

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 May 2024

DOCKET NUMBER: AR20230011907

APPLICANT REQUESTS: in effect, correction of her military records to show –

- she completed two years of college
- she was discharged from the Army National Guard (ARNG) due to a disability incurred while on active duty
- her service was characterized as honorable
- a video/telephone appearance before the Board

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- 2-DD Forms 149, Application for Correction of Military Record
- DD Form 293, Application for Review of Discharge
- Medical records, March 2016
- ARNG Retirement Points History Statement
- Memorandum, Failure to meet physical standards for enlistment, 25 August 2016
- Orders 267-013, 23 September 2016
- Memorandum, Failure to meet physical standards for enlistment, 6 October 2016
- Memorandum, [Applicant], undated
- DA Form 2823, Sworn Statement, 12 October 2016
- NGB Form 22, National Guard Report of Separation and Record of Service, 23 September 2016
- Department of Veterans Affairs (VA) letter, 19 July 2023

FACTS:

1. The applicant did not file within the three-year time frame provided in Title 10, U.S. Code (USC), 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 a mental health condition. She states, in effect, that she was unable to fulfill the physical requirements for duty due to an in-service disability/injury. She contends that this injury was the only reason she was

not able to complete training. Her uncharacterized service prevents her from receiving benefits from the Department of Veterans Affairs. She further states -

a. She sustained an injury while serving in the New Mexico ARNG (NMARNG) that severely impacted her ability to perform her duties. The injury was the result of the strenuous exercise regimen required during drill weekends. Specifically, she began to experience severe knee pain during a 5-mile run on that Sunday. As the day progressed, the pain intensified, leading to her leadership instructing her to go home and utilize alternating ice and heat treatments. She reported this injury promptly to her leadership on the day it occurred. Important is the fact that she did not mention that she had experienced any knee pain prior to that particular weekend. It is crucial to note that she had no history of knee problems or pre-existing conditions before joining the military, as all her medical records were thoroughly examined during the enlistment process.

b. While participating in Basic Combat Training (BCT) at Fort Sill, OK, the military doctor who evaluated her did not fully understand that the NMARNG required them to partake in drill weekends before attending BCT. This misunderstanding led to the medical assessment not adequately considering the unique demands and strains of her service. She firmly believes that her injury, which occurred during the course of her service and was exacerbated by this misunderstanding, has led to a significant disability that warrants an upgrade to her narrative reason for discharge.

c. She is committed to providing any necessary documentation, medical records, and supporting evidence to demonstrate the direct correlation between her military service, including drill weekends, and the resulting disability.

3. The record shows that on 10 March 2015, the applicant underwent a medical prescreening for enlistment into the military which found she had a history of gestational diabetes. This form indicates that a waiver would be processed and there was a need for review of additional documents.

4. Subsequent to the medical prescreening the applicant completed a physical evaluation for entry into the military on 5 May 2015 which shows the applicant was not qualified for service due to her history of gestational diabetes. The military provider/examiner recommended the applicant receive a waiver and the form shows the waiver was granted on 14 May 2015.

5. She enlisted in the NMARNG on 18 June 2015.

6. The applicant's record contains a DD Form 220, Active Duty Report, 2 December 2015, which shows she entered active duty on 2 November 2015 and departed active

duty on 3 December 2015. Item 21, Remarks, of this form contains the entry "SOLDIER IS A NON-BT GRADUATE."

7. In a memorandum, 25 August 2016, the Deputy State Surgeon, NMARNG, stated, in effect, the applicant was evaluated by the NMARNG Medical Department on 8 August 2016. This review was conducted by the Office of the State Surgeon in conjunction with the Deputy State Surgeon and determined the applicant's injuries did not warrant a Line of Duty (LOD); therefore, did not qualify for entry into the Disability Evaluation System process specifically a Medical Evaluation Board (MEB). This official further stated, in effect:

a. A review of the applicant's service treatment record determined she did not have a definitive diagnosis for a specific injury and her condition existed prior to service (EPTS).

b. The applicant did not divulge a history of bilateral knee pain on her Chapter 2, Physical Standards for Enlistment, Appointment, and Induction physical performed at the Albuquerque Military Entrance Processing Station (MEPS) on 5 May 2016.

