

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 October 2024

DOCKET NUMBER: AR20230011125

APPLICANT REQUESTS: in effect -

- correction of the narrative reason for separation listed on her NGB Form 22 (Report of Separation and Record of Service) to show she was discharged due to a service-connected disability
- a video/telephonic appearance before the Board

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

- DD Form 149, Application for Correction of Military Record
- NGB Form 22, for the period ending 1 October 2005
- Department of Veterans Affairs (VA) Rating Decision, 3 July 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 indicates her request is related to post-traumatic stress disorder (PTSD), and sexual assault/harassment. She states she was raped while serving in the Army National Guard (ARNG) by a Soldier and the narrative reason for her discharge should be due to PTSD. She further states, in order to be eligible for VA benefits the narrative reason for her discharge must be changed.
3. A review of the applicant's service record shows she enlisted in the ARNG on 27 April 2000.
4. Her record is void of a separation packet. However, her NGB Form 22 shows she was discharged from the TNARNG on 1 October 2005 in accordance with National Guard Regulation (NGR) 600-200 (Personnel-General-Enlisted Personnel Management), paragraph 8-26b(7), by reason of dependency or hardship affecting Soldier's immediate family. She completed 5 years, 5 months, and 5 days of net

service. This form further shows the applicant was barred from reenlistment and her service was characterized as honorable.

5. The applicant provides her VA Rating Decision, dated 3 July 2023. This document shows the VA determined the applicant's PTSD with cannabis use disorder had been established as directly related to her military service. The VA examiner determined that her PTSD was due to stressful events during her ARNG service and that her cannabis use disorder was secondary to her PTSD. The VA assigned a 50% evaluation for this connection.

6. There is no indication or evidence in the applicant's record that shows she was determined to be medically unfit or that she had a condition which required referral for disability evaluation prior to being discharged.

7. The U.S. Army Criminal Investigation Division has no record of an MST event involving the applicant.

8. The applicant provides her VA Rating Decision, dated 3 July 2023 which shows the VA granted applicant's PTSD with cannabis use disorder an evaluation of 50%, effective 27 July 2022. The VA examiner found that her condition was directly related to military service and due to stressful events during her service in the ARNG.

9. Regulatory guidance provides the mere presence of 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 member reasonably may be expected to perform because of their office, rank, grade, or rating.

10. 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. Additionally, applicants may be represented by counsel at their own expense.

11. The Board should consider the applicant's overall record and provided statement in accordance with the published equity, injustice, or clemency determination guidance.

12. MEDICAL REVIEW:

a. 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). In effect, the applicant requests change in authority and

reason for discharge to medical disability. She indicated that PTSD and MST were related to her request and contends the VA has awarded her disability benefits.

b. The ABCMR ROP summarized the applicant's available military record. The exact circumstances surrounding her discharge were not available for review. The applicant enlisted in the National Guard of Tennessee 27Apr2000. She entered active service 07Jun2001 and was released from active duty training 2 months later after completion. While in service, her MOS was Automated Logistical Specialist. She was ultimately discharged on 01Oct2005 under provisions of NGR 600-200, para 8-26b(7) for dependence or hardship affecting her immediate family. Her re-entry code RE-4 indicated she was barred from re-enlistment. Her service was characterized as Honorable.

c. The applicant submitted documentation indicating that she was service connected by the VA for PTSD with Cannabis Use Disorder at 50% effective 27Jul2022. JLV search revealed the applicant was first seen requesting services at a VA facility in December 2023. She indicated at that time that for financial reasons she was seeking BH services at the VA. She was already service connected by the VA for PTSD but not in any treatment for the condition. In addition to financial concerns, current stressors included recent domestic violence and related legal issues. Current symptoms included anxiety and depression. She also endorsed emotional lability, impulsivity, and recklessness. She shared that she had difficulties dealing with men in her personal life and professionally. She preferred to work from home to avoid her male supervisor. She reported her problems with men started after she was drugged and raped by an older soldier while in service. She self-treats symptoms with marijuana. She denied combat exposure.

d. There were no service treatment records available for review to include BH visits. She denied any previous outpatient BH treatment or psychiatric admission. There was no history of suicide attempts, unprovoked violence, mania, or psychosis. Based on records available for review, there was insufficient evidence to support the applicant's PTSD failed medical retention standards at the time of discharge. Referral for medical discharge processing is not warranted. Concerning the applicant's specific request to change the authority and reason on her NGB form to a service-connected disability; her request does not appear to be supported by current medical evidence.

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 request, supporting documents, and evidence in the records. The Board considered the applicant's statement and record of service and the

reason for separation. The applicant was discharged for dependency or hardship affecting her immediate family; she was barred from re-enlistment. The Board found no error or injustice in the narrative reason for separation assigned during separation processing from the Army National Guard. The Board reviewed and concurred with the medical advisor's review finding insufficient evidence to support her post-traumatic stress disorder failed medical retention standards at the time of her discharge and the evidence does not support amendment of her narrative reason to reflect service-connected disability. The Board concluded referral to the Disability Evaluation System was not warranted.

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:

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.

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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. NGR 600-200, Personnel-General-Enlisted Personnel Management, Chapter 8, of the regulation in effect at the time, provides for the administrative discharge of enlisted personnel from the Army National Guard and/or Reserve of the Army. Dependency or hardship affecting Soldier's immediate family is listed as a reason for discharge.
3. Army Regulation (AR) 635-40, Personnel Separations-Physical Evaluation for Retention, Retirement, or Separation, in effect at the time, stated 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.
4. Title 38, U.S. code, section 1110, General - Basic Entitlement: 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, U.S. Code, section 1131, Peacetime Disability Compensation - Basic Entitlement: 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. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency

generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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.

7. Section 1556 of Title 10, United States 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 Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

8. 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 will decide cases on the evidence of record. It is not an investigative body. 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. Additionally, applicants may be represented by counsel at their own expense.

//NOTHING FOLLOWS//