

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 July 2024

DOCKET NUMBER: AR20230012627

APPLICANT REQUESTS: reconsideration of her previous request for correction of her records to show she was discharged due to a medical disability instead of weight control failure.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States in lieu of DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Department of Veterans Affairs (VA) benefits decision letter

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20130019419 on 31 July 2014.
2. The applicant states she should have received a medical discharge due the injuries she sustained during her military service. She is providing her VA benefits letter showing how her medical conditions have progressed since her separation.
3. The applicant enlisted in the Regular Army on 29 June 2006. She served in Iraq from 10 July 2007 to 15 August 2008.
4. DA Forms 5501 (Body Fat Content Worksheet- Female), dated 31 August 2008 and 4 December 2008, show the applicant was not in compliance with Army weight control standards set forth in Army Regulation 600-9 (The Army Body Compositions Program).
5. On 8 December 2008, a FLAG (suspension of favorable personnel actions) was imposed against the applicant due to failure to meet the Army's weight control standards.

6. On 7 January 2009, she was counseled by her company commander regarding her noncompliance with Army weight control standards, possible courses of action and solutions, and the possible adverse effects her noncompliance could have on her career. In response to the counseling, she noted she had just ended a physical profile period and she indicated she agreed with the counseling and proposed course of action. The commander also advised the applicant of the following:

- she should be separated from military service after two consecutive monthly weigh-ins if she did not make progress by losing 3 to 8 pounds per month
- she would be barred from reenlistment after 6 months in the program without satisfactory progress
- she would be weighed monthly if medical personnel were unable to determine a medical reason for a lack of weight loss
- she was required to participate in the unit's Special Physical Training Program until she met body fat standards
- she would be removed from the program if body fat standards were met
- if she exceeded the standard within 12 months of removal she would be subject to separation

7. A DA Form 5501, dated 29 January 2009, shows the applicant was still exceeding the weight standards. On 30 January 2009, the commander requested a medical evaluation of the applicant.

8. A memorandum, dated 12 February 2009, subject: Weight Control Program, shows a physician assistant (PA) found the applicant fit for participation in the Weight Control/Physical Exercise Program and determined her overweight condition was not due to a medical condition. The PA recommended her continuation in the weight reduction program.

9. DA Forms 5501, dated 3 March, 3 April, 19 May, 17 June, and 29 July 2009, show the applicant was still failing to meet the Army's weight control standards.

10. A DD Form 2808 (Report of Medical Examination) shows the applicant underwent a medical examination on 13 August 2009 for the purpose of separation. The examining PA noted various abnormalities in her lower and upper extremities and spine. Items 74 a and b of the DD Form 2808 show the examining PA found her qualified for service without physical limitations.

11. On 26 October 2009, the applicant's company commander notified her that he was initiating action to separate her under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), chapter 18, for failure to meet body fat standards. The commander stated the specific reason for the proposed separation action was the applicant's failure to make satisfactory progress in the Army Weight

Control Program after eight months. The applicant was also advised of her rights to consult with counsel and to submit statements in her own behalf.

12. On 27 October 2009, the applicant consulted with counsel, and she was advised of the basis for her contemplated separation and its effects, the rights available to her, and the effect of a waiver of her rights. She elected not to submit statements in her own behalf.

13. On 30 October 2009, the separation authority approved the recommendation for separation under the provisions of AR 635-200, chapter 18, and directed the issuance of an Honorable Discharge Certificate.

14. The applicant's DD Form 214 shows she was honorably discharged on 16 November 2009 under the provisions of AR 635-200, chapter 18, by reason of weight control failure (separation code JCR/reentry code 3). She completed 3 years, 4 months, and 18 days of net active service during the period covered.

15. The applicant provided a VA benefits decision letter showing she was granted service-connected disability compensation for the following conditions:

- cervical degenerative disc disease and degenerative joint disease
- left upper extremity radiculopathy
- right knee strain, meniscal tear, joint osteoarthritis, instability
- right knee strain, meniscal tear, joint osteoarthritis, residuals s/p meniscus tear with repair
- right knee scars s/p surgery
- right knee strain, joint osteoarthritis, patellofemoral pain syndrome, tendinitis, patellar tracking disorder

16. 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.

