

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 July 2024

DOCKET NUMBER: AR20230014116

APPLICANT REQUESTS: reconsideration of her previous request for disability separation, separation pay in the grade of E-3, and entitlement to benefits. She now specifically requests:

- correction of her enlistment date to 3 February 1981
- correction of her discharge date to 30 November 1986
- correction of rank to reflect Sergeant/E-5 and back pay

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

- DD Form 149 (Application for Correction of Military Record)
- self-authored statement
- discharge approval memorandum, 24 June 1981
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 30 June 1981
- picture of Soldiers with class date September 1982

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR200388384 on 1 July 2003.

2. The applicant states, in effect, after she enlisted while in basic training, she was injured and never reported it to sick call due to the stigma which came with sick call. When she completed basic training, she was sent home to her Reserve unit where she served 5 years.

a. When she enlisted, she was assaulted by four guys who were enlisted personnel and a military policeman, they threatened her if she told anyone. She blamed herself for this assault. While in basic training, when watching a film regarding sexual assault she could not watch, and she suffered from flashbacks of the incident.

b. When she left basic training and went to the Reserve Unit, she was never required to sign in, she just reported to her Commanding Officer. She worked at the Reserve Unit, as a secretary, until her Commanding Officer told her she was being discharged and to not return to work. He additionally told her; she was being promoted to Sergeant and that she would receive her discharge information in the mail.

c. She received her DD Form 214 almost seven years later, when she had the Military Police come to her home and inform her she was absent without leave. She noticed her DD Form 214 was incorrect as it showed discharge trainee. She has been treated by the Department of Veterans Affairs (VA) for post-traumatic stress disorder and sexual assault, due to trauma she endured when she enlisted and while serving in basic training.

d. She requests her DD Form 214 to show she was discharged on 30 November 1986 in the rank of Sergeant as she served in her Reserve Unit and was told she was being promoted. She requests to receive back pay while she served in the Reserve, although the Reserve Unit where she drilled is no longer there; therefore, there are no records or documents showing she served or was promoted. Additionally, she should have received a sign on bonus of \$10,000.00 and never received this either.

3. On her DD Form 149, she notes post-traumatic stress disorder (PTSD) and sexual assault/harassment are related to her request, as contributing and mitigating factors in the circumstances that resulted in her separation.

4. On 27 March 1981, the applicant enlisted in the U.S. Army Reserve, for a period of 6 years. She entered active duty on 15 May 1981, at Fort Jackson, South Carolina. Her DA Form 2-1 (Personnel Qualification Record) shows the highest rank she attained was private/E-1.

5. She accepted nonjudicial punishment, under the provision of Article 15, of the Uniform Code of Military Justice (UCMJ) on 11 June 1981 for going absent without leave (AWOL) while in reception on or about 22 May 1981 and remaining AWOL until on or about 29 May 1981 and for intentionally injuring herself by misusing prescription medication to avoid returning to duty on or about 3 June 1981. Her punishment imposed was forfeiture of \$117.00 pay for one month.

6. On 17 June 1981, the applicant's U.S. Army Reserve Liaison Noncommissioned Officer recommended the applicant be separated from the Army under Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-33, by reason of Trainee Discharge Program (TDP), showing on Training and Doctrine Command Form 871-R (TDP Counseling) that she exhibited very immature behavior and entered the interview stating she could not adjust to military life and self-discipline to meet the training requirements and had a negative attitude towards the military in general. He

recommended she be discharged because she would never become a productive Soldier.

7. The applicant's immediate commander notified the applicant on 18 June 1981, that he was initiating actions to separate her from the Army under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-33, Trainee Discharge Program (TDP). As the specific reason, the commander noted her lack of motivation to complete basic combat training, additionally adding she had been given ample time to improve but failed to do so.

8. The applicant acknowledged receipt of the separation notification on 18 June 1981. She indicated she understood she would receive that due to noncompletion of requisite active-duty time, Department of Veterans Affairs (VA) and other benefits normally associated with completion of honorable active service would be affected. Further, she understood that she would not be permitted to apply for reenlistment in the Army within 2 years of her separation. She declined to submit a statement in her own behalf and declined a separation medical examination.

9. The separation authority approved the recommended action for separation on 24 June 1981, additionally adding the applicant would be medically discharged and issued an honorable discharge certificate and she would be released from active duty and transferred to the Individual Ready Reserve to complete her six-year military service obligation which would end October 1986, in parentheses it states applicable for advanced individual training personnel only.

10. The applicant was discharged on 30 June 1981 under the provisions of Army Regulation 635-200, paragraph 5-33, TDP marginal or nonproductive, in the grade of E-1. She received an honorable characterization of service with separation code JET and reenlistment code of RE-3, 3B. She was credited with 1 month and 15 days of net active service this period with time lost from 22 May 1991 to 29 May 1981.

11. The DD Form 214 is a summary of a Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of active-duty service at the time of release from active duty, retirement, or discharge.

