

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 May 2024

DOCKET NUMBER: AR20230012978

APPLICANT REQUESTS: an honorable physical disability discharge in lieu of discharge due to entry level performance and conduct.

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

- DD Form 293 (Application for the Review of Discharge)
- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 20 May 1989

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 states she has a service-connected disability and should have been medically discharged. She wanted to continue to serve and be transferred to another Army base since Fort McClellan was being closed. She was forced to go home with a Chapter 11. She was injured and did not have a performance or conduct issue.

3. The applicant enlisted in the Regular Army on 3 March 1998.

4. A review of the applicant's service record shows:

a. The applicant accepted nonjudicial punishment on 30 April 1998, for stealing a pack of cigarettes, of a value of about \$1.50, the property of the Fort Benning shoppette on or about 24 April 1998.

b. The applicant was formally counseled on 1 May 1998, for falsifying a sworn statement.

c. A DA Form 3822-R (Report of Mental Status Evaluation), dated 5 May 1998, shows the applicant was seen for a psychiatric evaluation at her commander's request. The evaluating physician determined there was no evidence of a mental disease or defect. The applicant was psychiatrically cleared for administrative action deemed appropriate by command. The psychiatrist diagnosed the applicant with an adjustment disorder with mixed anxiety and depressed mood and recommended that the command initiate an administrative separation.

d. The applicant's immediate commander notified the applicant on 6 May 1998 that he was initiating action to separate her under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 11, for entry level status performance and conduct. As the specific reason, the commander cited the applicant's inability to adapt to the military.

e. The applicant acknowledged receipt of the separation notification on the same date. She waived her right to consult with counsel and elected to make a statement in her own behalf, which is unavailable for the Board to review.

f. On 6 May 1998, the applicant's immediate commander formally recommended her separation under the provisions of Army Regulation 635-200, Chapter 11.

g. A counseling report, dated 9 May 1998 from the battalion chaplain shows the applicant was counseled on 28 April 1998 at her request. She states she has been experiencing a lot of depression in the last few weeks. Her boyfriend had been killed and she joined the Army to run away from her grief. She made a mistake in enlisting; her mother is ill and she constantly worries about her. She is dealing with being on a profile and being behind in training and reported having suicidal ideation.

h. The applicant was formally counseled on 12 May 1998, regarding her mental status evaluation, memorandum from the battalion chaplain, and discharge from the service under Chapter 11.

i. The separation authority on 16 May 1998, approved the separation recommendation and directed the issuance of an entry level separation with an uncharacterized discharge.

j. The applicant was discharged on 20 May 1998, under the provisions of Army Regulation 635-200, Chapter 11, for entry level performance and conduct. She completed 2 months and 18 days of active service. Her DD Form shows her characterization of service as uncharacterized, Separation Code JGA and Reentry Code 3.

5. By regulation, Soldiers are considered to be in an entry-level status when they are within their first 180 days of active-duty service. An uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It simply means the Soldier was not in the Army long enough for his or her character of service to be rated as honorable or otherwise.

6. 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/or 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 an upgrade of her 20 May 1998 uncharacterized discharge, and in essence, a referral to the Disability Evaluation System (DES). She states:

"I was finally able to prove my service-connected disability from service and that I should of received a medical discharge not a general. I was injured. I did not want to be discharged. I wanted to be fixed and transferred to a new base since Ft. McClellan was being closed. They forced me to go home on a chapter 11."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 for the period of service under consideration shows she entered the Regular Army on 3 March 2003 and received an uncharacterized discharge on 20 May 1998 under provisions provided in chapter 11 of AR 635-200, Personnel Separations – Enlisted Personnel (26 June 1996), for falling below entry level performance and conduct standards.

d. No medical documentation was submitted with the application. There are no clinical encounters in the EMR.

e. The applicant received an Article 15 on 30 April 1998 for stealing a pack of cigarettes from the Fort Benning Shoppette.

f. She underwent a mental health evaluation on 5 May 1998 after which the provider recommended she be administratively separated, diagnosed her with "Adjustment disorder with mixed anxiety and depressed mood" and Personality disorder NOS [not otherwise specified], and stated:

“PVT [Applicant] is experiencing acute adjustment problems secondary to entering the military and due to longstanding personality and coping difficulties. Her current difficulties are symptomized by depressed mood, crying spells, irritability, low frustration tolerance, variable energy level, easy fatigability, sleep disturbance (initial & terminal insomnia & recurrent awakenings), suicidal ideation, nervousness, tension, anxiety, shaking, problems with nausea & vomiting, problems with attention & concentration, difficulty thinking clearly and making decisions, feelings of hopelessness, helplessness, & worthlessness, and low self-esteem.