c. The applicant underwent a physical examination at the Albuquerque MEPS on 5 May 2015 and did not indicate a history of bilateral knee problems. Soldier checked "NO" on block 12, Have you ever had or do you now have: (knee trouble (e.g., locking, giving out, pain or ligament injury, etc), of the DD Form 2807-1. In addition, the applicant did not divulge a history of bilateral knee pain on her DD Form 2807-2, 10 March 2015. The applicant checked "NO" on Item 2a, Have you ever had or do you now have knee or elbow problem (out of place)".

d. During her Initial Entry Training at Fort Sill, OK, she was treated by medical personnel for bilateral knee pain. During this treatment, she divulged that this condition EPTS. The applicant was treated on 5 November 2015 at Reynolds Army Community Hospital, Fort Sill, OK for a bilateral knee injury, with a diagnosis of pain in the left knee and pain in the right knee. Since the only diagnosis is pain, this does not qualify for a LOD since pain is a symptom, not a definitive diagnosis of injury or a disease process.

e. The applicant was treated on 10 November 2015 at Reynolds Army Community Hospital, Fort Sill, OK, for the chief complaint, "My knees hurt." She stated on the Standard Form 600, Chronological Record of Treatment, 10 November 2015, "they were hurting before I started basic. I used to run 4 miles. Now they hurt running, marching, going up and down stairs." The diagnosis was pain in unspecified knee. Since the only diagnosis is pain, this does not qualify for a LOD determination since pain is a symptom, not a definitive diagnosis of injury or a disease process.

f. The applicant was treated on 12 November 2015 at Reynolds Army Community Hospital, Fort Sill, OK for bilateral knee pain. The diagnosis was pain in unspecified knee. Since the only diagnosis is pain, this does not qualify for a LOD determination since pain is a symptom, not a definitive diagnosis of injury or a disease process.

g. She underwent a bone scan on 20 November 2015 at Fort Sill, OK. The provider's notes listed on the Standard Form 600 contain the following, "12NOV15-23y/o female present to TMC for f/u for bilateral knee pain x2-3 weeks. Patient states she had pain in her knees prior to joining the army. Patient states the pain has not gotten any better states its been consistent. Patient states the pain is now spreading up her legs. Pain started during NG RSP drills, 1 month ago."

h. The applicant's bone scan was negative for fractures of other bony abnormality, and she was diagnosed with, "Pain in unspecified knee." Since the only diagnosis is pain, this does not qualify for a LOD since pain is a symptom, not a definitive diagnosis of injury or a disease process. In addition, there is no medical documentation that the applicant received any treatment during her Recruit Sustainment Program (RSP) drill period therefore the unit cannot initiate a LOD.

i. The applicant underwent a medical examination at Reynolds Army Community Hospital, Fort Sill, OK on 2 December 2015 and was medically cleared to return home for discharge proceedings. Her examination noted "23 y/o female presents to the TMC for medical clearance prior to flying home tonight Patient is being chaptered from the Army." "There is no evidence of injury on plain films or bone scans. Patient is medically cleared for separation."

j. The standards of Army Regulation (AR) 40-501, Medical Services- Standards of Medical Fitness, Chapter 2 apply. This chapter prescribes the medical conditions and physical defects that are causes for rejection for appointment, enlistment, and induction into military service.

(1) Applicants for enlistment in the Reserve component and Federally recognized units or organization of the ARNG/ARNG of the United States. For medical conditions or physical defects predating original enlistment, these standards are applicable during the enlistees' initial period of active duty training (ADT).

(2) Current deformities, disease, or chronic joint pain of pelvic region, thigh, lower leg, ankle and/or foot that have interfered with function to such a degree as to prevent the individual from following a physically active vocation in civilian life, or that would interfere with walking, running, weight bearing, or the satisfactory completion of training or military duty, do not meet the standard.

j. Due to the findings of this evaluation and the applicant's own statements that this

condition EPTS, OTSS recommends RSP initiate an administrative discharge.

