

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 August 2024

DOCKET NUMBER: AR20230015087

APPLICANT REQUESTS: in effect, reconsideration of her prior request for physical disability discharge in lieu of administrative discharge due to unsatisfactory performance

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

- Department of Veterans Affairs (VA) Form 21-4138 (Statement in Support of Claim), dated 10 October 2023
- photograph
- partial Army Board for Correction of Military Records (ABCMR) Record of Proceedings for Docket Number AR20220010049, dated 7 July 2023

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Number AR20220010049 on 7 July 2023.

2. The applicant states please refer to the attached photo as evidence for correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty). Due to multiple accidents, she spent her active duty time either in physical therapy and/or on crutches.

3. A physical profile is used to classify a Soldier's physical disabilities in terms of six factors, 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. The applicant's available service records do not contain a Standard Form 88 (Report of Medical Examination) from the time of her enlistment. A review of the U.S. Army Human Resources Command (AHRC) Soldier Management System (SMS) however,

reveals the applicant's PULHES was 111111, with no limitations in any factors, based on her last physical examination on 1 June 2000.

5. A DD Form 4 (Enlistment/Reenlistment Document) shows the applicant enlisted in the Army National Guard (ARNG) on 28 June 2000, for a period of 8 years.

6. Military Entrance Processing Station (MEPS) Orders 127-4, dated 30 June 2000, ordered the applicant to initial active duty for training (IADT), with a reporting date to the Reception Battalion and then Basic Combat Training (BCT) at Fort Jackson, SC, on 3 January 2001, and a follow up reporting date for Advanced Individual Training (AIT) at Fort Lee, VA, on 19 March 2001.

7. An undated Fitness Training Company, 120th Adjutant General Battalion (Reception) memorandum from the applicant's immediate commander notified her he was initiating action to separate her with an honorable discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 13, for unsatisfactory performance. The reasons for the proposed action were she lacked the necessary motivation, adaptability, self-discipline, ability, or attitude to become a productive Soldier. She was advised of her right to consult with counsel and to submit written statements in her own behalf.

8. On 9 October 2001, the applicant acknowledged receipt of the notification of recommendation for separation under the provisions of Army Regulation 635-200, Chapter 13. She acknowledged having been advised by consulting counsel of the basis for the contemplated action to separate her for unsatisfactory performance under the provisions of Army Regulation 635-200, chapter 13, its effects and the rights available to her. She waived consulting counsel and did not submit statements in her own behalf.

9. On 13 October 2001, the approval authority directed the applicant's honorable discharge under the provisions of Army Regulation 635-200, Chapter 13, for unsatisfactory performance.

10. A Standard Form 88 from the time of the applicant's discharge is not in her available records for review.

11. The applicant's available service records do not show:

- she was issued a permanent physical profile rating
- she suffered from a medical condition, physical or mental, that affected her ability to perform the duties required by her Military Occupational Specialty (MOS) and/or grade or rendered her unfit for military service
- she was diagnosed with a medical condition that warranted her entry into the Army Physical Disability Evaluation System (PDES)

- she was diagnosed with a condition that failed retention standards and/or was unfitting

11. The only available copy of the applicant's DD Form 214 in her service records is an abbreviated Veterans Administration Copy – 3. This DD Form 214 shows on 17 October 2001, she was honorably released from ADT, discharged from the Reserve of the Army, and returned to the ARNG due to unsatisfactory performance, with an uncited authority and separation code. She was not awarded an MOS and was credited with 9 months and 15 days of net active service.

12. The applicant's National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) shows she was given an uncharacterized discharge from the ARNG on 17 October 2001, under the provisions of National Guard Regulation 600-200 (Enlisted Personnel Management) paragraph 8-27y (as a result of discharge from the Reserve of the Army). She was credited with 1 year, 10 months, and 17 days of net service.

13. Massachusetts National Guard Orders 351-4, dated 17 December 2001, discharged the applicant from the ARNG effective 17 October 2001, under the provisions of National Guard Regulation 600-200, paragraph 8-27y, with assignment loss reason code TK (Trainee discharge program release from IADT). Her service was uncharacterized.

14. The applicant provided a photograph, presumably of herself, standing with crutches in what appears to be an open bay room in BCT.

