

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 July 2023

DOCKET NUMBER: AR20230012694

APPLICANT REQUESTS: correction of her records to show she was discharged from the U.S. Army Reserve (USAR) due to disability instead of being found disqualified for retention in the USAR.

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

- DD Form 149 (Application for Correction of Military Record), 7 September 2023
- Headquarters, 63d Readiness Division Orders 19-065-00054, 6 March 2019

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 she was at a medical unit at the time of her discharge. Her U.S. Army Reserve (USAR) orders state she was honorably discharged with an additional comment stating she was medically disqualified not due to her own misconduct. She would like her DD form 214 (Certificate of Release or Discharge from Active Duty) to reflect her medical discharge was due to the service-connected disability she incurred during her active duty training. She should have been medically boarded. She is now permanently 100% disabled at age 33. She has two children to raise and was told she could not get a Department of Veterans Affairs (VA) home loan because she was not medically separated.
3. A review of the applicant's service records show:
 - a. On 31 October 2014, she enlisted in the USAR.
 - b. Her DA Form 2808 (Report of Medical Examination), dated 31 October 2014, completed for the purpose of enlistment, shows she was qualified for service.

c. Her DA Form 2807 (Report of Medical History), dated 31 October 2014, shows, in part:

- childbirth in 2010
- work injury of the knee in 2013
- UTI in 2014
- report of good health in the last 30 days

d. On 8 December 2014, she was ordered to initial active duty training (IADT) with a report date of 29 December 2014.

e. On 11 February 2015, Orders 042-727 issued from U.S. Army Installation Management HQ, U.S. Garrison Fort Jackson, attached her to A Company, 58th Transportation Battalion, Fort Leonard Wood for military occupational specialty (MOS) training. Her proceed date was 12 March 2015.

f. On 14 May 2015, the Commander, U.S. Army Reserve Command, authorized her release from active duty due to a temporary medical condition. If further authorized the Houston Military Entrance Processing Station (MEPS) to reschedule her for MOS training, prior to a 30 November 2015 suspense date. This memorandum, further instructed:

- MEPS to ensure she was medically, morally, and otherwise qualified prior to IADT.
- Her unit to initiate separation under the provisions of Chapter 8, Army Regulation 135-178 (Enlisted Administrative Separations) if she did not return to active duty by the suspense date.

g. On 22 May 2015, she was honorably released from active duty training by reason of completion of required active service under authority of Chapter 4, Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations) and she was transferred to control of 453rd Transportation Company. Her DD Form 214 shows:

- last duty assignment was Reception Holding Unit, 120th Adjutant General Battalion, Reception Training Company
- was not awarded an MOS; completed 4 months and 24 days of active service
- Separation Code: MBK and Reentry Code: 1

h. The complete facts and circumstances surrounding the applicant's discharge from the USAR are unavailable for the Board to review.

i. On 6 March 2019, HQ, 63D Readiness Division (USAR), honorably discharged her from the USAR, effective 6 April 2019. Orders 19-065-00054, show she was medically disqualified, not as a result of her own misconduct.

4. 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: The applicant is applying to the ABCMR in essence requesting a referral to the Disability Evaluation System (DES). She states: "My DD214 states an honorable discharge. At the time of my discharge, I was in a medical unit. My reserve orders state that I have an honorable discharge with additional comments stating medically disqualified with no fault of my own misconduct. I would like my DD214 to reflect my medical discharged due to the service-connected disability I obtained during my active-duty training. I should have been med board. I am 100% disabled totally and permanently at the age of 33."

b. The Record of Proceedings outlines the applicant's military service and the circumstances of the case. The applicant's DD 214 shows the former USAR Soldier entered active duty for training 29 December 2014 and received an honorable discharge on 22 May 2015 at the completion of her required active service under the separation authority provided by 4 of AR 635-200, Active Duty Enlisted Administrative Separations (17 December 2009). It does not contain a primary specialty .

c. AHLTA shows the applicant was first seen for foot pain on 14 January 2015 and which was treated conservatively. Over the next several months, she continued to have pain in various regions of both lower extremities and after several radiographic studies, she was diagnosed with a right tibial plateau stress fracture. She was placed on convalescent leave but upon return, continued to have significant duty restricting bilateral lower extremity/knee pain. In a 14 May 2015 memorandum, the Acting Chief of the Manning Division informed the Commander of the 4th Expeditionary Force of their ability to discharge the applicant for this temporary medical condition:

1. The Fort Jackson Reserve Liaison is authorized to release the above-named Soldier from active duty due to a temporary medical condition.

2. This memorandum serves as authority for the Houston Military Entrance Processing Station (MEPS) Guidance Counselor to reschedule the Soldier in MOS 88M10 under the Standard Training Program prior to the above suspense date. The MEPS must ensure the Soldier is medically, morally and otherwise qualified prior to

Initial Active Duty for Training (IADT). The Soldier is not a Basic Combat Training graduate. The MEPS will revise orders and furnish this Command with a copy.

