

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 September 2024

DOCKET NUMBER: AR20230015149

APPLICANT REQUESTS:

- medical retirement
- award of Combat Related Special Compensation (CRSC)
- personal appearance before the Board

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) for the period 19 April 2002 to 21 September 2006
- DD Form 214 for the period 1 November 2007 to 8 July 2011
- Department of Veterans Affairs (VA) Form 21-4138 (Statement in Support of Claim), dated 20 July 2012, prepared K.K.W., Ph.D.
- VA Rating Decisions, dated 2 October 2012 and 11 July 2018
- VA Summary of Benefits, dated 11 July 2023
- 13 pages of medical records

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 medically evacuated from Afghanistan due to the severity of her mental health. She had no guidance, support, or knowledge about what needed to be done to get a permanent disability retirement or how to apply for CRSC. She was the only Soldier from her unit back in the rear and had to out-process from the Army on her own. Had she known that she was entitled to a military disability retirement, she would have taken the necessary steps to ensure these were completed. She believes her command did her an injustice and should have informed her on this critical benefit and they should

have made sure she was sent to the medical review board for her combat related disabilities. She was failed in this.

b. She is a 100% permanent and total disabled veteran who is housebound due to her combat related disabilities. She believes that she was failed by those appointed above her after she was medically evacuated from Afghanistan because of her mental health. She had no guidance, direction, or knowledge of the medical review board, military disability retirement, or CRSC until this year in 2023 when she was informed about the entitlements. Her symptoms started in Iraq in 2005, but it was not until her deployment to Afghanistan in early 2010 that her command took notice. Per her unit commander's request, the Combined Joint Special Operations Task Force (CJSOTF) Afghanistan Command Psychologist, COL W, was flown to the remote camp where she was embedded with the Army Green Berets. COL W was sent to evaluate her mental health and well-being from the missions she had been on and her time outside the wire.

c. She met privately with COL W on several occasions. COL W and her commander had taken both of her weapons away and shipped her home immediately to the Behavioral Health Center on Fort Liberty to get a mental health evaluation. Upon returning home, she attended her mental health assessment and was told she would not be returning to Afghanistan due to the severity of her mental health and because her expiration term of service (ETS) date was in a few months, that she should start out-processing. She had very little contact with her unit in Afghanistan due to the nature of their deployment and she was on her own at the office since they would not be returning home until after her ETS date. A first sergeant from another unit in the same building as hers told her to check in with him once a week through email, to attend her mental health appointments, and to out-process in between so she would not have to go to the Wounded Warrior Battalion and be held over after her ETS date.

d. She was on her own and out-processed herself from her unit as well as the Army and never even went through the Soldier Readiness Center upon redeploying. She was left to figure things out on her own when she returned from Afghanistan. She believes that had her unit been home, she would have had the support and knowledge and would have been sent to the medical review board before she got out, however, they were not home, and she had very little contact with them due to the nature of their deployment. After getting out, she immediately applied for VA disability and received an 80% rating. In 2018, she was awarded a 100% permanent and total disability rating and housebound status due to the severity of her combat related disabilities. In addition, she has been seeing a psychiatrist and has been on medication every month since her ETS date and it will always be this way. She cannot work and has not worked since getting out due to the severity of her combat related disabilities, both physical and mental.

e. Because the VA could not get her seen at mental health for 8 months, she paid out of pocket to see a mental health provider and to see a primary care physician every

month from 2011 to 2016. In 2016, she finally switched over to the VA for all of her healthcare and she has been seen ever since. She is also getting evaluated and started testing for a traumatic brain injury (TBI) she was told she may have due to a roadside bomb her vehicle hit in Iraq in 2005 that has gone undiagnosed all of these years. She started TBI testing on 1 December 2023. A day does not go by that she does not suffer. It takes everything in her to get through each and every day. She believes that she deserves a military disability retirement and should have had it all of these years. She was on her own and without support at the end of her time in service. Her hope is that upon reviewing her application, that the Board can see there was an injustice done from the "inaction" of her command and grant her a military disability retirement, something that she truly believes should have been awarded to her back in 2011.