8. On 15 September 2016, the applicant's commander recommended the applicant be discharged from the NMARNG in accordance with National Guard Regulation (NGR) 600-200, Personnel-General-Enlisted Personnel Management, paragraph 6-35c(5), not medically qualified under procurement medical fitness standards. This request was subsequently approved by appropriate separation authority.

9. The applicant was discharged from the NMARNG on 23 September 2016, under the provisions of NGR 600-200, paragraph 6-35c(5), not medically qualified under procurement medical fitness standards. Her NGB Form 22, shows she was credited with 1 year, 3 months, and 6 days of net active service. Her service was uncharacterized. Item 14, Highest Education Level Successfully Completed, shows the applicant had a high school education.

10. The applicant did not provide evidence of the completion of two years of college.

11. The applicant provided:

a. A Memorandum for Record, undated, written by the Human Resources Sergeant, NMARNG for the purpose of clarifying events pertaining to the applicant during the October 2015 RSP Drill Weekend. This noncommissioned officer (NCO) stated, in effect, that shortly after taking an Army Physical Fitness Test with the RSP on Saturday, 17 October 2015, the applicant approached her complaining of sore knees. The NCO asked the applicant if she had the pain before attending drill, and she responded "yes." The NCO looked at her knees and evaluated for swelling and bruising (of which the applicant presented with neither). The NCO explained to the applicant that many new Service Members have the same problem due to not running prior to their enlistment and recommended that she rest and alternate with ice and heat, which ever felt better. The applicant was also excused from physical training Sunday morning to allow her time to stretch and focus on shipping to training on 2 November 2015.

b. Post service medical records, March 2016, which show the applicant was treated for bilateral knee pain and reported the injury occurred on 20 October 2015 and was the result of running during BCT. Progress notes, 21 March 2016, indicate "runner's knee" with a recommendation for physical therapy.

c. Her sworn statement, 10 October 2016, wherein the applicant states, in effect, that during the RSP Drill Weekend of 17 October 2016, they trained on completing the APFT and ran an additional mile and a half as a company. They also performed many other exercises as a team. She contends that shortly after the completion of training she started getting bad knee pains. She shared this with her battle buddy and he encouraged her to tell leadership. She contacted her platoon leader and he referred her

to sergeant (SGT) G. SGT G told her that it was probably stress and that if she officially made a report that she would not be able to ship to BCT. SGT G recommended applying heat and cold. She rested and did as she was instructed. Her condition improved but on day three of BCT she stepped off the trailer carrying her bags and her knee gave out. The pain returned at full force. She could not get up the stairs without assistance. She went to sick call and reported that the pain began at RSP drill before she shipped to BCT. The medical provider was Regular Army and was unaware that the ARNG had a program that trained new recruits to get ready for BCT. She contends that she tried to explain it to the medics, but no one had ever heard of the program. She was never asked about how she got injured again and she was never given a LOD prior to being released from active duty. After being discharged from the ARNG she has received treatment from a civilian physician.

d. A VA benefits letter, 19 July 2023, which shows the applicant is receiving disability compensation based on a combined evaluation of 60-percent. Her service-connected medical conditions are not listed on this document.

12. Regulatory guidance provides –

a. Enlisted Soldiers identified within the first six months of active duty with a condition that existed prior to service that does not meet the standards of chapter 2 may be separated (or receive a waiver to remain on active duty) following an evaluation by an Entrance Physical Standards Board.

b. Soldiers are considered to be in an entry-level status when they are within their first 180 days of active-duty service. The characterization of service during entry level status is normally uncharacterized.

c. The highest level of civilian education attained from the DA Form 2-1, Personnel Qualification Record, will be entered in item 17, Civilian Education and Military Schools, of the NGB Form 22.

13. The Director or the ABCMR may grant a formal hearing whenever justice requires. Additionally, applicants may be represented by counsel at their own expense.

14. 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, the Army Aeromedical Resource Office (AERO), 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 in essence requesting a referral to the Disability Evaluation System (DES). She states:

“I was unable to fulfill physical requirements for duty due to disability/injury caused in-service. This in-service disability was my only reason for not being able to complete my time in service. Disability is in-service related.”

