

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 June 2024

DOCKET NUMBER: AR20230011414

APPLICANT REQUESTS: correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty) to reflect, in effect:

- an honorable character of service in lieu of under honorable conditions
- physical disability separation in lieu of administrative release from active duty training (ADT) due to completion of ADT

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

- two DD Forms 149 (Application for Correction of Military Record)
- two self-authored statements
- Department of Veterans Affairs (VA) Rating Decision, dated 20 November 2020
- partial Record of Proceedings for her prior case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20210011327, dated 20 October 2021
- ABCMR letter, dated 12 November 2021
- Army Review Boards letter, dated 10 March 2022
- DD Form 214 (Certificate of Release or Discharge from Active Duty), issued on 15 March 2022
- VA letter, dated 7 December 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 is requesting correction to her DD Form 214 to show disability discharge due to injury for purposes of home loan eligibility. She was injured during her service in the military and would like her DD Form 214 to reflect this. She has also marked the items

on the application indicating that post-traumatic stress disorder (PTSD) and sexual assault are issues/conditions related to her request.

b. She was honorably discharged on 12 August 1996, but prior to her discharge she injured both of her legs during training, which has been deemed service-connected. She is not able to walk without extreme pain and discomfort. She uses a cane and a brace to keep from falling and has suffered since her discharge in 1996. She has included her medical record and disability letter.

c. She also states she is requesting to change her character of service to honorable. Her service was characterized as honorable, but someone erroneously changed her character of service to under honorable conditions. This is a mistake and she did not request this change. She mailed a form earlier this year requesting the addition of information to item 18 (Remarks) on her DD Form 214, but instead of what was requested, someone mistakenly changed item 24 (Character of Service) to reflect under honorable conditions. She did not authorize this change and requests it be changed back to honorable, as it was an unintentional mistake.

3. A physical profile is used to classify a Soldier's physical disabilities in terms of six factors or body systems, as follows: "P" (Physical capacity or stamina), "U" (Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric) and is abbreviated as PULHES. Each factor has a numerical designation: 1 indicates a high level of fitness, 2 indicates some activity limitations are warranted, 3 reflects significant limitations, and 4 reflects one or more medical conditions of such a severity that performance of military duties must be drastically limited. Physical profile ratings can be either permanent (P) or temporary (T).

4. A Standard Form 93 (Report of Medical History) shows the applicant provided her medical history on 10 January 1996, for the purpose of U.S. Army Reserve (USAR) enlistment. She did not indicate having had any of the listed conditions on the form.

5. A Standard Form 88 (Report of Medical Examination) shows the applicant underwent medical examination on 10 January 1996, for the purpose of USAR enlistment. The examining physician did not indicate any conditions in item 74 (Summary of Defects and Diagnoses) and found her qualified for service with a PULHES of 111111.

6. A DD Form 4 (Enlistment/Reenlistment Document) shows the applicant enlisted in the USAR on 11 January 1996.

7. Military Entrance Processing Station (MEPS) Orders 029-006, dated 15 February 1996 ordered the applicant to initial active duty for training (IADT), with a reporting date to Fort Leonard Wood, MO, of 15 February 1996, for Basic Combat Training (BCT) and

a follow-on reporting date to Fort Sam Houston, TX, of 19 April 1996, for Advanced Individual Training (AIT).

8. The applicant's DD Form 214 shows she entered ADT on 15 February 1996.

9. A DA Form 2173 (Statement of Medical Examination and Duty Status) shows:

a. The applicant was seen at the Fort Leonard Wood, MO, Consolidated Troop Medical Clinic (CTMC) on 27 March 1996, for complaints of left leg pain from running while in an ADT status.

b. The remarks show the injury occurred as a result of lack of physical conditioning prior to BCT. The applicant was currently on profile and her condition was being monitored.

c. Her unit commander signed the form on 2 April 1996, indicating a formal line of duty (LOD) investigation was not required and the injury was considered to have been incurred in the LOD.

10. The applicant's original DD Form 214 further shows she was released from ADT and transferred back to her USAR Troop Program Unit (TPU) on 12 August 1996, due to completion of period of ADT, based on self-terminating MEPS orders dated 15 February 1996. She was awarded the Military Occupational Specialty (MOS) 91B (Medical Specialist) and was credited with 5 months and 28 days of net active service, which was uncharacterized (note: her service was not characterized as under honorable conditions).

11. The applicant's available service records do not contain a DA Form 3349 (Physical Profile) or 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 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 review of the U.S. Army Human Resources Command (AHRC) Soldier Management System (SMS) shows:

a. The applicant transferred to the USAR Control Group (Annual Training) in November 1996 and transferred back to USAR TPU service in December 1998. She was voluntarily discharged on 31 March 1999, with assignment/loss reason code CQ (Sole surviving son or daughter).

b. Her PULHES was 111111, with no limitations in any factors, and she passed her Army Physical Fitness Test (APFT) in July 1996.

