

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 October 2024

DOCKET NUMBER: AR20230013304

APPLICANT REQUESTS: correction of her uncharacterized discharge to honorable discharge based on a service-connected medical issue. Additionally, she requests an appearance before the Board via video/telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- DA Form 2173 (Statement of Medical Examination and Duty Status)
- Orders 273-1312
- Separation Counseling Checklist

FACTS:

1. The applicant did not file within the 3-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 her leg and bone were injured during training while at Fort Jackson, SC, she was no longer physically able to complete the required training without medical care. She was told by the Judge Adjutant General (JAG) Officer that because she was graduating and leaving on the same day for advanced individual training (AIT) she would have to stay in a temporary housing for physical therapy and change her military occupational specialty (MOS) to fulfill her contract; or go home, heal, and return once she was cleared from the Veterans Administration (VA) as the training cycle for the MOS 98C (Signal Intelligence Analyst) was only available every 12 months. Her DA Form 2173 shows her injury was incurred in the line of duty; therefore, her discharge should be corrected and upgraded. She has been unable to obtain copies of her official military medical records/files after multiple requests for them.
3. The applicant enlisted in the Regular Army on 18 August 1998, for 4-years. She did not complete training and was not awarded a MOS.

4. DA Form 2173 shows on or about 3 September 1998 an injury-shin splints-left quad strain-left thigh pain-edema both legs-swollen knee. The applicant began complaining of leg pain throughout her leg after conducting psychical training one morning. The applicant was not able to complete training due to this pain. This was apparently an injury received during her tenure at Fort Jackson. The injury was considered to have been incurred in the line of duty.

5. The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding her discharge processing. The record is void of any adverse counseling.

6. The applicant was discharged on 2 October 1998. Her DD Form 214 shows she was discharged under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), paragraph 11, by reason of entry level status performance and conduct with Separation Code JGA and Reentry Code 3. She completed 1 month and 15 days of net active service. Her service was uncharacterized.

7. Soldiers are considered to be in an entry-level status when they are within their first 180 days of active-duty service. The evidence of record shows the applicant was in an entry-level status at the time of her separation. 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.

8. The applicant provides two service documents and a copy of her DD Form 214 as discussed above.

9. AR 635-5 (Separation Documents), states, the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered therein reflects the conditions as they existed at the time of separation.

10. In reaching its determination, the Board can consider the applicant's petition and service record in accordance with the published equity, injustice, or clemency determination guidance.

11. 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 2 October 1998 uncharacterized discharge, and in essence, a referral to the Disability Evaluation System (DES). She states:

“My leg and bone were injured during training while at Ft. Jackson, SC and I was no longer physically able to complete the required trainings without medical care. I was told by the JAG Officer that because I was graduating and leaving on the same day for AIT that I would have to stay in a temporary housing for physical therapy and change my MOS to fulfill my contract or go home, heal and return once I was cleared from the VA as the training cycle for the MOS 98 Charile was only available every 12 months. DA Fom1 2173 shows my injury was incurred in the line of duty therefore my discharge should be corrected and upgraded.

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 18 August 1998 and received an uncharacterized discharge on 2 October 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. A 14 October 1998 Statement of Medical Examination and Duty Status shows the applicant's bilateral shin splints and left quadriceps muscle strain occurred in the line of duty while the applicant was performing physical training O/A the morning of 3 September 1998

f. Neither her separation packet nor documents addressing her involuntary administrative separation were submitted with the application nor uploaded into iPERMS.

g. JLV shows the applicant is not registered with VA.

h. 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. This type of discharge does not attempt to characterize service as good or bad.

i. 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.

j. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? NO

(2) Did the condition exist or experience occur during military service? N/A

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

BOARD DISCUSSION:

1. The Board determined 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.

2. 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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests.

a. The applicant's separation packet is not available for review. However, other available evidence (DD Form 214) shows the applicant was discharged on 2 October 1998, under the provisions of AR 635-200, paragraph 11, by reason of entry level status performance and conduct with Separation Code JGA and RE-3. She completed 1 month and 15 days of net active service. Her service was uncharacterized. 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 applicant's argument but did not find it supported by the evidence.

b. 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 finding insufficient evidence to support that the applicant had a mental health condition while on active service. Since she was separated within the first 180 days of active service, based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or 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.

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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 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. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or

Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.

3. Title 10, USC, 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.

4. Title 10, USC, Section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating at less than 30 percent.

5. Army Regulation 15-185 (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, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

6. AR 635-200, in effect at the time, sets 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. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. 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 an 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.

7. AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation) prescribes 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. It implements the requirements of Title 10, USC, Chapter 61.

a. Chapter 5, of the regulation in effect at the time of the applicant's period of service, provided for the separation of enlisted personnel for non-service aggravated conditions that existed prior to service when a Soldier requested a waiver of a physical evaluation board evaluation. An enlisted person must meet the following conditions:

- Soldier was eligible for referral into the disability evaluation system.
- Soldier does not meet the medical retention standards as determined by a medical evaluation board
- the disqualifying defect or condition existed prior to entry on active duty.
- hospitalization or institutional care is not required
- after being advised of the right to a full and fair hearing, the Soldier waives physical evaluation board action.
- Soldier was advised a physical evaluation board is required for receipt of Army disability benefits, but waiver of the physical evaluation board will not prevent applying for VA benefits

b. A physical evaluation board liaison officer was required to inform the Soldier of the rights and conditions noted above. If the Soldier declined the opportunity to apply for a discharge, the liaison officer was required to notify the Soldier's commander. If the Soldier requested a discharge, the liaison officer assisted the Soldier in preparing their request for discharge.

c. Commanders with special court-martial convening authority could approve or disapprove a Soldier's discharge under this chapter. Discharges under this provision would be expeditious discharges and each Soldier would receive a DD Form 214 documenting their service. When a Soldier was in an entry level status, meaning they were still in training and had not completed military occupational specialty training, their service would be described as uncharacterized in accordance with AR 635-200, Chapter 3.

8. AR 40-501 (Standards of Medical Fitness) governs medical fitness standards for enlistment, induction, appointment, retention, and separation (including retirement.) Chapter 3 provides the various medical conditions and physical defects which may

render a Soldier unfit for further military service and which fall below the standards required for the individual in paragraph 3-2, below. These medical conditions and physical defects, individually or in combination:

- significantly limit or interfere with the Soldier's performance of duties
- may compromise or aggravate the Soldier's health or well-being if the Soldier remains in the military-this may involve dependence on certain medications, appliances, severe dietary restrictions, frequent special treatments, or a requirement for frequent clinical monitoring
- may compromise the health or well-being of other Soldiers
- may prejudice the best interests of the government if the individuals were to remain in the military service

9. 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 (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) 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; 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 to 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.

10. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and BCM/NRs on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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 on the basis of equity, injustice, or clemency grounds, Boards 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//