15. The applicant previously applied to the ABCMR in June 2022, requesting amendment of her discharge to reflect medical discharge instead of unsatisfactory performance. She indicated she was misled by her drill sergeant and advised against taking a medical discharge because this would cause her problems in the civilian world. She was injured while in BCT and spent 9 months underdoing physical therapy.

16. In the adjudication of the applicant's request, an agency medical advisor reviewed her case and opined that there is no evidence the applicant had any medical condition which would have failed the medical retention standards of Army Regulation 40-501 (Standards of Medical Fitness) or was the cause for her poor performance. It was the opinion of the agency medical advisor that referral to the Disability Evaluation System (DES) was not warranted.

17. On 7 July 2023, the Board denied the applicant's request, determining the evidence presented did not demonstrate the existence of a probable error or injustice and the overall merits of her case were insufficient as a basis for correction of her records.

18. 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 requesting reconsideration of their prior denial of her request for a referral to the Disability Evaluation System (DES). She states she has included a photograph as new evidence. She stated in her prior request:

"I was advised by my drill sergeant not to take a medical discharge because this will give me a problem getting a job in a civilian world. I was 9 months undergoing physical therapy, from 2/2001 to 10/2001. After that, I was discharged I want my DD 214 corrected because it was my multiple injuries while in service that I can no longer be in the service. Actually, my pain is so much that I cannot work."

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 training on 3 January 2001 and was discharged under honorable on 17 October 2001 under the provisions in paragraph 13 of AR 635-200, Active Duty Enlisted Administrative Separations (26 June 1996): Separation for Unsatisfactory Performance.

d. This request was previously denied by the ABCMR on 7 July 2023 (AR20220010049). Rather than repeat their findings here, the board is referred to the record of proceedings and medical advisory opinion for that case. This review will concentrate on the new evidence submitted by the applicant.

e. The submitted photograph shows a female Soldier on crutches without brace(s) or other orthopedic devices. While this is evidencing the applicant received treatment for a lower extremity condition, it is not evidence substantiating she any 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.

f. No medical documentation was submitted with the application, there no encounters in AHLTA, and there is no documentation or diagnoses in JLV.

g. In an undated memorandum, her company commander notified her he was recommending that she be separated with an honorable conditions characterization of service under chapter 13 AR 635-200:

“These are the reasons for my proposed action: You lack the necessary motivation, adaptability, self-discipline, ability, or attitude to become a productive soldier. You are a quitter and a disgrace to those highly motivated and dedicated soldiers that are honoring their commitment to the US Army and the United States.”

h. The applicant acknowledged receipt of this notification on 9 October 2001, declined to submit a statement on her behalf, and waived her right to counsel.

i. The battalion commander approved the applicant’s discharge with an honorable condition characterization of service on 13 October 2001.

j. There is no evidence the applicant had any medical condition which would have failed the medical retention standards of chapter 3, AR 40-501 prior to her discharge; or which was a cause for her poor performance. Thus, there was no cause for referral to the Disability Evaluation System. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge.

k. It remains the opinion of the Agency Medical Advisor that a referral of her case to the DES is not warranted.

I. 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:

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 review based on law, policy, and regulation. Upon review of the applicant's petition and available military records, the evidence of record shows the applicant, as a member of the Army National Guard, entered active duty for training on 3 January 2001. On 17 October 2001, she was honorably released from active duty training and discharged from the Reserve of the Army and returned to the Army National Guard due to unsatisfactory performance. The Board noted the applicant's contention she spent her active duty period in crutches; however, the Board reviewed and concurred with the medical advisor's review finding no evidence the applicant had a medical condition which would have failed medical retention standards prior to her discharge or which were a cause for her poor performance. The Board determined referral of her case to the Disability Evaluation System (DES) is not warranted.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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| : | : | : | 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 amendment of the ABCMR decision rendered in Docket Number AR20220010049 on 7 July 2023.

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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, 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.

2. 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.

3. 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.

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

a. Chapter 13 contains policy and outlines procedures for separating individuals for unsatisfactory performance and provides that commanders will separate a member under this chapter when, in the commander's judgment, the member will not develop sufficiently to participate satisfactorily in further training and/or become a satisfactory Soldier.

b. The service of Soldiers separated because of unsatisfactory performance will be characterized as honorable or under honorable conditions as warranted by their military records.

5. 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.

//NOTHING FOLLOWS//