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. Her Report of Separation and Record of Service (NGB Form 22) for the period of Service under consideration shows the former Guardsman enlisted in the Army National Guard on 18 June 2015 and received an uncharacterized discharge from the New Mexico Army National Guard (NMARNG) on 23 September 2016 under the provisions in paragraph 6-35c(5)a of NGR 600-200, Enlisted Personnel Management (31 July 2009): Not medically qualified under procurement medical fitness standards.

d. A 25 August 2016 memorandum from the NMARNG Deputy State Surgeon to the applicant's company commander SUBJECT: [Applicant], PFC, XXXX, PFC 8751 , Failure to meet physical standards for enlistment states she had preservice knee pain which she failed to reveal during her pre-entrance physical evaluation:

1. PFC [Applicant] was evaluated by the New Mexico Army National Guard (NMARNG), Medical Detachment on August 8, 2016. The provider who evaluated PFC [Applicant] established a case with the NMARNG, Office of the State Surgeon (OTSS), Case Management (CM) . OTSS CM in conjunction with the Deputy State Surgeon conduct a review of PFC [Applicant]'s service treatment record (STR) and determined that PFC [Applicant]'s injuries do not warrant a Line Investigation Duty (LOD) and therefore do not qualify PFC [Applicant] for entry into the Disability Evaluation System process specifically a Medical Evaluation Board.

2. A review of PFC [Applicant]'s STR determined PFC [Applicant] does not have a definitive diagnosis for a specific injury and the soldier's condition existed prior to service (EPTS). PFC [Applicant] did not divulge a history of bilateral knee pain on her Chapter 2, Physical Standards for Enlistment, Appointment, and Induction physical performed at the Albuquerque Military Entrance Processing Station (MEPS) May 5, 2016...

5. During her Initial Entry Training at FT Sill, Oklahoma, PFC [Applicant] was treated by medical and personnel for bilateral knee pain. During this treatment,

she divulged to medical personnel that this condition existed prior to her military service...

10. Due to the findings of this evaluation and the soldiers own statements that this condition EPTS, OTSS recommends RSP initiate an administrative discharge.”

e. Review of the submitted documentation and EMR shows this is an accurate description of the applicant’s pre-existing condition. Her Active Duty Report (DD Form 220) shows she entered IET on 2 November 2015 and departed for home station on 3 December 2015 after being released from active duty prior to completing basic combat training.

f. Review of his record in JLV shows he has been awarded multiple VA service-connected disability ratings, including several related to her knees. However, the DES compensates an individual only for service incurred 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. These roles and authority were granted by Congress to the Department of Veterans Affairs and are executed under a different set of laws.

g. 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 her 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 had a medical condition which was, unfortunately, not within enlistment standards.

h. 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/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, and published Department of Defense guidance for liberal and clemency

determinations requests for upgrade of her characterization of service. 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 Board noted the applicant provided insufficient evidence to support annotation that she completed two years of college.

2. The Board noted that 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. The applicant served 1 month, did not complete training and was discharged from active duty. 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 such, her DD Form 214 properly shows the appropriate characterization of service as uncharacterized, there is no basis for granting the applicant's request. Therefore, the Board denied relief.

3. 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:

<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 three 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 three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation (AR) 40-501, Medical Services-Standards of Medical Fitness, prescribes the physical standards for appointment, enlistment, and induction.

a. The purpose of the standards outlined in Chapter 2, Physical Standards for Enlistment, Appointment, and Induction, of this regulation is to ensure that individuals medically qualified are –

- free of contagious diseases that would likely endanger the health of other personnel
- free of medical conditions or physical defects that would require excessive time lost from duty for necessary treatment or hospitalization or would likely result in separation from the Army for medical unfitness.
- medically capable of satisfactorily completing required training
- medically adaptable to the military environment without the necessity of geographical area limitations

- medically capable of performing duties without aggravation of existing physical defects or medical conditions

b. Enlisted Soldiers identified within the first six months of active duty with a condition that existed prior to service that does not meet the standards of chapter 2 may be separated (or receive a waiver to remain on active duty) following an evaluation by an Entrance Physical Standards Board, in accordance with AR 635–200, Active Duty Enlisted Administrative Separation, chapter 5, with the exception as noted in (c), below.

