

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 June 2024

DOCKET NUMBER: AR20230011850

APPLICANT REQUESTS: her reason for separation be changed to reflect a medical discharge, and a personal appearance before the Board via video/telephone.

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

DD Form 149 (Application for Correction of Military Record), 27 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 states, in effect, her post-traumatic stress disorder (PTSD) was caused by military sexual trauma while serving in basic training. She believes her discharge should have been a medical discharge which was overlooked and has caused her anguish due to the error.
3. On her DD Form 149, she notes PTSD, Traumatic Brain Injury (TBI), other mental health, and sexual assault/harassment are related to this request.
4. The applicant enlisted in the U.S. Army Reserve (USAR) on 22 July 1981 for a period of 6 years in the grade of E-1.
5. She entered initial active duty for training (IADT) on 3 December 1981 and was awarded military occupational specialty 76W (Petroleum Supply Specialist).
6. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was honorably released from IADT on 26 April 1982, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-15 (Reserve Component personnel ordered to IADT under Reserve Enlistment Program). She served 3 months and 14 days of net active service.

7. Orders D-07-050990, issued by the USAR Personnel Center, show the applicant was honorably discharged from the USAR with an effective date of 21 July 1987, in the rank/grade of specialist/E-4.

8. 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 requesting a referral to the Disability Evaluation System (DES). On her DD Form 149, she indicates that PTSD, TBI, Other mental conditions, and Sexual assault/ harassment are issues related to her request. She states:

“My PTSD was the cause of MST while serving in basic training. My discharge should have been medical.”

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. There is no DD 214 in the supporting documents and neither the characterization of her service nor the reason for her separation are known.

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

e. 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. 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.

f. JLV shows she has a 100% VA service-connected disability rating for PTSD. 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.

g. It is the opinion of the ARBA medical advisor that a referral of her case to the DES is not warranted.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. The Board concurred with the conclusion of the ARBA Medical Advisor that the evidence does not show the applicant had a service-incurred or aggravated medical condition that would have been a basis for her referral to the Disability Evaluation System. Based on a preponderance of the evidence, the Board determined her honorable discharge upon reaching the end of her military service obligation was not in error or unjust.

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.

12/19/2024

X

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, U.S. Code, Section 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.
3. 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 may, in its discretion, hold a hearing. 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.
4. AR 635-5 (Separation Documents), in effect at the time, prescribed the separation documents that were prepared for individuals upon retirement, discharge, or release

from active military service or control of the Army. It established standardized policy for preparing and distributing DD Form 214. The purpose of the separation document is to provide the individual with documentary evidence of his or her military service at the time of release from active duty, retirement, or discharge. It is important that information entered on the form be complete and accurate, reflective of the conditions as they existed at the time of separation.

5. AR 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 3 provides that a separation will be described as entry level with uncharacterized service if the Soldier has less than 180 days of continuous active duty service at the time separation action is initiated.

b. Paragraph 3-7a provides that 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.

c. Paragraph 3-9, in effect at the time of the applicant's separation, provided that a separation would be described as entry level with uncharacterized service if processing was initiated while a Soldier was in an entry-level status, except when:

(1) a discharge under other than honorable conditions was authorized, due to the reason for separation and was warranted by the circumstances of the case; or

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

d. Paragraph 5-15 provides guidance and states commanders of training installations are authorized to release Reserve component personnel orders to IADT under REP 63 upon completion of military occupational specialty training when training is completed prior to the period of time specified in IADT orders provided a minimum period of 12 weeks IADT has been completed.

6. 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 (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) 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; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. 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.

7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs 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 type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

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, BCM/NRs 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.

8. On 4 April 2024, the Office of the Undersecretary 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 eligibility for medical retirement or separation benefits. This guidance is being promulgated in light of *Doyon v. United States* and is consistent with that decision. Accordingly, the BCM/NR will apply liberal consideration to the eligible applicant's assertion that combat- or military sexual trauma -related PTSD or TBI potentially contributed to the circumstances resulting in their discharge or dismissal to determine whether any discharge relief is appropriate. After making that determination, the BCM/NR will then separately assess the individual's claim of medical unfitness for continued service due to that PTSD or TBI condition as a discreet issue, without applying liberal consideration to the unfitness claim or carryover of any of the findings made when applying liberal consideration.

//NOTHING FOLLOWS//