Although she has never received any mental health treatment, PVT [Applicant] reported the following as being present for quite some time: difficulty getting along with females, having no clear identity of her own, being fearful of being alone, chronic feelings of emptiness, indecisiveness, passivity, submissiveness, being unassertive, doing things that she does not want to do in order to keep the peace, not expressing her feelings due to fears of losing the support/nurturance of others, having no self-confidence, and tending to be self-abasing.

Recommendations:

Recommend that the command initiate an administrative separation under the applicable provisions of AR 635-200, and that this action be processed to completion in a timely manner.

Recommend that the unit remove the soldier from training and observe her closely at the unit level until separation from active duty. This soldier should engage in no weapons training.

Recommend that the soldier continue to be followed at the CMHS [Community Mental Health Service] until separation from active duty.

Based on all available information, this individual has a mental disorder that would impair her judgment, reliability, or stability.”

g. Paragraph 3-36 of AR 40-501, Standards of Medical Fitness, states that acute adjustment disorder is not a cause for referral to a medical evaluation board:

“3-36. Adjustment disorders

Transient; situational maladjustments due to acute or special stress do not render an individual unfit because of physical disability, but may be the basis for administrative separation if recurrent and causing interference with military duty.”

h. JLV shows the applicant has been awarded three VA service-connected disability ratings for lower extremity musculoskeletal conditions. Though her medical problem list

shows she has been diagnosed with PTSD and major depressive disorder, neither condition is service connected.

i. 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). This type of discharge does not characterize service as good or bad.

j. It is the opinion of the Agency Medical Advisor that neither a discharge upgrade nor a referral of her case to the DES is warranted.

k. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? YES: PTSD and Major Depression

(2) Did the condition exist or experience occur during military service? NO: Neither condition is VA service connected

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A

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 shows the applicant was separated under the provisions of chapter 11 of AR 635-200, due to entry level status and performance. She was credited with 2 months and 1 days of active service. She did not complete initial entry training and was not awarded an MOS. Her service was uncharacterized. The Board found no error or injustice in her separation processing. An uncharacterized discharge is given to individuals who separate prior to completing 180 days of military service, or when the discharge action was initiated prior to 180 days of service. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the reviewing medical official's finding insufficient evidence of a medical condition that failed medical retention standards and necessitated her entry into the disability system. Based on a preponderance of evidence, the Board determined that neither a discharge upgrade nor a referral of her case to the DES is warranted.

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.

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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, USC, 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 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 3 states a separation will be described as entry level with uncharacterized service if the Soldier is in an entry-level status at the time separation action is initiated.

b. Chapter 11 provides for the separation of personnel because of unsatisfactory performance or conduct (or both) while in an entry-level status. When separation of a Soldier in entry-level status is warranted by unsatisfactory performance or minor disciplinary infractions (or both) as evidenced by inability, lack of reasonable effort, or failure to adapt to the military environment, he or she will normally be separated per this chapter. Service will be uncharacterized for entry-level separation under the provisions of this chapter. This policy applies to Soldiers in the Regular Army, Army National Guard (ARNG), and USAR who have completed no more than 180 days of continuous active duty or initial active duty for training (IADT) or no more than 90 days of Phase II under a split or alternate training option.

c. Section II (Terms) of the Glossary defines entry-level status for Regular Army Soldiers as the first 180 days of continuous active duty or the first 180 days of continuous active duty following a break of more than 92 days of active military service. For ARNG and USAR Soldiers, entry-level status begins upon enlistment in the ARNG or USAR. For Soldiers ordered to IADT for one continuous period, it terminates 180 days after beginning training. For Soldiers ordered to IADT for the split or alternate training option, it terminates 90 days after beginning Phase II of Advanced Individual Training.

3. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) 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. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501, chapter 3, as evidenced in a medical evaluation board (MEB); when they receive a permanent physical profile rating of "3" or "4" in any functional capacity factor and are referred by a Military Occupational Specialty Medical Retention Board; 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 or 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 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 are either 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 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 medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

d. 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.

e. 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.

4. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised post-traumatic stress disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental

health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

5. 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 DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD, traumatic brain injury, 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. The guidance further describes evidence sources and criteria and requires boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (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 based on 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.

//NOTHING FOLLOWS//