

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 April 2025

DOCKET NUMBER: AR20240000238

APPLICANT REQUESTS: in effect, correction of her record to show:

- she receive all promotions, back pay, care, awards, change in her performance evaluations
- medical retirement
- appearance before the Board via video/telephone

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

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 she wants to be made whole. Her whole life has been ruined through all of the mental anguish, torture and torment that she has been forced to endure through the diagnosis forced on her. She was misled by her superiors; she had a medical trauma and was taken advantage of. She has been damaged by the service in the military and her protected health information was compromised at the Post Office. In August 2023 a sedated MRI was done at Brooks Army Medical Center (BAMC) San Antonio. The diagnosis from the BAMC showed that the diagnosis at the time of her release from the service was incorrect. This incorrect diagnosis created more and more traumas. It all happened without her permission. Her discharge paperwork is structurally defective. The delay in finishing this upgrade request is that she just found out about error in the records in June when she received her military records and was then able to read what was in her file. This information was hidden from her for all these years. She lists post-traumatic stress disorder (PTSD), other mental health and sexual assault/harassment as related to her request.
3. A separation packet is listed on DD Form 149 however; it is not available for review.

4. A review of the applicant's service record shows:

a. She enlisted in the Regular Army on 5 August 1965 in the grade of private 2/(E2).

b. Memorandum for Record, Subject: Recommendation for Separation under the provisions of Army Regulation 635-209, (Personnel Separations Discharge Unsuitability) Paragraph 3c apathy, 14 December 1965 shows the applicant's commander determined that the best interests of the service will be met by elimination action. The commander provided information to a board of officers with facts to determine whether the applicant should be discharged prior to expiration of term of service.

c. The commander's statement, 14 December 1965 shows the applicant completed basic training and began school on 25 October 1965. She was recycled because of her academic deficiency. She was screened by the technician of the mental Hygiene Clinic while she was in basic training. The same technician screened her here at CTC. There was no improvement in her attitude, and she still possessed a very deep-rooted resentment towards discipline and general regimentation.

(1) " Since 4 November 1965, the applicant has continuously asked to be eliminated from the service. She is very childish and cries so profusely that you can hardly carry on a conversation with her. She continuously wrings her hands and displays other little nervous mannerisms. She improved a little academically in school but not enough to be retained. On several occasions she has not done her homework and did not have any excuse.

(2) Numerous efforts have been made by the Platoon Sergeants, Platoon Officer and the commander to help her adjust to the Army. All efforts have been in vain.

(3) In view of her lack of motivation for service, it is believed that separation would be in the best interest of the Army and the applicant. Recommend she be administratively separated from the service under the provisions of paragraph 3c, AR 635-209. Further recommend she be furnished an Honorable Discharge Certificate. She has not been a disciplinary problem."

d. The applicant was informed that she was being recommended for separation as being unsuitable for further military service under the provisions of AR 635-209 and was counseled by her commander and advised of the basis for this action. She was advised she may be discharged with an honorable or under honorable conditions (general) discharge.

(1) She was informed she may request her case be heard by a Board of Officer, that that she may waive the hearing before the Board of Officers. And she was advised she may request counsel of her own choosing to represent her at a board hearing. She

did not desire to appear before a Board of Officers, and she hereby waive the hearing. She understands that if the convening authority directs discharge that she will not be given another opportunity to appear before a Board of Officers before being discharged.

(2) The applicant did not desire counsel and did not desire to submit written statements in her behalf.

e. The separation authority approved the applicant's discharge under the provisions of AR 635-209, Paragraph 3c, on 28 December 1965. She would be furnished an honorable discharge certificate.

f. The applicant was honorably discharged on 29 December 1965. Her DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows she was discharged under AR 635-209, Separation Program Number 46A for Apathy. She completed 4 months and 25 days net active service.

g. The applicant does not provide, and her record does not show information regarding promotions, care, pay, awards or reason for retirement.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the lack of corroborating evidence of the applicant's statements and the time since the applicant completed her military service, as well as the applicant receiving an honorable characterization of service at the time of separation, the Board concluded there was insufficient evidence of an injury which would have failed retention standards warranting a change to the applicant's narrative reason for separation.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	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.

//SIGNED//

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CHAIRPERSON

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 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. Title 38 USC, section 1110 (General-Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.
3. Title 38 USC, section 1131 (Peacetime Disability Compensation - Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

4. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

5. Army Regulation 635-40 (Personnel Separations Disability Evaluation for Retention, Retirement, or Separation), in effect at the time, 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. Once a determination of physical unfitness is made, all disabilities are rated using the Department of Veterans Affairs Schedule for Rating Disabilities (VASRD).

a. Chapter 3-2 states 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. Chapter 3-4 states 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. 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.

6. Title 38, USC, permits the VA to award compensation for a medical condition which was incurred in or aggravated by active military service. The VA, however, is not required by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual's medical condition, although not considered medically unfitting for military service at the time of processing for separation, discharge, or retirement, may be sufficient to qualify the individual for VA benefits based on an evaluation by that agency. The VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

7. Army Regulation (AR) 635-209 (Personnel Separations-Discharge Unsuitability) this regulation establishes the policy and provide procedures and guidance for the prompt elimination of enlisted personnel who are determined to be unsuitable for further military service. Individuals will be discharged by reason of unsuitability, with an honorable or general discharge as warranted by the 'individual's military record. Such discharge will be affected when it has been determined that an individual is unsuitable for further military service because of-

a. Inaptitude- Applicable to those persons who are best described as inapt, due to lack of general adaptability, want of readiness or skill, unhandiness, or inability to learn.

b. Character and behavior disorders. Pertains to those persons with character and behavior disorders, disorders of intelligence, and transient personality disorders due to acute or special stress as defined in "Joint Armed Forces Nomenclature and Method of Recording Psychiatric Conditions-1949" (SR 40-1025-2).

c. Apathy (lack of appropriate interest), defective attitudes, and inability to expend effort constructively. While lack of appropriate interest or other defective attitudes may be manifested in conjunction with physical defects or mental or organic diseases,

including psychoneurosis, such traits are not necessarily produced by the physical defects or disease process. On the other hand, individuals considered for elimination may attempt to excuse immature, inadequate, and ill-disciplined behavior on the basis of minor or nondisabling illnesses. The presence of a physical or mental disease or defect producing impairment of function insufficient to warrant separation under provisions of AR 635-40A and related regulations is no bar to discharge for unsuitability.

8. Army Regulation 635-5 (Personnel Separations-Separation Documents) prescribed the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It established the standardized policy for the preparation of the DD Form 214. The DD Form 214 is a synopsis of the Soldier's most recent period of continuous active service.

9. Army Regulation 635-5 46A (Personnel Separations-Separation Forms) provides the specific authorities and reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge). The SPN 46A (is to be used for RA Soldiers discharged for apathy (lack of appropriate interest), defective attitudes and inability to expend effort constructively.

//NOTHING FOLLOWS//