3. If the Soldier fails to return to active duty by the above suspense date, the unit must use notification procedures in AR 135-178, Chapter 3 and initiate separation under Chapter 8 [Entry Level Performance and Conduct]. The unit will provide this Command a copy of the separation order as applicable. The unit may request an extension of the above suspense from this Command.”

f. The suspense date for the applicant to reengage with a MEPS station was 30 November 2015. There is no evidence the applicant met this contractual obligation. Orders published by the 63rd Readiness Division (USAR) show she was discharged effective 6 April 2019 – Medically disqualified, not result of own misconduct. This option was likely selected because there had been limited if any contact with the applicant after she left active duty in May 2015.

g. Her healing stress injuries/fractures did not constitute a disability IAW AR 635-40, Physical Evaluation for Retention, Retirement, or Separation. Given the nature of her injury and the treatment thereof in a healthy individual, the healing fractures would be expected to heal, and been quite unlikely to have gone on to fail the medical retention standards of chapter 3, AR 40-501 prior to her discharge. Thus, there was no cause for referral to the Disability Evaluation System.

h. JLV shows she has been awarded multiple VA service-connected disability ratings, including neurosis (100%) originally effective 15 February 2023, limited motion of ankle (20%) originally effective 26 October 2018, and fibromyalgia (20%) originally effective 23 May 2015. However, the DES compensates an individual only for 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. That role and authority is granted by Congress to the VA and executed under a different set of laws. It is the opinion of the Agency Medical Advisor that a referral of her case to the Disability Evaluation System is unwarranted.

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 applicant served on active duty for training as a Reserve Soldier from 29 December 2014 to 22 May 2015 and was honorably released from active duty due to completion of her required service. The facts and circumstances surrounding her 2019 discharge from

the USAR are not available. However, orders published by the 63rd Readiness Division (USAR) show she was discharged effective 6 April 2019 – Medically Disqualified, not result of own misconduct. 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 from the USAR is neither in error nor 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.





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. Army Regulation 635-200, in effect at the time, set policies, standards and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. Chapter 4 provided Soldiers of the ARNGUS and the U.S. Army Reserve (USAR) ordered to active duty for a period in excess of 90 days will, upon release from active duty, revert to control of the appropriate Reserve Component.

b. Paragraph 4-5. Characterization of service. A Soldier being separated upon expiration of enlistment or fulfillment of service obligation will be awarded a character of service of honorable unless the Soldier is in entry-level status and service is uncharacterized.

3. Army Regulation 135-178 (Enlisted Administrative Separations), in effect at the time, established policies, standards, and procedures governing the administrative separation of certain enlisted Soldiers of the Army National Guard and the United States Army Reserve as directed by DoD Directive 1332.14.

a. Paragraph 2–4. Counseling and rehabilitation. Commanders must make reasonable efforts to identify Soldiers who are likely candidates for early separation and to improve their chances for retention through counseling, retraining, and rehabilitation before starting separation action. These actions are prerequisite for initiating action to separate a Soldier for one of the following reasons:

- involuntary separation due to parenthood
- other designated physical or mental conditions
- entry level performance and conduct
- unsatisfactory performance
- minor disciplinary infractions or a pattern of misconduct
- failure to meet Army body composition standards (chap 16, of this regulation).

b. Counseling. When a Soldier's conduct or performance approaches the point where a continuation of such conduct or performance would warrant initiating separation action for one of the reasons, above, the Soldier will be counseled by a responsible person about his or her deficiencies at least once before initiating separation action.

Additional formal counseling is discretionary; however, the Soldier's counseling or personnel records must establish that the Soldier was afforded a reasonable opportunity to overcome these deficiencies. Such factors as the length of time that has elapsed since the prior counseling, the Soldier's conduct and performance during that period, and the commander's assessment of the Soldier's potential for becoming a fully satisfactory Soldier, should be considered. Counseling will include, but not be limited to, the following:

- reasons for counseling
- the fact that continued behavior of a similar nature or additional misconduct may result in the Soldier's separation
- the characterization of service that may be issued and the effect of each type if such action is taken and separation accomplished

c. Chapter 8. Entry Level Performance and Conduct. A Soldier may be separated under this chapter if he or she is notified of the initiation of separation proceedings while in an entry level status (see glossary) when it is determined under the guidance set forth in chapter 2, section I, that the Soldier is unqualified for further military service by reason of unsatisfactory performance or conduct (or both), as evidenced by inability, lack of reasonable effort, failure to adapt to the military environment or minor disciplinary infractions.

d. Separation processing may not be initiated under this chapter until the Soldier has been formally counseled under the requirements prescribed by paragraph 2–4, of this regulation.

4. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation), in effect at the time, established the Army Physical Disability Evaluation System according to the provisions of chapter 61 of Title 10 United States Code and Department of Defense Directive 1332.18. It set forth policies, responsibilities, and procedures that apply in determining whether a member was unfit because of physical disability to perform the duties of his office, grade, rank, or rating. If a member was found unfit because of physical disability, it provided for disposition of the member according to applicable laws and policies.

a. Paragraph 4-24 provided that Based upon the final decision of the Commanding General, U.S. Army Physical Disability Agency, or the Army Physical Disability Review Board, the Commanding General, Military Personnel Center would issue retirement orders or other disposition instruction separation for physical disability with severance pay.

b. Paragraph 4-24b(1) provided U.S. Army Human Resources Command (HRC) will publish orders or issue proper instructions to subordinate headquarters or return any

disability evaluation case to U.S. Army Physical Disability Agency (USAPDA) for clarification or reconsideration when newly discovered evidence becomes available and is not reflected in the findings and recommendations. Based on the final decision of USAPDA, HRC will issue retirement orders or other instructions as follows:

- permanent retirement for physical disability (Title 10, United States Code, Section 1201 or 1204)
- placement of the Temporary Disability Retirement List (Title 10, United States Code, Section 1202 or 1205)
- separation for Physical Disability with severance pay (Title 10, United States Code, Section 1203 or 1206)

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 Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//