12. Army Regulation 635-200 sets forth the basic authority for separation of enlisted personnel. Chapter 5, in effect at that time, states administrative separation of individuals who had demonstrated during the first 180 days of training that they lacked the necessary motivation, discipline, ability or aptitude to become effective soldiers. This program, known as the TDP, mandated the award of an honorable discharge.

13. On 1 July 2003, the ABCMR denied the applicant's request for disability retirement, separation in pay grade E-3, separation pay, access to military base facilities,

entitlement to the GI Bill, removal of the term "non-productive," and lost time being removed from her separation document. The Board determined the applicant failed to submit sufficient relevant evidence to demonstrate the existence of probable error or injustice.

14. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

15. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of her previous request for disability separation, separation pay in the grade of E-3, and entitlement to benefits. She now also specifically requests: correction of her enlistment date to 3 February 1981, correction of her discharge date to 30 November 1986, and correction of rank to reflect Sergeant/E-5 and back pay.

b. This opine will narrowly focus on the applicant's request for disability separation and will defer the additional corrections and entitlement requests to the Board.

c. 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:

- Applicant enlisted in the U.S. Army Reserve on 27 March 1981.
- She entered active duty on 15 May 1981, at Fort Jackson, South Carolina. Her DA Form 2-1 (Personnel Qualification Record) shows the highest rank she attained was private/E-1.
- Applicant accepted nonjudicial punishment, under the provision of Article 15, of the Uniform Code of Military Justice (UCMJ) on 11 June 1981 for going absent without leave (AWOL) while in reception on or about 22 May 1981 and remaining AWOL until on or about 29 May 1981 and for intentionally injuring herself by misusing prescription medication to avoid returning to duty on or about 3 June 1981. Her punishment imposed was forfeiture of \$117.00 pay for one month.
- On 17 June 1981, the applicant's U.S. Army Reserve Liaison Noncommissioned Officer recommended the applicant be separated from the Army under Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-33, by reason of Trainee Discharge Program (TDP), showing on Training and Doctrine Command Form 871-R (TDP Counseling) that she exhibited very immature behavior and entered the interview stating she could not adjust to military life and self-discipline to meet the training requirements and had a negative attitude towards the military in general.
- Applicant's immediate commander notified the applicant on 18 June 1981, that he was initiating actions to separate her from the Army under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel),

paragraph 5-33, Trainee Discharge Program (TDP). As the specific reason, the commander noted her lack of motivation to complete basic combat training, additionally adding she had been given ample time to improve but failed to do so.

- Applicant acknowledged receipt of the separation notification on 18 June 1981. She indicated she understood that due to noncompletion of requisite active-duty time, she would be denied Department of Veterans Affairs (VA) and other benefits normally associated with completion of honorable active service. Further, she understood that she would not be permitted to apply for reenlistment in the Army within 2 years of her separation. She declined to submit a statement in her own behalf and declined a separation medical examination.
- The separation authority approved the recommended action for separation on 24 June 1981, additionally adding the applicant would be medically discharged and issued an honorable discharge certificate and she would be released from active duty and transferred to the Individual Ready Reserve to complete her six-year military service obligation which would end October 1986, in parentheses it states applicable for advanced individual training personnel only.
- Applicant was discharged on 30 June 1981 under the provisions of Army Regulation 635-200, paragraph 5-33, TDP marginal or nonproductive, in the grade of E-1. She received an honorable characterization of service with separation code JET and reenlistment code of RE-3, 3B. She was credited with 1 month and 15 days of net active service this period with time lost from 22 May 1991 to 29 May 1981.
- On 1 July 2003, the ABCMR denied the applicant's request for disability retirement, separation in pay grade E-3, separation pay, access to military base facilities, entitlement to the GI Bill, removal of the term "non-productive," and lost time being removed from her separation document. The Board determined the applicant failed to submit sufficient relevant evidence to demonstrate the existence of probable error or injustice.

d. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, after she enlisted while in basic training, she was injured and never reported it to sick call due to the stigma which came with sick call. When she completed basic training, she was sent home to her Reserve unit where she served 5 years. She further reports that when she enlisted, she was assaulted by four guys who were enlisted personnel and a military policeman, they threatened her if she told anyone. She blamed herself for this assault. While in basic training, when watching a film regarding sexual assault she could not watch and suffered a flashback of the incident. When she left basic training and went to the Reserve Unit, she was never required to sign in, she just reported to her Commanding Officer. She worked at the Reserve Unit, as a secretary, until her Commanding Officer told her she was being discharged and to not return to work. He additionally told her; she was being promoted to Sergeant and that she would receive her discharge information in the mail. She received her DD Form 214

almost seven years later, when she had the Military Police come to her home and inform her, she was absent without leave. She noticed her DD Form 214 was incorrect as it showed discharge trainee. She has been treated by the Department of Veterans Affairs (VA) for post-traumatic stress disorder and sexual assault, due to trauma she endured when she enlisted and while serving in basic training.

