

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 August 2024

DOCKET NUMBER: AR20230013457

APPLICANT REQUESTS: an upgrade of her uncharacterized discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record), 17 October 2024
- 39 pages of psychiatric treatment records dated 2020 — 2023

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 marked post-traumatic stress disorder (PTSD) and other mental health issues or conditions were related to her request. She states the change is requested for eligibility requirements.
3. The applicant provided 39 pages of psychiatric treatment records reflecting care was given by (Practice) Psychiatry for alcohol and cannabis abuse, bipolar disorder, generalized anxiety disorder, panic disorder, reaction to severe stress, and attention deficit hyperactivity disorder.
4. A review of the applicant's service records show:
 - a. On 12 March 1998, she enlisted in the Regular Army for 3 years beginning at grade/pay grade private first class/E-3 with an understanding that her enlistment assured her she would receive training in military occupational specialty 88H (Cargo Specialist).
 - b. On 23 March 1998, she was rated 'no go' on an Army Physical Fitness Test while assigned to Fitness Training Company.
 - c. On 10 April 1998, she was given initial counseling for training.

d. On 17 April 1998, she was counseled that she would receive a medical recommendation for separation due to pregnancy.

e. On the same date she was placed on medical profile which limited her training. The profile noted a medical condition intrauterine pregnancy with a date of probable conception of 11 March 1998. The examining physician recommended she be returned to her unit for expedited processing for separation.

f. On 20 April 1998, she understood and agreed in writing, that she would be recommended for separation because of pregnancy.

g. On 20 April 1998, the Company Commander, E Company, 1st Battalion, 34th Infantry Regiment, notified her was initiating action to separate her for pregnancy under provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-11b, as the result of an obstetrician finding, and he notified her of her rights. He recommended she receive an entry level/uncharacterized separation. She understood the battalion commander and separation authority were not bound by his recommendation as to characterization of service. She had a right to consult with consulting counsel or civilian counsel at her own expense and she may submit statements in her own behalf. She further understood she may obtain copies of the documents that would be sent to the separation authority supporting the proposed separation.

h. On the same date, she elected her rights. She elected not to submit statements in her own behalf and she waived consulting counsel. She understood that she may expect to encounter substantial prejudice in civilian life if a characterization that was less than honorable were issued to her. She further understood that she may up until the date of the separation authority orders or approval of her separation, she may withdraw the waiver of any of the rights she did not elect; she would be ineligible to enlist in the U.S. Army for 2 years after her discharge.

i. On the same date, her company commander recommended her separation from the Army, noting in part, she had no potential for useful service under conditions of full mobilization.

j. On 20 April 1998, her intermediate commander recommended approval of her discharge.

k. On 21 April 1998, the separation authority approved her discharge for procurement medical standards and directed an uncharacterized entry level discharge.

l. On 24 April 1998, she was discharged. Her DD form 214 (Certificate of Release or Discharge from Active Duty) shows in:

- Block 11 (Primary Specialty) – none (no MOS was awarded).
- Block 12c (Net Active Service This Period) – 1 month and 13 days.
- Block 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) – none.
- Block 24 (Character of Service) – Uncharacterized
- Block 25 (Separation Authority) – Army Regulation 635-200, Paragraph 5-11
- Block 26 (Separation Code) – JFW
- Block 27 (Reentry Code) – 3
- Block 28 (Narrative Reason for Separation) – Failure to Meet Procurement Medical Fitness Standards

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

6. There is no evidence indicating she applied to the Army Discharge Review Board for an upgrade of her discharge within that board's 15-year statute of limitations.

7. 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 an upgrade of her uncharacterized discharge. On her DD 293, she has noted that PTSD and Other Mental Health concerns are issues related to her request.

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 for basic combat training on 12 March 1998 and received an uncharacterized discharged on 24 April 1998 under the separation authority provided by paragraph 5-11 of AR 635-200, Personnel Separations – Enlisted Personnel (26 June 1996): Separation of personnel who did not meet procurement medical fitness standards.

d. Paragraph 5-11a of AR 635-200:

- a. Soldiers who were not medically qualified under procurement medical fitness standards when accepted for enlistment, or who became medically disqualified

under these standards prior to entry on AD [active duty] or ADT [active duty for training] for initial entry training, will be separated. Medical proceedings, regardless of the date completed, must establish that a medical condition was identified by appropriate military medical authority within 6 months of the soldier's initial entrance on AD for RA [regular Army], or during ADT for initial entry training for ARNGUS [Army National Guard of the United States] and USAR [United States Army Reserve], which—

(1) Would have permanently or temporarily disqualified him or her for entry into the military service or entry on AD or ADT for initial entry training had it been detected at that time.