3. Regarding the applicant's request for CRSC, the CRSC program restores military retired pay to eligible retired veterans with service connected disabilities that have been determined to be combat related. The applicant is not currently a military retiree; therefore, she is not eligible for CRSC at this time. Should a determination be made that she qualifies for a medical retirement, she then must submit her CRSC application to the U.S. Army Human Resources Command Special Compensation Branch with supporting evidence. This portion of the applicant's request will not be discussed further in this Record of Proceedings.
4. The applicant enlisted in the Regular Army on 19 April 2002. She held military occupational specialty 46R (Broadcast Journalist). She served in Iraq from 31 December 2004 to 21 November 2005.
5. The applicant was discharged on 21 September 2006 under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), chapter 8, by reason of pregnancy or childbirth.
6. The applicant again enlisted in the Regular Army on 1 November 2007 for a period of three years. She reenlisted on 9 March 2009 for a period of two years and on 13 March 2009, she extended her enlistment for four months establishing her new ETS as 8 July 2011.
7. The applicant's record shows she served in Afghanistan from 1 August 2010 to 1 February 2011.
8. The applicant's DD Form 214 shows she was honorably discharged on 8 July 2011 under the provisions of Army Regulation 635-200, chapter 4, by reason of completion of required active service. The DD Form 214 also shows she was assigned reentry code 1 (fully eligible to reenlist).
9. The applicant provided:

a. A VA Form 21-4138, dated 20 July 2012, prepared by K.K.W., Ph.D., stating the following:

Note: I no longer have access to my clinical notes, nor a diagnosis made at that time, therefore this information is based upon my best recollection of events between September-December 2010.

Between the period of September-December 2010 I served as the CJSOTF Command Psychologist in Bagram AB [Air Base], Afghanistan. My command requested that I travel to Tarin Kowt, AFG [Afghanistan] to meet with [the applicant] and assess her reported psychological symptoms. I met with [the applicant] approximately 5-6 times over a period of several weeks.

[The applicant] was assigned to a highly active and mobile unit in the JSOTF [Joint Special Operations Task Force]. According to her command, [the applicant] was a very diligent Soldier; however, she was having difficulty maintaining the energy required for her position. She reported significant sleep disturbances, regular and severe periods of depression (withdrawal, emotional dyscontrol, and weight loss) related to her deployment and separation from her child, and stress due to her unstable marital relationship. She also reported a significant past history of bulimia while deployed to Iraq in 2005. With the support of the JSOTF Surgeon, [the applicant] was treated with supportive therapy (cognitive-behavioral treatment for depression/anxiety) and (I believe) a trial of anti-depressants. Her symptoms continued and because she was due to redeploy for mid-tour leave, I recommended that she return early. I also recommended she seek a full mental health evaluation to include a medication evaluation at Womack Army Medical Center [WAMC] and wrote a consult for her to provide to the treating provider. I informed her command that I believed her symptoms to be severe and she required a medical and psychological level of care that was unavailable while deployed.

[The applicant] contacted me via e-mail several weeks later stating that she was unable to see the provider at WAMC due to excessive wait times. I recall contacting a provider at WAMC to ensure that she was seen in a timely manner. This is the last contact I had regarding her case.

b. VA documents showing she was granted service-connected disability compensation for various conditions that include post-traumatic stress disorder with mood disorder and attention deficit disorder with a combined disability rating of 100%.

10. The Army rates only conditions determined to be physically unfitting at the time of discharge, which disqualify the Soldier from further military service. The Army disability

rating is to compensate the individual for the loss of a military career. The VA does not have authority or responsibility for determining physical fitness for military service. The VA may compensate the individual for loss of civilian employability.

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 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 and a medical retirement for a mental health condition. She states in part:

“I am a 100% Permanent and Total Disabled Veteran who is housebound due to my combat related disabilities. I believe that I was failed by those appointed above me after I was medevaced from Afghanistan because of my mental health. I had no guidance, direction, or knowledge of the medical review board, military disability retirement or CRSC [Combat Related Special Compensation] until this year in 2023 when I was informed about the entitlements. My symptoms started in Iraq, 2005, but it wasn’t until my last deployment to Afghanistan in early 2010 that my command took notice.”

