

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 July 2024

DOCKET NUMBER: AR20240000323

APPLICANT REQUESTS:

- an upgrade of her uncharacterized discharge to honorable
- a video or telephone appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Information Report, 29 September 2023
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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 is requesting an upgrade of her uncharacterized discharge to honorable. She enlisted "early prior to service" disclosing intermittent pain in her left knee. After a few weeks of running with her platoon, her knee continued to hurt, which led to her medical discharge. The applicant just found out that she is a Veteran and is concerned about the benefits that are available to her. She consulted with her local VA office to obtain her medical discharge documents, but there were none on file.
3. The applicant provides a VA Information Report dated 29 September 2023, crediting the applicant as a U.S. Army Reserve member with Guard/Reserve Active Service (GRAS) from 6 May 1999 to 9 June 1999. The character of service listed for the GRAS is honorable (absence of a negative report).
4. A review of the applicant's service record shows:
 - a. She enlisted in the U.S. Army Reserve on 22 February 1999.

b. The service record includes the applicant's medical examinations, dated 11 February 1999, for the purpose of enlistment which indicated she was generally in good health. The applicant was marked qualified for service.

- Standard Form (SF) 88 (Report of Medical Examination)
- SF 93 (Report of Medical History)

c. Orders 92-3 dated 6 May 1999, ordered the applicant to initial active duty for training (IADT) with an effective date of 6 May.

d. A DA Form 4707-C (Entry Physical Standards Board (EPSBD) Proceedings), dated 26 May 1999, shows the applicant was evaluated at the medical treatment facility during the initial stages of basic training. She reported a long history of bilateral knee pain, related to significant problems with activities, especially downhill skiing, and other vigorous activities since around age 16. Upon arrival at Fort Leonard Wood, the increased activities subsequently increased the pain, making her unable to continue training. At that time, the applicant did not meet the requirement Army Regulation (AR) 40-501 (Standards of Medical Fitness), paragraph 2-11b. It was recommended that she separated from the military.

e. On 3 June 1999, the applicant was informed of the medical findings. She acknowledged that legal advice of an attorney employed by the Army was available to her or that she could consult civilian counsel at her own expense, and that she could request to be discharged from the U.S. Army without delay or request retention on active duty. She concurred with the proceedings and requested to be discharged from the Army without delay.

f. On 3 June 1999, the separation authority approved the EPSBD Proceedings under the provisions of AR 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-11, entry-level separation. The unit commander also noted the applicant did not complete basic training (BT) or one station unit training (OSUT).

g. On 9 June 1999, she was discharged from active duty with an uncharacterized characterization of service. Her DD Form 214 shows she completed 1 month and 4 days of active service with no lost time. She was assigned separation code JFW and the narrative reason for separation is listed as "Failure to Meet Procurement Medical Fitness Standards," with reentry code 3.

5. There is no evidence the applicant applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

6. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

7. By regulation (AR 635-200):

a. Soldiers are considered to be in an entry-level status when they are within their first 180 days of active-duty service. A separation will be described as entry-level with service uncharacterized if processing is initiated while a Soldier is in entry-level status.

b. 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 may be separated. Such conditions must be discovered during the first 6 months of active duty. Such findings will result in an EPSBD. This board, which must be convened within the Soldier's first 6 months of active duty, takes the place of the notification procedure required for separation under this chapter.

8. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

9. 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 requesting an upgrade of her 9 June 1999 uncharacterized discharge.

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 shows the former USAR Soldier entered the regular Army for training on 6 May 1999 and was discharged 9 June 1999 under provisions provided in paragraph 5-11 of AR 635-200, Active Duty Enlisted Administrative Separations (26 June 1996): Separation of personnel who did not meet procurement medical fitness standards.

d. Paragraph 5-11a of AR 635-200:

“a. 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 AD [active duty] or ADT [active duty for training] for initial entry training, will be separated. Medical proceedings, regardless of the date completed, must establish that a medical condition was identified by appropriate military medical authority within 6 months of the soldier’s initial entrance on AD for RA [regular Army], or during ADT for initial entry training for ARNGUS [Army National Guard of the United States] and USAR [United States Army Reserve], which—

(1) Would have permanently or temporarily disqualified him or her for entry into the military service or entry on AD or ADT for initial entry training had it been detected at that time.