(2) Does not disqualify him or her for retention in the military service under the provisions of AR 40–501, chapter 3.

e. On 17 April 1998, the applicant was counseled by SFC M.A.L and informed he was recommending she be separated from the Army because she was pregnant. On 20 April 1998, her company commander informed her of his initiation of action to separate her for this condition under paragraph 5-11b or AR 635-200.

f. She completed a Soldier's Questionnaire on 20 April 1998 in which she agreed with her pending separation and she would consider returning to the Army in the next 6 to 24 months "To continue her career."

g. Her separation was approved by the brigade commander on 21 April 1998 with the directive she receive an uncharacterized discharge.

h. In a 23 April 2024 "To Whom It May Concern" memorandum, her behavioral health provider states she has been treating the applicant since April 2020 for the following conditions:

- Alcohol abuse, uncomplicated
- Cannabis abuse, uncomplicated
- Other bipolar disorder
- Generalized anxiety disorder
- Panic disorder [episodic paroxysmal anxiety]
- Other reactions to severe stress
- Bipolar disorder, current episode depressed, moderate
- Attention-deficit hyperactivity disorder, unspecified type

i. This is supported by civilian treatment records April 2020 to August 2023. The initial encounter states she had been depressed for about one year.

j. JLV shows she receives humanitarian emergency care as a non-service-connected Veteran. She has no VA service-connected disabilities and no diagnosed mental health conditions on her JLV medical problems list.

k. 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. Through no fault of her own, she simply had a medical condition which was, unfortunately, not within enlistment standards.

l. It is the opinion of the Agency Medical Advisor that an upgrade of her is not warranted.

m. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? YES: Applicant asserts she has PTSD and other mental health conditions and she has been diagnosed with multiple mental health conditions.

(2) Did the condition exist or experience occur during military service? YES: Applicant asserts these were incurred during her 43 days of service.

(3) Does the condition or experience actually excuse or mitigate the discharge? NO: While the applicant has recently been diagnosed with several behavioral health conditions, there is no evidence these were incurred during her brief period of service or have any relevancy to her discharge for pregnancy.

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 found to have a preexisting condition which does not meet the enlistment standard in chapter 2 of AR 40-501, Standards of Medical Fitness, that was neither incurred on active duty nor permanently aggravated by service. As a result, her chain of command separated her. She completed 1 month and 13 days of net active service. She did not complete initial entry training and was not awarded an MOS. 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 found no error or injustice in her separation processing. Also, the Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical

reviewing official and agreed that while the applicant has recently been diagnosed with several behavioral health conditions, there is no evidence these were incurred during her brief period of service or have any relevancy to her discharge for pregnancy. Therefore, the Board determined relief is not warranted.

BOARD VOTE:

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:	:	:	GRANT FULL RELIEF
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■	■	■	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, United States 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 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Section III, Paragraph 3-9, in effect at the time of the applicant's separation, provides that a separation would be described as entry level with uncharacterized service if processing was initiated while a Soldier was in an entry-level status, except when:

(1) An under other than honorable conditions characterization was authorized by the reason for separation and was warranted by the circumstances of the case; or

(2) The Secretary of the Army, on a case by case basis, determined a characterization of service as honorable was clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty. This characterization was authorized when the Soldier was separated by reason of selected changes in service obligation, for convenience of the government, and under Secretarial plenary authority.

b. Paragraph 5-11, Section V, provided that Soldiers who were not medically qualified under procurement medical fitness standards when accepted for enlistment or who became medically disqualified under these standards prior to entrance on active duty, active duty for training, or initial entry training would be separated. A medical proceeding, regardless of the date completed, must establish that a medical condition was identified by appropriate medical authority within 6 months of the Soldier's initial entrance on active duty, that the condition would have permanently or temporarily disqualified the Soldier for entry into military service had it been detected at that time, and the medical condition did not disqualify the Soldier from retention in the service under the provisions of Army Regulation 40-501. The character of service for Soldiers separated under this provision would normally be honorable but would be uncharacterized if the Soldier was in an entry-level status.

c. Entry-level status is defined as the first 180 days of continuous active service for Regular Army Soldiers.

d. An uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It merely means the Soldier has not served on active duty long enough for his or her character of service to be rated.

3. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designator (SPD) Codes), in effect at the time, prescribes the specific authorities (regulatory, statutory, or other directives) reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It shows separation by paragraph 5-11 of

Army Regulation 635-200 the reason of separation to be "failed medical/physical procurement standards" and the SPD code of "JFW."

4. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Chapter 3 prescribes basic eligibility for prior-service applicants for enlistment and includes a table of U.S. Army reentry eligibility (RE) codes.

- RE-1 applies to persons completing an initial term of active service who are considered qualified to reenter the U.S. Army if all other criteria are met
- RE-3 applies persons who are not considered fully qualified for reentry or continuous service at the time of separation, but disqualification is waivable
- RE-4 applies to persons separated from their last period of service with a nonwaivable disqualification

5. 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 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.

6. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

7. 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. 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. 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.

8. 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//