

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 July 2024

DOCKET NUMBER: AR20240000064

APPLICANT REQUESTS --

- Correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty) to show an honorable, vice uncharacterized, character of service
- Replacement of the current Separation Program Designator Code with one that reflects her service-connected injury
- Permission to appear personally 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
- Department of Veterans Affairs (VA) Rating Decision
- Two VA Medical Opinion Disability Benefits Questionnaires

FACTS:

1. The applicant states, in effect, her DD Form 214 should state her service was honorable, not uncharacterized; this is because she incurred a service-connected injury while on active duty. In support of her request, she provides the following:

a. VA Rating Decision, dated in April 2023, which supports her contention that VA verified the below-listed injuries as service-connected:

- Left hip femoral neck stress fracture with pubic fracture and osteopenia
- Right hip tendinopathy

b. Two VA Medical Opinion Disability Benefits Questionnaires (DBQ), both dated in April 2023. The first addresses the applicant's right hip pain and the second her right and left hip pain.

(1) The first DBQ includes an entry from the applicant's service treatment records (STR): "5/25/22. [Applicant] BCT w/stress fx's of bilat tibia, LEFT inferior pubic

ramus (grade 4) & neck of LEFT femoral neck (grade 3). TX by Physical Therapy since 04/07/2022; presents today c/o increased LEFT hip pain and now RIGHT hip pain as well."

(2) Item 3C (Rationale). "The claimant is diagnosed with right hip strain." "Enlistment exam showed no findings related to the claimed condition. STR over 3 weeks, [Applicant] followed up with physical therapy multiple times using different modalities with improvement back to baseline."

(a) "220506 DEXA (dual energy x-ray absorptiometry; an imaging test used to measure bone strength) showed high risk osteopenia left hip and lumbar spine...Risk Factors for stress fracture include low bone density, decreased physical fitness, and biomechanical actors. The degree of severity of each risk factor varies from Soldier to Soldier but results in (an) inability of this Soldier to complete the rigors of basic training...an EPTS (existed prior to service) discharge is recommended."

(b) "The claimed condition right hip strain is at least as likely as not (likelihood is at least approximately balanced or nearly equal, if not higher) incurred in or caused by the bilateral hip pain during service" "The right hip pain was present during her time in service and was evaluated by MRI (magnetic resonance imaging)."

(3) The second DBQ Item 3C (Rationale). "The claimed condition left inferior pubic and femoral neck fractures, osteopenia left hip is at least as likely as not (likelihood is at least approximately balanced or nearly equal, if not higher) incurred In or caused by the claimed in-service injury, event or illness. Rationale is condition onset during basic training with physical therapy and rest, suspension of basic training exercises. Later MRI imaging showing fractures to left pubic and femoral neck with osteopenia."

2. On 16 February 2022, the applicant enlisted into the U.S. Army Reserve (USAR) for 8 years; on 7 March 2022, she entered initial active duty for training to complete initial entry training.

3. The applicant's separation packet is unavailable for review; however, her available service record includes her DD Form 214, which shows that, on 27 July 2022, the Army discharged her with an uncharacterized character of service. The report additionally reflects the following:

- Item 12c (Net Active Service This Period) – "0000/04/21"
- Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) – "None"

- Item 25 (Separation Authority) – Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations)
- Item 26 (Separation (SPD) Code) – "LFW"
- Item 27 (Reentry (RE) Code) – RE-3
- Item 28 (Narrative Reason for Separation) – "FAILURE TO MEET PROCUREMENT MEDICAL FITNESS STANDARDS"

4. AR 15-185 (ABCMR), currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

5. The VA and the Army (under the Department of Defense) operate under separate provisions of Federal law (respectively Title 38 (Veterans' Benefits) and Title 10 (Armed Forces)). As such, each makes independent determinations, based upon the requirements set forth within their respective parts of the law and their own internal regulations.

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, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of her characterization of service. The governing regulation provides that a separation will be described as an entry-level separation, with service uncharacterized, if the separation action is initiated while a Soldier is in entry-level status. Soldiers in the USAR and ARNG are authorized and honorable discharge while in entry-level status only if they complete their active-duty schooling and earn their MOS.

2. Upon review of the applicant's petition and available military records, the Board determined the applicant completed 4 month and 21 days of active service with no lost. The applicant was released from active duty for failure to meet procurement medical fitness standards. As such, her DD form 214 properly show the appropriate characterization of service as uncharacterized. An uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It merely means the Soldier has not been in the Army long enough for his or her character of service to be rated as honorable or otherwise. As a result, there is no basis for granting the applicant's request for upgrade of her uncharacterized character of service or amendment of the applicant's current separation program designator code. Therefore, the Board denied relief.

3. The applicant’s request for a personal appearance hearing was carefully considered. In this case, 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.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.



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. AR 635-200, currently in effect, prescribes policies and procedures for the separation of active duty enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge). An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct.

(1) Only the honorable characterization may be awarded a Soldier for discharges under chapters 4 (Separation for Expiration of Service Obligation) or 12 (Retirement for Length of Service); for the completion of a period ordered to active duty or ADT; or where required under specific reasons for separation unless the Soldier is in an entry-level status separation (uncharacterized).

(2) When a Soldier is discharged before expiration term of service based on a reason for which an honorable discharge is discretionary, the following considerations apply:

(a) Where there have been infractions of discipline, the extent thereof should be considered, as well as the serious-ness of the offense(s).

(b) A Soldier will not be denied an honorable discharge solely by reason of a conviction by court-martial, action under the Uniform Code of Military Justice, Article 15, or any other administrative action. The characterization should be based upon the underlying conduct.