13. The applicant provided a copy of a VA Rating Decision, dated 25 November 2020, which shows:

a. The applicant was granted service-connection for the following conditions with the following ratings effective 24 February 2020:

- right knee strain, 20 percent
- tinnitus, 10 percent
- adjustment disorder with mixed anxiety and depressed mood, 30 percent

b. The last two sentences in the decision portion of the VA Rating Decision document are incomplete, showing only partial sentences related to service-connection for PTSD and back injury, with the end of the sentences having been removed from the provided document. It is therefore unknown from a reading of this document whether those conditions were denied service-connection or granted service-connection and at what percentage.

14. The applicant previously applied to the ABCMR in December 2020, requesting correction of her DD Form 214 to reflect honorable service in lieu of uncharacterized service.

a. Regulatory guidance in effect at the time of the issuance of her DD Form 214 for completion of ADT, called for her service to be uncharacterized, as she was in an entry-level status at the time of her release from active duty, with less than 6 months or 180 days of continuous active duty. However, current regulatory guidance directs that the service of members of the USAR separated after completion of IADT which resulted in the award of an MOS, regardless of the length of ADT, would be characterized as honorable.

b. As a matter of equity, and in keeping with current regulatory guidance, on 20 October 2021, the Board granted the applicant's request to upgrade the characterization of her service on her DD Form 214 to honorable.

c. A letter from the ABCMR, dated 12 November 2021, advised the applicant that the Board granted full relief of her request. Another letter from the ARBA, dated 10

March 2022, informed the applicant that her records were corrected in accordance with the ABCMR findings and provided her with a copy of her reissued DD Form 214.

15. The applicant's service records contain a voided copy of her original DD Form 214 and a reissued DD Form 214. The reissued DD Form 214 shows: Her DD Form 214 was administratively reissued on 15 March 2022, per ABCMR proceedings AR20210011327, dated 10 March 2022; Item 24 (Character of Service) shows honorable.

16. The applicant's available service records do not contain a DD Form 214 reflecting her service characterized as under honorable conditions and there is no evidence of record her reissued DD Form 214, reflecting her service as honorable, was inadvertently or otherwise amended after the fact in any capacity.

17. The applicant provided a copy of a VA letter addressed to her, dated 7 December 2023, summarizing her VA benefits. The military information portion of the letter lists her ADT service from 15 February 1996 through 12 August 1996, with a character of service of under honorable conditions.

18. In the adjudication of this case, the Department of the Army Criminal Investigation Division (DACID) was asked to provide redacted CID or Military Police (MP) reports pertaining to the applicant's military sexual trauma. The USACID responded via memorandum on 6 February 2024, indicating a search of the Army criminal file indexes revealed no military sexual trauma records pertaining to the applicant.

19. 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.

20. 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 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 essentially requesting a referral to the Disability Evaluation System so she may be eligible for a VA Home Loan. On her DD Form 149, she has indicated the PTSD and Sexual Assault/Harassment are issues related to her request. She states:

“I was injured during training and hurt both my legs which is service connected. I'm not able walk without being in extreme pain and discomfort. I walk with a cane and brace to keep me from falling. I have been suffering since 1996 when I was discharged.”

c. The Record of Proceedings outlines the applicant's military service and the circumstances of the case. A screenshot of the U.S. Army Human Resources Command (AHRC) Soldier Management System (SMS) shows the applicant was voluntarily discharged on 31 March 1999 with assignment/loss reason code CQ (Sole surviving son or daughter).

d. No probative medical documentation was submitted with the application and her period of service predates the EMR.

e. A 2 April 1996 Statement of Medical Examination and Duty Status shows the applicant was having left leg pain with running. The commander stated “Injury occurred as a result form lack of physical conditions prior to basic. Private [Applicant] is currently on a profile and her condition is being monitored.”

f. There is no evidence the applicant's left knee condition or any additional duty incurred medical condition failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to her voluntary separation; or that any such duty limiting medical condition prevented her from reenlisting. 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 her voluntary separation.

g. JLV shows the applicant has several VA service-connected disability ratings, including sleep apnea (50%), chronic adjustment disorder (50%), and three ratings associated with her left knee. 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; 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.

h. It is the opinion of the Agency Medical Advisor that a referral of her case to the DES is not warranted. 1.

BOARD DISCUSSION:

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.

a. The applicant entered active duty for training and completed MOS training from 15 February to 12 August 1996. Her DD Form 214 for this period initially reflected an uncharacterized discharge. However, this DD Form 214 has since been corrected to reflect an honorable characterization for this period. There is no evidence the applicant completed another period of active service of 90 or more active duty days that warranted the issuance of a second DD Form 214.

b. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's finding no evidence the applicant's left knee condition or any additional duty incurred medical condition failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to her voluntary separation; or that any such duty limiting medical condition prevented her from reenlisting. 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 her office, grade, rank, or rating prior to her voluntary separation. Therefore, the Board determined the applicant's referral of her case to the disability evaluation system is not warranted.

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.

■ [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

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. 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 (DRBs) and Boards for Correction of Military/Naval Records (BCM/NRs) 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 (PTSD), traumatic brain injury (TBI), sexual assault, or sexual harassment. 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.

3. 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.

4. 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.

5. 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.

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//