

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 June 2024

DOCKET NUMBER: AR20230013303

APPLICANT REQUESTS: physical disability separation in lieu of honorable separation due to disability, exited prior to service (EPTS) – medical board.

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

DD Form 149 (Application for Correction of Military Record)

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:
 - a. She was discharged under a false reason, which states her injuries were EPTS, but her medical history and her entry physical state otherwise. If her injuries would have been incurred prior to service, she would not have been able to join. She never went to a medical board and was never given a change to do so.
 - b. Her records should be corrected to show disability discharge because she cannot work and is being turned away from getting the benefits she deserves. She would like the chance to have her issues really heard and not be just thrown away. If there were nothing wrong with her, she would have never left the Army.
 - c. She marked item 14 of the DD Form 149 indicating that post-traumatic stress disorder (PTSD) is an issue/condition related to her request.
3. A physical profile is used to classify a Soldier's physical disabilities in terms of six factors or body systems, as follows: "P" (Physical capacity or stamina), "U" (Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric) and is abbreviated as PULHES. Each factor has a numerical designation: 1 indicates a high level of fitness, 2 indicates some activity limitations are warranted, 3 reflects significant

limitations, and 4 reflects one or more medical conditions of such a severity that performance of military duties must be drastically limited. Physical profile ratings can be either permanent (P) or temporary (T).

4. A DD Form 2808 (Report of Medical Examination) shows the applicant underwent medical examination on 17 September 2003, for the purpose of Regular Army enlistment.

a. The clinical evaluation shows asymptomatic, macromastia, a laceration scar on the right knee, and moderate, asymptomatic pes planus.

b. She was initially found not qualified for service on 17 September 2003, with a PULHES of 3(T)11120. The 3T rating was due to being overweight and the 2 rating was for vision.

5. A DD Form 4 (Enlistment/Reenlistment Document) shows the applicant enlisted in the U.S. Army Reserve (USAR) Delayed Entry Program (DEP) on 9 February 2004.

6. The applicant's DD Form 2808 further shows that subsequent to her initial PULHES rating on 17 September 2003, she was given a revised PULHES rating of 111121 on 26 May 2004, due to losing weight, and found qualified for service.

7. The applicant's DD Form 4 shows she enlisted in the Regular Army on 26 May 2004.

8. The applicant's Enlisted Record Brief (ERB), dated 13 August 2004, shows her PULHES as of that date to be 111121.

9. The complete facts and circumstances surrounding the applicant's discharge are unknown as her discharge packet, to include her any medical board proceedings, a DD Form 3349 (Physical Profile), and any other supporting medical or administrative documentation is not in her available service records for review and has not been provided by the applicant.

10. U.S. Army Combined Arms Support Command and Fort Lee Orders 351-0506, dated 16 December 2004, reassigned the applicant to the transition point for transition processing with an effective date of discharge of 17 December 2004.

11. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was honorably discharged on 17 December 2004, under the provisions of Army regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), chapter 5, due to disability, EPTS - medical board, with corresponding separation code KFN. She was not awarded a Military Occupational Specialty (MOS) and was credited with 6 months and 22 days of net active service.

12. 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/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 in essence requesting a referral to the Disability Evaluation System (DES) She states:

“I was discharged under false reason stating that my injuries occurred prior to service but my medical history and my entry physical say otherwise. If my injuries would have occurred prior to service I would not have been able to join and I never went to medical board nor was I given the chance to.”

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. Her DD 214 shows she entered the regular Army on 26 May 2004 and received an honorable discharge on 17 December 2004 under the provisions in Chapter 5 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (17 October 1990): Separation for Non-Service Aggravated, EPTS (existed prior to service) Conditions upon Soldier's Waiver of PEB Evaluation. The military separation code KFN denotes “Disability, Existed Prior to Service, Med Board.”

d. On her DD 149, the applicant indicated PTDS was an issue related to this request and her potential mental health issue was addressed in a separate behavioral health advisory opinion.