(c) An honorable discharge may be furnished when disqualifying entries in the Soldier's military record are clearly outweighed by prior or subsequent honest and faithful service over a greater period of time during the current term of service. In these cases, the performance of duty must be so meritorious that any other characterization would be clearly inappropriate.

b. Paragraph 3-7b (General Discharge). 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. Paragraph 3-9a (Uncharacterized Separations – Entry-Level Status Separation). A separation will be described as entry-level with service uncharacterized if processing is initiated while a Soldier is in entry-level status. The exceptions are when:

(1) Characterization under other than honorable conditions is authorized under the reason for separation and is warranted by the circumstances of the case.

(2) The Deputy Chief of Staff, G-1 determines, on a case-by-case basis, that a characterization of service of honorable is clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty. This

characterization is authorized when the Soldier is separated by reason of selected changes in service obligation, convenience of the Government, and/or Secretarial plenary authority.

(3) The Soldier is on active duty with less than 181 days of continuous active military service, has completed IET, has been awarded an MOS, and has reported for duty at a follow-on unit of assignment. Reserve Component Soldiers will receive a characterization of service as “honorable” upon successful completion of initial entry training.

d. Paragraph 5-10 (Separation of Personnel Who Did Not Meet Procurement Medical Fitness Standards). 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 active duty or active duty for training for initial entry training, may be separated. Such conditions must be discovered during the first 6 months of active duty, and the findings will result in an entrance physical standards board (EPSBD).

(1) Medical authority must convene an EPSBD within the Soldier's first 6 months of active duty, take the place of the notification procedure required by chapter 2 (Procedures for Separation) of AR 635-200.

(2) For USAR Soldiers, medical proceedings must establish that a medical condition was identified by an appropriate military medical authority during active duty for training for initial entry training and that the condition:

- Would have permanently or temporarily disqualified the Soldier for entry on active duty for training for initial entry training, had it been detected at that time
- Does not disqualify the Soldier for retention in the military service per AR 40-501 (Standards of Medical Fitness)

e. Chapter 15 (Secretarial Plenary Authority). Separation under this chapter is the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and used when no other provision of this regulation applies.

- Separation under this chapter is limited to cases where the early separation of a Soldier is clearly in the best interest of the Army
- Separations under this chapter are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memoranda
- Secretarial separation authority is normally exercised on a case-by-case basis but may be used for a specific class or category of Soldiers

e. Appendix C (Glossary). Entry-Level Status for USAR Soldiers begins on the date of their enlistment and continues after being ordered to initial active duty for training until the Soldier has either completed 180 days of continuous active duty or 90 days after the start of Phase II (advanced individual training).

2. AR 40-501, currently in effect, states the following:

a. Chapter 2 (Physical Standards for Enlistment, Appointment, and Induction) that the purpose of the standards contained in the most current Department of Defense Instruction 6130.03 (Medical Standards for Military Service: Appointment, Enlistment or Induction), Volume 1, and this chapter is to ensure that individuals are medically qualified and are medically capable of satisfactorily completing required Army training.

b. Chapter 3 (Medical Fitness Standards for Retention and Separation, Including Retirement) states:

(1) Paragraph 3-20 (Spine and Sacroiliac Joints). The causes for referral to the Disability Evaluation System are as follows:

- Dislocation of the hip, congenital
- Spina bifida
- Spondylolysis or spondylolisthesis
- Coxa vara
- Herniation of nucleus pulposus
- Kyphosis
- Scoliosis
- Nonradicular pain involving the cervical, thoracic, lumbosacral, or coccygeal spine

(2) Paragraph 3-22 (Lower Extremities). The causes for referral to the Disability Evaluation System are as follows:

- Amputations
- Foot issues
- Internal derangement of the knee
- Joint ranges of motion
- Shortening of an extremity that exceeds two inches
- recurrent dislocation of the patella

(3) Paragraph 3-23 (Miscellaneous Conditions of the Extremities). The causes for referral to the Disability Evaluation System are as follows:

- Arthritis due to infection or trauma
- Osteoarthritis
- Avascular Necrosis of the bone
- Chondromalacia or osteochondritis dissecans
- Fractures due to malunion, nonunion, a bone fusion defect, or an excessive callus
- Osteomyelitis

3. AR 635-8 (Separation Processing and Documents), currently in effect, states DD Form 214 should refer to AR 635-5-1 (SPD Codes) to obtain the corresponding SPD code for the regulatory authority and reason for separation. For the RE Code, AR 601-210 (Regular Army and Reserve Components Enlistment Program) determines reentry eligibility and provides regulatory guidance on reentry codes.

4. AR 635-5-1, currently in effect, states the following:

a. Soldiers separated for failure to meet procurement medical fitness standards received an SPD of "LFW" and a narrative reason for separation stating, "Failure to Meet Procurement Medical Fitness Standards."

b. Soldiers involuntarily separated due to physical disability receive the following SPD and narrative reasons for separation, based the listed regulatory authority: AR 635-40 (Disability Evaluation for Retention, Retirement or Separation), "LER," "Disability, Other IDES (Integrated Disability Evaluation System)."

5. AR 601-210, in effect at the time, prescribed policies and procedures for Regular Army and USAR enlistments.

a. Table 3-1 (U.S. Army RE Codes).

- RE-1 – Qualified for reentry
- RE-3 – Not qualified for reentry but the disqualification is waivable

b. Paragraph 4-5 (Waiver Requirements for Medical Disqualifications). Any applicant, with or without prior military service, who does not meet medical standards for enlistment must receive a waiver to enlist.

6. AR 15-185 (ABCMR), currently in effect, states:

a. The ABCMR decides cases on the evidence of record; it is not an investigative body.

(1) The ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary).

(2) The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

b. An applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

//NOTHING FOLLOWS//