

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 August 2024

DOCKET NUMBER: AR20240000965

APPLICANT REQUESTS: in effect, a reconsideration of a previous request to:

- change her uncharacterized discharge to a medical discharge
- amend her separation code to a more favorable one
- amend her reentry code to a more favorable one

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

- DD Form 293 (Application for The Review of Discharge from The Armed Forces of The United States)
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 22 December 1992
- Department of Veterans Affairs (VA) Form 21-4138 (Statement in Support of Claim), dated 24 October 2023

FACTS:

1. Incorporated herein by reference are military records, which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20210013781, dated 15 November 2022.

2. The applicant states, in effect, during the gas chamber exercise portion of basic combat training, she started experiencing respiratory issues. Eventually her chest began to burn, and she started to gasp for air. She was later examined, only to have medical personnel belittle her, and claim she was faking her condition and/or symptoms. They explained that there was nothing wrong with her, and this was just an attempt for her to elude training. After medical testing, she was diagnosed with reactive airway disease, and asthma. The applicant further explains, she was not provided with adequate treatment. When she discovered her service would be terminated, she requested to stay, she believed she would be a great asset the Army but was denied the opportunity to continue her service. The applicant claims, she was told she would receive a 20 percent (%) medical disability rating, but a doctor explained that would not

result to much of a compensation. She also believes the medical personnel manipulated the way she answered her physical examination questions, thus giving the appearance that this was a preexisting condition.

3. The applicant's service record shows:

- a. She enlisted in the Regular Army on 12 November 1992.
- b. Orders 356-42 dated 21 December 1992, directed the reassignment of the applicant to the U. S. Army transition point, at Fort Leonard Wood, MO., with an effective date of 22 December 1992.
- c. The facts and circumstances surrounding all of her active service from 12 November to 22 December 1992 to include her Entrance Physical Standards Board (EPSBD) proceedings are not available for review with this case.
- d. Her DD Form 214 shows she was discharged on 22 December 1992, pursuant to Army Regulation 635-200 (Personnel Separations Enlisted Personnel), Chapter 5-11, Did not Meet Procurement Medical Fitness Standards – No Disability, with an “uncharacterized” discharge. She was assigned Separation Code “JFT” and Reentry Code “3”. She completed 1 month and 11 days of active service.

4. In a prior request on 15 November 2022, in Docket Number AR20210013781, the Board denied the applicant's request for a re-characterization from uncharacterized to under honorable conditions (General). The Board determined that in accordance with the governing regulation, 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 and available military records the Board determined the applicant did not complete training and was released from active duty due to not meeting procurement medical fitness standards. As such, her DD Form 214 properly showed the appropriate characterization of service as uncharacterized.

5. 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 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 (DES) and a discharge upgrade. She states she was diagnosed with reactive airway disease following gas chamber training while in basic combat training.

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 she entered the Regular Army on 12 November 1992 and was discharged 22 December 1992 under authority provided by paragraph 5-11 of AR 635-200, Personnel Separations – Enlisted Personnel (17 September 1990): Separation of personnel who did not meet procurement medical fitness standards.

d. Neither the applicant's separation packet nor additional documentation addressing his involuntary administrative separation was submitted with the application or uploaded into iPERMS.

e. Given the separation authority on her DD 214 and her statement, it is assumed the applicant was referred to an entry physical standards board (EPSBD) IAW paragraph 5-11 of AR 635-200 for reactive airway disease/asthma. 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.

EPSBD's are convened IAW paragraph 7-12 of AR 40-400, Patient Administration. This process is for enlisted Soldiers who within their first 4 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.

f. It is implicit the EPSBD determined her condition had existed prior to service (EPTS), failed the enlistment standards of AR 40-501, had not been permanently aggravated by his military service, and were not compatible with continued service.

g. An uncharacterized discharge is given to individuals on active duty 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 his own, he simply had medical conditions which were, unfortunately, not within enlistment standards.

h. It is the opinion of the ARBA Medical Advisor that neither a discharge upgrade nor a referral of her case to the DES is 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. Upon review of the applicant's petition, available military records and the medical review opinion rendered by the ARBA Medical Advisor, the Board concurs with the recommendation that neither a discharge upgrade nor referral to the Disability Evaluation System (DES) is warranted in this case.

2. The applicant completed 1 month and 11 days of active-duty service and did not complete the required training. Her separation was executed due to failure to meet procurement medical fitness standards, a condition which was determined to exist prior to service and not considered disabling at the time of entry or discharge. Therefore, the basis for separation does not meet criteria for a medical discharge. An uncharacterized discharge, in this context, is not intended to carry negative connotation. It simply reflects that the individual did not serve on active duty long enough to merit a characterization

under Army policy. It is standard procedure for individuals who separate before completing 180 days of active service.

3. After considering the petition under the liberal guidance framework, the Board finds that there is insufficient evidence of an error, injustice, or mitigating circumstance that would merit modification of the narrative reason for separation or change to the separation code. As such, the Board denied relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR20210013781, dated 15 November 2022.

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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. Army Regulation 15-185 (Army Board for Correction of Military Records) 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. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

2. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, provided the authority for separation of enlisted personnel upon expiration term of service, prior to ETS, and the criteria governing the issuance of honorable, general, and undesirable discharge certificates.

a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member'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 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, MSO, or period for which called or ordered to active duty.

c. Chapter 5-11. Separation of Personnel who did not meet procurement medical fitness standards. This chapter provides that members who were not medically qualified procurement medical fitness standards when accepted for initial enlistment will be separated. Medical proceedings, regardless of the date completed, must establish that a medical condition was identified by appropriate military medical authority within four months of the member's initial entrance on active duty or active training which would have permanently disqualified them for entry into the military service had it been detected at that time and does not disqualify them for retention in the military.

d. Medical proceedings had to establish that medical authority identified the disqualifying medical condition(s) within 6 months of the Soldier's initial entrance on active duty, the condition(s) would have permanently or temporarily disqualified her for IADT, had it been identified earlier.

3. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes:

- RE code "1" applies to personnel who have completed their obligated term of active service and are considered qualified to reenter the U.S. Army if all other criteria are met
- RE code "2" Applies to persons not eligible for immediate reenlistment
- RE code "3" applies to personnel who are not considered fully qualified for reentry or continuous service at time of separation, but whose disqualification is waivable. They are ineligible unless a waiver is granted
- RE code "4" applies to personnel separated from last period of active-duty service with a nonwaivable disqualification

4. Army Regulation 635-5-1 (Separation Program Designator Codes) states that the Separation Program Designator (SPD) codes are three-character alphabetic combinations which identify reasons for, and types of, separation from active duty. SPD code "JFT" is the appropriate code to assign to enlisted Soldiers who are administratively discharged under the provisions of Army Regulation 635-200, Chapter 5-11, based on Physical Standards. RE code of "3" is the appropriate corresponding RE code for SPD code "JFT".

5. 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.

6. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

7. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

8. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a

court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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 on the basis of equity, injustice, or clemency grounds, Boards 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.

9. 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 applicant's (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//