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. Her DD 214 for the period of service under consideration shows the former public affairs chief entered the Regular Army on 1 November 2007 and was honorably discharged on 8 July 2011 after completing her required active service on under the separation authority provided in chapter 4 of AR 635-200, Active Duty Enlisted Administrative Separations (17 December 2009). The DD 214 shows she served in Afghanistan from 1 August 2010 thru 1 February 2011 and had been awarded a Combat Action Badge. The reenlistment code of 1 means she was fully qualified to reenter the Army.

d. Review of the EMR for her last year of service shows she was being treated for “Adjustment Disorder with Disturbance of Emotions and Conduct” and “Borderline Personality Disorder.” Personality disorders are deeply ingrained, rigid ways of thinking

and behaving that result in impaired relationships with others and often cause distress for the individuals who experience them. These are lifelong conditions, and while they may show some response to treatment, it is often limited and there is “no growing out of it” or “cure” for personality disorders.

e. Borderline personality disorder as described on the Cleveland Clinic’s website:

“Borderline personality disorder (BPD) is a mental health condition marked by extreme mood fluctuations, instability in interpersonal relationships and impulsivity.

People with BPD have an intense fear of abandonment and have trouble regulating their emotions, especially anger. They also tend to show impulsive and dangerous behaviors, such as reckless driving and threatening self-harm. All of these behaviors make it difficult for them to maintain relationships.”

(<https://my.clevelandclinic.org/health/diseases/9762-borderline-personality-disorder-bpd>)

f. From her 16 September 2010 behavioral health encounter:

“Anxiety from anticipation of separation, with fear of going crazy, with fear of losing self-control, fear that personal behavior caused this illness, high irritability, hypersensitivity overreacting to real or imagined slights or failures, depression with pessimism about the future, or brooding about the past, nightmares, screaming in the middle of the night, being concerned about appearance, embarrassed about appearance, low self-esteem compensated by falsely positive attitude, fear of rejection, feeling guilty, constant boredom, being upset by problems at home or work, uncertainty about value systems, receiving insufficient emotional support, feeling emotionally rejected, being overly envious of others, extremely self-centered, self-absorbed, a constant need for admiration, overidealizing/overevaluating other persons, turbulent and damaging interpersonal relationships, being poorly organized, not goal-directed, bulimic episodes, hypercritical or intolerant, overly dramatic, constantly seeking emotional stimulation, constantly seeking reassurance, and impulsive behavior.

SM [Service Member] presents with report of removal of weapon during deployment to Afghanistan following request for sleep aids. SM states that she was allowed to leave for R&R early to allow for a psychological evaluation. SM is scheduled to return to Afghanistan on 22 September. She states concern for her military career, given her uncertainty regarding reenlistment. SM reports a pattern of behavior that her ex-husband was not aware of while they were married. She is now desirous of reconciling the relationship and expressed

concern for the impact her behavior may have on their relationship in the future. SM and ex-husband are residing together. She said they plan to seek marriage counseling services. SM reports great regret and guilt for her behavior.

g. Her diagnoses were correct, and remained the same following her final behavioral health encounter on 4 November 2010, 8 months prior to her separation:

"SM reports indecision regarding her military career. She states a desire to return to deployment and remain on active duty. This is inconsistent with previous reports of a plan to not return to theater and ETS next year. SM disclosed that her fiancé is pressuring her to have another child and he wants her to get out of the military. However, given financial strain in her extended family and concern for the stability of her romantic relationship, she believes that she should remain on active duty. She expressed concern for financial strain if the relationship ends and/or she does not do well in college. SM disclosed a history of difficulty with college classes, purportedly failing out of multiple schools. She is making progress in treatment."

h. An ultrasound obtained on 1 December 2010 showed she was approximately 9 weeks pregnant. Thus, she was not returned to Afghanistan. While she was pregnant, her mental health issues were monitored and addressed, with a provider writing on 16 May 2011: "Doing well with current regimen of Celexa and Ambien."