(2) Does not disqualify him or her for retention in the military service under the provisions of AR 40–501, chapter 3.”

e. There are no encounters in the EMR.

f. The applicant completed her pre-entrance examination in February 1999. It shows she was in good health, without significant medical history or conditions.

g. The applicant was referred to an entry physical standards board (EPSBD) for symptomatic bilateral knee pain under paragraph 5-11 of AR 635-40. These boards are convened IAW paragraph 7-12 of AR 40-400, Patient Administration. This process is for enlisted Soldiers who within their first 6 months of active service are found to have a preexisting condition which does not meet the enlistment standard in chapter 2 of AR 40-501, Standards of Medical Fitness, but does meet the chapter 3 retention standard of the same regulation. The fourth criterion for this process is that the preexisting condition was not permanently service aggravated.

h. From her Entrance Physical Standards Board (EPSBD) Proceedings (DA form 4707) for chronic bilateral retro patellar pain:

CHIEF COMPLAINT: Bilateral knee pain EPTS [Existed Prior to Service]

HISTORY OF PRESENT ILLNESS: This is a 35-year-old white female currently in her second week of basic training with a long history of chronic bilateral knee pain. She relates significant problems with activities especially downhill skiing and other vigorous activities since around age 16. She lives a very active lifestyle as a civilian but was able to rest her knees after they became symptomatic. However, upon arrival to Fort Leonard Wood, the increased activities increased the pain making her

unable to continue training She was seen in physical therapy and was referred to orthopedics for evaluation.

PHYSICAL EXINATION: This is a healthy-appearing 35-year-old white female Knees are without any noticeable effusion. Range of motion is essentially normal Varus and valgus stress is intact Lachman is intact with good endpoint McMurray s is without any clicks or joint line pain. There is exquisite pain reproducing the majority of the symptoms with patellar grind. There is moderate lateral motion with kneecaps on exam. [NOTE ***: These last two findings are abnormal are related to chronic patellar instability].

IMPRESSION: Chronic bilateral retropatellar pain symptomatic, EPTS

RECOMMENDATION: At this time the patient does not meet the requirements of AR 40-501, 2-11b. It is recommended that she be expeditiously separated from the military as a result.”

i. Paragraph 2-11b of AR 40-501, Standards of Medical Fitness (30 August 1995) states:

“Chronic retropatellar knee pain syndrome with or without confirmatory arthroscopic evaluation” does not meet enlistment standards.

j. The EPSBD found her condition had existed prior to service, was not permanently aggravated by her military service, failed the medical enlistment standard of AR 40-501, and was not compatible with continued military service. On 3 June 1999, the applicant agreed with the EPSBD’s findings and recommendation, both selecting and initialing the option “I concur with these proceedings and request to be discharged from the US Army without delay.”

k. An uncharacterized discharge is given to individuals who separate prior to completing 180 days of military service, or when the discharge action was initiated prior to 180 days of service. This type of discharge does not attempt to characterize service as good or bad. Through no fault of her own, she simply had a medical condition which was, unfortunately, not within enlistment standards.

l. It is the opinion of the ARBA Medical Advisor that a discharge upgrade is not warranted.

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. 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 are authorized and honorable discharge while in entry-level status only if they complete their active duty schooling and earn their MOS. Upon review of the applicant's petition, available military records and the medical review, the Board concurred with the advising official finding the applicant's contentions for a discharge upgrade is not warranted.

2. The Board determined the applicant completed 1 month and 4 days of active service with no lost time and did not complete her training. 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. 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:

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.



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. 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.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. 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 and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. A separation will be described as entry-level with service uncharacterized if processing is initiated while a Soldier is in entry-level status, except 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 Secretary of the Army, on a case-by-case basis, determines that characterization of service as 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 Secretarial plenary authority.

d. Paragraph 5-11 states 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 AD or ADT for initial entry training, will be separated. Medical proceedings, regardless of the date completed, must establish that a medical condition was identified by appropriate military medical authority within 6 months of the soldier's initial entrance on AD for RA, or during ADT for initial entry training for ARNGUS and USAR, which—

(1) Would have permanently or temporarily disqualified him or her for entry into the military service or entry on AD or ADT for initial entry training had it been detected at that time.

(2) Does not disqualify him or her for retention in the military service under the provisions of AR 40-501, -chapter 3.

e. Section II (Terms):

(1) Character of service for administrative separation - A determination reflecting a Soldier's military behavior and performance of duty during a specific period of service.

The three characterizations are honorable, general (under honorable conditions), and under other than honorable conditions. The service of Soldiers in entry-level status is normally described as uncharacterized.

(2) Entry-level status - For ARNG and USAR soldiers, entry level status begins upon enlistment in the ARNG or USAR. It terminates—Soldiers ordered to IADT for one continuous period—180 days after beginning training.

4. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (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 based on 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.

5. Section 1556 of Title 10, United States 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 Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//