e. After a Soldier has undergone a medical evaluation board which has found him/her to have a pre-service condition which fails medical retention standards, Chapter 5 of AR 635-40 allows a Soldier to waive a physical evaluation board (PEB) for this medical condition. While the condition does fail medical retention standard, it would be non-compensable because it existed prior to service and was not permanently aggravated by service. A medical evaluation board (MEB) is completed to validate these criteria have been met and separation under chapter 5 is applicable. The Soldier is advised that a PEB evaluation is required for receipt of Army disability benefits, but waiver of the PEB will not prevent applying for VA benefits.

f. Her pre-entrance Report of Medical Examination shows her to have been in good health but she was noted to have moderate, asymptomatic, pes planus (flat feet).

g. No additional medical documentation was submitted with the application. AHLTA shows she was evaluated for right foot pain several times and diagnosed with "Congenital foot deformity, pes planus."

h. Neither her separation packet nor documentation addressing her involuntary administrative separation was submitted with the application nor uploaded into iPERMS. Given her separation authority, it must be assumed a medical evaluation board found her pes planus to be a pre-service condition which failed the medical retention standards in Chapter 3 or AR 40-501, Standards of Medical Fitness. Informed that her preexisting condition was non-compensable, she waived her right to a physical evaluation board and was subsequently separated from the Army.

i. JLV shows she is eligible for care as a non-service-connected veteran and has no service-connected disabilities.

j. There is no evidence the applicant had a 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.

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

13. BEHAVIORAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting physical disability separation in lieu of honorable separation due to disability, existed prior to service (EPTS) – medical board. The applicant selected PTSD on her DD Form 149, perhaps as an error, since she does not assert PTSD and is solely seeking disability based on medical issues (right ankle injury and bilateral leg stress fracture).

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following:

- The applicant enlisted into the Regular Army on 26 May 2004.
- A DD Form 2808 (Report of Medical Examination) shows the applicant underwent medical examination on 17 September 2003, for the purpose of Regular Army enlistment. She was initially found not qualified for service on 17 September 2003, with a PULHES of 3(T)11120. The 3T rating was due to being overweight and the 2 rating was for vision. The clinical evaluation shows asymptomatic, macromastia, a laceration scar on the right knee, and moderate, asymptomatic pes planus.
- Applicant's DD Form 2808 shows that in her subsequent PULHES she received a revised rating of 111121 on 26 May 2004, due to losing weight, and she was found qualified for service.

- Applicant's Enlisted Record Brief (ERB), dated 13 August 2004, shows her PUHLES as of that date to be 111121.
- The complete facts and circumstances surrounding the applicant's discharge are unknown as her discharge packet, to include any medical board proceedings, a DD Form 3349 (Physical Profile), and any other supporting medical or administrative documentation is not in her available service records for review and has not been provided by the applicant.
- Applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was honorably discharged on 17 December 2004, under the provisions of Army regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), chapter 5, due to disability, EPTS - medical board, with corresponding separation code KFN.

c. Review of Available Records: The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents contained in the applicant's file. The applicant states she was discharged under a false reason, which states her injuries were EPTS, but her medical history and her entry physical state otherwise. If her injuries would have been incurred prior to service, she would not have been able to join. She never went to a medical board and was never given a chance to do so. Her records should be corrected to show disability discharge because she cannot work and is being turned away from getting the benefits she deserves. She would like the chance to have her issues really heard and not just thrown away. If there were nothing wrong with her, she would have never left the Army. The applicant does not assert any behavioral health condition, and none was found in her medical record or supporting documentation.

d. The VA's Joint Legacy Viewer (JLV) was also reviewed and indicates the applicant is not service connected and has not been treated or diagnosed with any behavioral health condition. However, the applicant received supportive services via the VA from November 2012 to February 2019 due to issues with homelessness. The medical record indicates the applicant has repeatedly sought to obtain service connection for her ankle and leg issue in 2007, 2009, 2012, and 2015.

e. A Compensation and Pension Examination in the applicant's VA electronic medical record, dated 29 December 2012, indicates she was claiming service connection for right ankle torn ligament and bilateral leg stress fracture condition. The medical provider opined: "The claimed condition, which clearly and unmistakably existed prior to service, was clearly and unmistakably not aggravated beyond its natural progression by an in-service injury, event, or illness."