17. 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 reconsideration of their previous denial of her request to have her Chapter 18 discharge (AR 635-200 – Failure to meet body fat standards) changed to a “medical discharge.” She states: “I believe I should have had the option to one due to the injuries I have during my time in.”

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 29 June 2006 and was honorably discharged on 16 November 2009 under provisions in chapter 18 of AR 635-40, Active duty Enlisted Administration Separations (6 June 2005): Failure to Meet Body Fat Standards.

d. This request was previously denied by the ABCMR on 31 July 2014 (AR20130019419). Rather than repeat their findings here, the board is referred to the record of proceedings for that case. This review will concentrate on the new evidence submitted by the applicant.

e. The only new evidence submitted with this request is 12 December 2022 copy of her VA benefits. As is often the case, her combined rating has increased over time as condition(s) worsen with increasing age and/or new conditions are added.

f. The EMR shows she was evaluated and treated for several conditions during her period of Service. The majority of these visits were related to her lumbar spine and started in January 2009. A 25 March 2009 lumbar MRI reviewed mild degenerative disc disease at L4-L5 and L5-S1. The applicant was evaluated by orthopedics on 13 October 2009, a month before her separation. The provider documented a normal examination and concluded:

“We discussed her case with her and she understands that lifting heavy objects, loadbearing, running or not in the best interest of taking care of her spine. So we recommend medical board. Her knee pain will be further evaluated with imagery and she will follow-up in 2-3 weeks.

g. Despite this recommendation to help the applicant care for her spine, there is insufficient evidence the applicant’s condition’s was unfitting for continued service. Paragraph 3-1 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (8 February 2006) states:

“The mere presence 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.”

h. There is insufficient evidence the applicant had a medical condition(s) 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 her office, grade, rank, or rating prior to his discharge.

i. JLV shows she has been awarded multiple VA service-connected disability ratings for a combined rating of 100%. Disabilities include including Mood Disorder, Degenerative arthritis of the spine, and knee condition. 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. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

j. It is the opinion of the Agency Medical Advisor that referral of this case to the DES is not warranted.

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. The evidence of record shows the applicant failed to meet body fat standards and failed to make satisfactory progress in the Army Weight Control Program after eight months. As a result, her chain of command initiated separation action against her. She was honorably discharged by reason of weight control failure. The Board found no error or injustice in her separation processing. The Board also 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 determination finding insufficient probative evidence the applicant had any service incurred medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to her discharge from the USAR. 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 his voluntary

separations. Therefore, the Board determined, based on available evidence, the reason for her separation is neither in error nor unjust.

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 to amend the decision of the ABCMR set forth in Docket Number AR20130019419 on 31 July 2014.



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. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. Chapter 18 provides that Soldiers who fail to meet the body fat standards set forth in Army Regulation 600-9 (The Army Body Composition Program) are subject to involuntary separation per this chapter when such condition is the sole basis for separation. Separation proceedings may not be initiated under this chapter until the Soldier has been given a reasonable opportunity to meet the body fat standards, as reflected in counseling or personnel records.

a. Soldiers who have been diagnosed by health care personnel as having a medical condition that precludes them from participating in the Army body fat reduction program will not be separated under this chapter.

b. If there is no underlying medical condition and a Soldier enrolled in the Army Weight Control Program fails to make satisfactory progress in accordance with Army Regulation 600-9, separation proceedings will be considered.

c. Initiation of separation proceedings is required for Soldiers who fail to meet body fat standards during the 12-month period following removal from the program, provided no medical condition exists.

2. Army Regulation 40-501 (Standards of Medical Fitness) provides that for an individual to be found unfit by reason of physical disability, the individual must be unable to perform the duties of his or her office, grade, rank, or rating. Performance of duty despite impairment would be considered presumptive evidence of physical fitness.

3. Title 38, U.S. Code, Sections 1110 and 1131, permit the VA to award compensation for disabilities which were incurred in or aggravated by active military service. However, an award of a VA rating does not establish an error or injustice on the part of the Army.

4. Title 38, Code of Federal Regulations, Part IV is the VA Schedule for Rating Disabilities. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge. As a result, the VA, operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform his duties. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

5. 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 ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//