i. As noted on her DD 214, she was authorized maternal care following her discharge and she delivered her child on 20 July 2011.

j. There were no additional significant medical issues or conditions during her final year of service.

k. Her final two NCO Evaluation Reports shows she was an exceptional Soldier. Her final NCO Evaluation Report shows she passed her Army Physical Fitness Test and met height and weight standards. Her rater marked her as "Excellent" in 4 of the 5 Values/NCO Responsibilities and "Success" in the 5th. He top-blocked her as "Among the Best." Her senior rater top-blocked her with 1's on a scale of 1 to 5 for both Overall Performance and Overall Potential, going on to opine:

- "promote now to Sergeant First Class ahead of peers
- completed BNCOC; select for ANCOC first available class
- superb proven leader who should be placed in positions of increased responsibility to capitalize on her unlimited potential
- puts the Army, mission, and soldiers before her own personal needs"

- I. Submitted medical documentation shows she has been diagnosed with several mental health conditions, including PTSD, following her separation from the Army.
 - m. There is no evidence the applicant had a mental health or other medical condition that would have failed the medical retention standards of chapter 3, AR 40-501 prior to her voluntary separation; or which prevented her from reenlisting and continuing her military career. 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 her office, grade, rank, or rating prior to her discharge.
 - n. Paragraph 3-1 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (8 February 2006) states:

"The mere presence of an impairment does not, of itself, justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier reasonably may be expected to perform because of their office, grade, rank, or rating."
 - o. JLV shows the VA has awarded her multiple service-connected disability ratings, including ratings for PTSD and fibromyalgia. However, the DES only compensates an individual for service incurred medical condition(s) which have been determined to disqualify him or her from further military service and consequently prematurely ends their career. 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.
 - p. It is the opinion of the ARBA medical advisor that a referral to her case to the DES is not warranted.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. The Board concurred with the conclusion of the ARBA Medical Advisor that the applicant did not have any conditions prior to her discharge that would have been a basis for referring her to the Disability Evaluation System. Based on a preponderance of the evidence, the Board determined the applicant's discharge by reason of completion of required active service 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.

1000

— [REDACTED] — [REDACTED]

[REDACTED]

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. Army Regulation 40-501 (Standards of Medical Fitness) provides that for an individual to be found unfit by reason of physical disability, he or she must be unable to perform the duties of his or her office, grade, rank, or rating. Performance of duty despite impairment would be considered presumptive evidence of physical fitness.
3. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation) establishes the Army Disability Evaluation System (DES) 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 or her office, grade, rank, or rating. It provides that a Medical Evaluation Board is convened to document a Soldier's medical status and duty limitations insofar as duty is affected by the Soldier's status. A decision is made as to the Soldier's medical qualifications for retention based on the criteria in Army Regulation 40-501.
 - 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 service.
 - b. The mere presence of impairment does not of itself justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the member reasonably may be expected to perform because of his or her office, rank, grade, or rating. The Army must find that a service member is physically unfit to reasonably perform his or her duties and assign an appropriate disability rating before he or she can be medically retired or separated.
 - c. When a member is being processed for separation for reasons other than physical disability (e.g., retirement, resignation, relief from active duty, administrative separation, completion of required active service, ETS, etc.), his or her continued performance of duty, until he or she is referred to the DES for evaluation for separation for reasons indicated above, creates a presumption that the member is fit for duty.
4. Title 38, U.S. Code, Sections 1110 and 1131, permit the VA to award compensation for disabilities which were incurred in or aggravated by active military service. However, an award of a VA rating does not establish an error or injustice on the part of the Army.
5. Title 38, Code of Federal Regulations, Part IV is the VA Schedule for Rating Disabilities. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge. As a result, the VA, operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform his duties. Unlike the Army, the VA can evaluate

a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

6. Army Regulation 15-185 (ABCMR) provides Department of the Army policy, criteria, and administrative instructions regarding an applicant's request for the correction of a military record. Paragraph 2-11 states 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.

7. Section 1556 of Title 10, U.S. 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 ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//