army on 1 May 1984 and was discharged on 27 June 1984 under the provisions in paragraph 11-3a of AR 635-200, Personnel Separations - Enlisted Personnel (1 October 1982) for failure to meet the entry level standards for performance and conduct.

d. No medical documentation was submitted with the application. Because of the period of service under consideration, there are no documents in AHLTA or iPERMS.

e. On 12 June 1984, her company commander informed her of his initiation of action to separate her under provisions in chapter 11, AR 635-200 (Trainee Discharge Program):

"The specific reasons for my proposed action are: Your poor physical condition, lack of motivation, and lack of commitment.

f. The applicant declined a separation physical.

g. Her commander's recommendation was approved brigade commander on 12 June 1984.

h. There is no evidence the applicant had any duty incurred medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge; or which led to her poor performance. Thus, there was no cause for referral to the Disability Evaluation System. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge.

i. JLV shows she has been awarded one VA service-connected disability rating for a left lower leg muscle injury. She has no diagnosed mental health conditions.

j. 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; 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.

k. It is the opinion of the Agency 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 concurred with the advising official finding that neither a discharge upgrade nor a referral of her case to the DES is warranted. The opine noted, there is no evidence the applicant had any duty incurred medical condition which would have failed the medical retention standards.

2. Per regulatory guidance, Soldiers are authorized and honorable discharge while in entry-level status only if they complete their active-duty schooling and earn their MOS. The Board noted, the applicant was counseled on multiple occasions during basic training and was unable to pass her diagnostic Army Physical Fitness Test (APFT) in any of the events and received 6 "Gos" out of 15 on the Phase Testing. The applicant's chain of command found the applicant lacked motivation and self-discipline and did not apply herself to successfully complete initial entry training (IET). Based on the medical opine and evidence in the record, the Board agreed the applicant's DD Form 214 properly shows the appropriate characterization of service as uncharacterized and found not basis for correction of her DD Form 214. As such, relief was denied.

3. An uncharacterized discharge is not derogatory; it is recorded when a Soldier has not completed more than 180 days of creditable continuous active duty prior to initiation of separation. It merely means the Soldier has not served on active duty 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:

<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, 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, U.S. Code, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system (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 (Discharge Review Board (DRB) Procedures and Standards) and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in a Medical Evaluation Board (MEB); when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an Military Occupational Specialty (MOS) Medical Retention Board (MMRB); and/or they are command-referred for a fitness-for-duty medical examination.

b. The disability evaluation assessment process involves two distinct stages: the MEB and Physical Evaluation Board (PEB). The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the severity of the disability and length of military service. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

c. The mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of his or her office, grade, rank, or rating. Reasonable performance of the preponderance of duties will invariably result in a finding of fitness for continued duty. A Soldier is physically unfit when a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

3. Army Regulation 635-40 establishes the Army Disability Evaluation System and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. Only the unfitting conditions or defects and those which

contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

a. Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in military service.

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

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

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

c. The percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Ratings are assigned from the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD). 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.

4. Title 10, U.S. Code, section 1201, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30 percent. Title 10, U.S. Code, section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating of less than 30 percent.

5. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 3 states a separation will be described as entry level with uncharacterized service if the Soldier is in an entry-level status at the time separation action is initiated.

b. 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 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. This policy applies to Soldiers in the Regular Army, Army National Guard (ARNG), and USAR who have completed no more than 180 days of continuous active duty or initial active duty for training (IADT) or no more than 90 days of Phase II under a split or alternate training option.

c. Section II (Terms) of the Glossary defines entry-level status for Regular Army Soldiers as the first 180 days of continuous active duty or the first 180 days of continuous active duty following a break of more than 92 days of active military service. For ARNG and USAR Soldiers, entry-level status begins upon enlistment in the ARNG or USAR. For Soldiers ordered to initial active-duty training (IADT) for one continuous period, it terminates 180 days after beginning training. For Soldiers ordered to IADT for the split or alternate training option, it terminates 90 days after beginning Phase II of Advanced Individual Training.

6. Title 38, U.S. Code, 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.

7. Title 38, U.S. Code, 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.

8. Title 10, U.S. Code, section 1556 requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//