e. Due to the period of service no active-duty electronic medical records were available for review and the applicant did not provide any hardcopy medical documentation from her time in service. However, inconsistent with the applicant's assertion that she was unaware of her discharge from military service is her acknowledged receipt of the separation notification on 18 June 1981.

f. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 70% service connected for numerous medical conditions including: paralysis of anterior crural nerve, paralysis of sciatic nerve, paralysis of anterior crural nerve, and intervertebral disc syndrome. She is not service connected for any BH condition. However, during a mental health consult on 14 November 2014, for the purpose of requesting a C and P evaluation, the applicant reported, "the day she enlisted and was sworn in, her friends took her out to celebrate, she drank soft drinks and was feeling sick. Her friend told her she had a friend who would take her home. He took her to a home and was ambushed by him and 2 other guys... he was big, tall, and dark hair... everything is fuzzy, after that... she was screaming but no one was around to hear her. When she woke up at home the next morning, she woke up in a bed of blood. They were all in the military and one said he was an MP... they said if I told anyone, it would be the last thing I would tell anybody." Due to the lack of an MST coordinator, she was offered psychiatry services but declined. The applicant participated in a psychiatric assessment on 15 June 2016 and was diagnosed with Mood Disorder, unspecified. She participated in an MST consult on 21 June 2016 and per her request was referred to the Women's MST Skills Group but only participated in one session. The record does not indicate any consistent treatment for MST or behavioral health services. In December 2016, the applicant contacted the VA because she was experiencing housing insecurity and requested financial assistance, however, the family's income was too high to qualify for assistance. The record indicates that again in September to November 2023 she received support from the VA related to homelessness.

g. A Compensation and Pension Examination, dated 13 February 2017, references a physical therapy evaluation dated 15 June 1981, while the applicant was in-service, which states, "female in 1st week of BT since 29 May when she strained a muscle pulling on a bunk. Has been x-rayed at Ft Polk result was reported as WNL" (within normal limits). The report further states, "all symptoms appear partially or totally exaggerated. Also inappropriate responses to exam". The medical provider opined, "the imaging changes are consistent with her age, obesity and prior occupation in a care home. Therefore, it is less likely degenerative arthritis of the lumbar spine and lumbar radiculopathy of the left lower leg was incurred while in service". The applicant

continued to receive services for her lower back pain and was eventually service connected.

h. Based on the available information, this Behavioral Health Advisor opines it is more likely than not that, if the applicant had not suffered an MST during basic training, she would not have engaged in misconduct and would have been able to successfully complete her term of military service. However, based on the evidence provided, a referral to the IDES process is not indicated, at this time. No probative medical documentation was submitted with the application and the applicant's period of service predates the electronic medical record. There is no evidence the applicant's multiple service-connected disabilities failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to her separation. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of her grade, rank, or rating prior to separation. Although the applicant has been service connected for paralysis of anterior crural nerve, paralysis of sciatic nerve, paralysis of anterior crural nerve, and intervertebral disc syndrome, VA examinations are based on different standards and parameters; they do not address whether a medical condition met or failed Army retention criteria or if it was a ratable condition during the period of service. Therefore, a VA disability rating would not imply failure to meet Army retention standards at the time of service. A subsequent diagnosis through the VA is not indicative of an injustice at the time of service. Furthermore, even an in-service diagnosis is not automatically unfitting per AR 40-501 and would not automatically result in medical separation processing. Based on the documentation available for review, there is no indication that an omission or error occurred that would warrant a referral to the IDES process. In summary, her separation process appears proper, equitable and free of error, and insufficient new evidence has been provided to determine otherwise.

i. 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 records and medical review, the Board concurred with the advising official finding no indication that an omission or error occurred that would warrant a referral to the IDES process. The opine noted, her separation process appears proper, equitable and free of error, and insufficient new evidence has been provided to determine otherwise. The Board determined there is insufficient evidence to support the applicant's contentions for correction of her enlistment date to 3 February 1981 and correction of her discharge date to 30 November 1986.

2. The Board found no evidence the applicant's multiple service-connected disabilities failed the medical retention standards, prior to her separation. In addition, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of her grade, rank, or rating prior to separation. The Board determined the applicant's record is void evidence that shows she was promoted to sergeant. The Board agreed correction of rank to reflect Sergeant/E-5 and back pay is without merit. Based on the preponderance of evidence found in the applicant's record and the advising official opine, the Board agreed reversal of the previous Board decision is unwarranted and denied relief.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION



BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR200388384 on 1 July 2003.



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 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.
2. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:
  - 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. Paragraph 5-33, the TDP provided that commanders may expeditiously separate members who lack the necessary motivation, discipline, ability, or aptitude to become a productive Soldier. Additionally, Members separated under this program would be awarded an honorable character of service.

3. 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 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 (PTSD); Traumatic Brain Injury; sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. 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.

4. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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 on the basis of 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//