f. Based on the available information, this Behavioral Health Advisor opines the applicant's discharge was proper and equitable and her narrative reason for separation should remain a condition and not a service induced disability. In addition, a referral to

the IDES process is not indicated due to the fact that her condition was pre-existing and there is no evidence it was permanently aggravated by military service.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Not applicable

(2) Did the condition exist or experience occur during military service? Not applicable

(3) Does the condition or experience actually excuse or mitigate the discharge? Not applicable

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief 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. Upon review of the applicant's petition, available military record and medical review, the Board concurred with the advising official finding the applicant's discharge was proper and equitable and her narrative reason for separation should remain a condition and not a service induced disability. The opine noted, a referral to the IDES process is not indicated due to the fact that her condition was pre-existing and there is no evidence it was permanently aggravated by military service.

2. The Board determined there is insufficient evidence to support referral of the applicant's case to the DES. The found the applicant completed 6 months and 22 days of net active service. and did not complete training and was discharged from active duty due to disability- exited prior to service (EPTS) – medical board. An uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It merely means the Soldier has not been in the Army long enough for his or her character of service to be rated as honorable or otherwise. As a result, there is no basis for granting the applicant's request for physical disability separation in lieu of honorable separation due to disability, exited prior to service (EPTS). Therefore, the Board denied relief.

3. Referral to the IDES occurs when a Soldier has one or more conditions which appear to fail medical retention standards as documented on a duty liming permanent physical profile. The DES compensates an individual only for service incurred medical 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; 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.

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.

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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, 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. 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 (DRBs) and Boards for Correction of Military/Naval Records (BCM/NRs) when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), 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.

3. Title 10, U.S. Code, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system (DES) and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 (Discharge Review Board (DRB) Procedures and Standards) and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in a Medical Evaluation Board (MEB); when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an Military Occupational Specialty (MOS) Medical Retention Board (MMRB); 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/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 or not 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 either are 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 a 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 a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

4. Army Regulation 635-40 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. 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.

b. 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.

c. The percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Ratings are assigned from the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD). The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting, or ratable condition, is one which renders the Soldier unable to perform the duties of their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. 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.

d. Chapter 5 (Separation for Non-Service Aggravated, Existed Prior to Service (EPTS) Conditions upon Soldier's Waiver of Physical Evaluation Board (PEB) Evaluation), in effect at the time, provides for the separation of an enlisted Soldier for non-service aggravated EPTS conditions when the Soldier requests a waiver of PEB evaluation. Separation under this authority is not to be confused with separation under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) chapter 5, which provides for the involuntary separation within the first 6 months of entry onto active duty for failure to meet procurement fitness standards.

e. The criteria for chapter 5 separation show the case must meet the conditions set forth below:

- (1) Soldier is eligible for referral into the disability system.
- (2) The Soldier does not meet medical retention standards as determined by the MEBD.
- (3) The disqualifying defect or condition existed prior to entry on current period of duty and has not been aggravated by such duty.
- (4) The Soldier is mentally competent.
- (5) Knowledge of information about his or her medical condition would not be harmful to the Soldier's well-being.
- (6) Further hospitalization or institutional care is not required.
- (7) After being advised of the right to a full and fair hearing, the Soldier still desires to waive PEB action.
- (8) Soldier has been advised that a PEB evaluation is required for receipt of Army disability benefits, but waiver of the PEB will not prevent applying for VA benefits.

f. Paragraph 5-3 (Actions by physical evaluation board liaison officer (PEBLO)) provides that he PEBLO will inform the Soldier of his/her rights and conditions as outlined above. If the Soldier declines the opportunity to apply for discharge, the PEBLO will notify the commander in writing. The notice will state that he Soldier has been fully informed of the provisions of this chapter and declined to apply for discharge. If the

Soldier requests to apply for discharge, the PEBLO will assist the Soldier in preparing a Request for Discharge for Physical Disability.

5. Title 10, U.S. Code, section 1201, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30 percent. Title 10, U.S. Code, section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating of less than 30 percent.

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. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. 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.

//NOTHING FOLLOWS//