c. Enlisted Soldiers identified within the first six months of active duty with a condition that existed prior to service that does not meet the standards of chapter 2, or chapter 3, Medical Fitness Standards for Retention and Separation, Including Retirement, must be evaluated by a medical evaluation board (MEB). The Soldier will then be referred to a physical evaluation board (PEB) unless the Soldier waives their right to the PEB in accordance with AR 635-40, Physical Evaluation for Retention, Retirement, or Separation.

d. Applicants for enlistment in the Reserve Component and Federally recognized units or organizations of the Army National Guard (ARNG)/ARNG of the United States (ARNGUS). For medical conditions or physical defects predating original enlistment, these standards are applicable during the enlistees' initial period of active duty training (ADT). Current deformities, disease, or chronic joint pain of pelvic region, thigh, lower leg, ankle and/ or foot that have interfered with function to such a degree as to prevent the individual from following a physically active vocation in civilian life, or that would interfere with walking, running, weight bearing, or the satisfactory completion of training or military duty, do not meet the standard.

3. AR 600-8-4, LOD Policy, Procedures, and Investigations, prescribes policies, procedures, and mandated tasks governing LOD determinations of Soldiers who die or sustain certain injuries, diseases, or illnesses. It states –

a. A Soldier of the National Guard or USAR is entitled to hospital benefits, pensions, and other compensation similar to that for Soldiers of the active Army for injury, illness, or disease incurred in the LOD, under the following conditions prescribed by law, Title 10, U.S. Code, section 1074a:

- while performing active duty for a period of 30 days or less
- while performing inactive duty training
- while traveling directly to or from the place at which that Soldier is to perform or has performed active duty for a period of 30 days or less
- inactive duty training

b. The LOD determination is presumed to be “LOD YES” without an investigation in the case of disease, except when (1) the disease or medical condition occurs under strange or doubtful circumstances or is apparently due to misconduct or willful negligence or (2) when a U.S. Army Reserve or ARNG Soldier is serving on an active duty tour of 30 days or less is disabled due to disease.

4. National Guard Regulation 600-200, Personnel-General-Enlisted Personnel Management, states in –

a. Paragraph 6-35c (5), states that an ARNG Soldier may be administratively separated or discharge for failure to meet medical procurement standards of AR 40-501, Medical Services-Standards of Medical Fitness, chapter 2, Physical Standards for Enlistment, Appointment, and Induction, prior to entry on Initial Entry Training including positive urinalysis and Human Immunodeficiency Virus (HIV) in entrance physicals.

b. Table F-1, Procedures for issuing NGB Form 22, Report of Separation and Record of Service to enter in Item 14, Highest Education, the highest level of civilian education attained from the DA Form 2-1, Personnel Qualification Record, item 17, Civilian Education and Military Schools.

c. Service will be described as uncharacterized if separation processing is initiated while a Soldier is in an entry level status. This AR defines entry level status as –

(1) Upon enlistment, a Soldier qualifies for entry level status during –

- the first 180 days of continuous active military service; or
- the first 180 days of continuous active service after a service break of more than 92 days of active service

(2) A member of a Reserve component who is not on active duty or who is serving under a call or order to active duty for 180 days or less begins entry level status upon enlistment in a Reserve component. Entry level status for such a member of a Reserve component terminates as follows:

- 180 days after beginning training if the Soldier is ordered to ADT for one continuous period of 180 days or more; or
- 90 days after the beginning of the second period of ADT if the Soldier is ordered to ADT under a program that splits the training into two or more separate periods of active duty

(3) For the purposes of characterization of service, the Soldier’s status is determined by the date of notification as to the initiation of separation proceedings.

5. The ARNG Recruit Sustainment Program (RSP) prepares new recruits mentally, physically, emotionally and administratively for Basic Combat Training. The RSP is conducted in five phases and includes physical training. Participants are compensated for performing drills and other training duties; however, are not in an active duty status.

6. 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.

7. 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 regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body.

//NOTHING FOLLOWS//