

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 September 2024

DOCKET NUMBER: AR20240001203

APPLICANT REQUESTS: a change of her uncharacterized service to honorable or under honorable conditions (general).

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 20 November 2008
- Medical Record (61 pages), dated 7 December 2018 to 22 June 2022

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 has had medical problems since her discharge and needs continuous care. A change in her characterization of service would allow her to receive health and disability benefits. The applicant notes post-traumatic stress disorder (PTSD) and other mental health as conditions related to her request.
3. Prior to enlistment, the applicant underwent a medical examination on 13 July 2007. The relevant DD Form 2807-1 (Report of Medical History) and corresponding DD Form 2808 (Report of Medical Examination show she reported being in good health and denied any significant health problems. The examining provider determined she was medically qualified for service.
4. The applicant enlisted in the Regular Army on 2 July 2008, for a 4-year period. The highest rank she attained was private first class/E-3.
5. A DA Form 4707 (Entrance Physical Standards Board [EPSBD] Proceedings), dated 10 October 2008, shows the following:

a. During advanced individual training (AIT), the applicant was diagnosed with acute capsulitis and chronic temporomandibular joint dysfunction with anterior displaced non-reducing articular disks and myofascial pain. The condition existed prior to service, to a lesser degree, but became progressively worse during basic training and AIT. The applicant stated the condition was intolerable; she could no longer train; and she wanted out of the Army. Additionally, she reported suffering from depression and sleep disturbances due to severe, daily, unremitting pain.

b. Despite non-surgical and surgical measures, the condition remained incompatible with military service. She required several years of limited physical activity and continuous follow-up care. The board determined retention was not practical. The applicant concurred with the proceedings and requested a discharge from the U.S. Army without delay.

6. On 30 October 2008, the applicant's immediate commander notified the applicant of her intent to initiate action to separate the applicant from service, in accordance with the board's findings, under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), paragraph 5-11, for failure to meet procurement medical fitness standards. Additionally, the commander recommended an uncharacterized entry-level separation.

7. On that same date, the applicant acknowledged receipt of the notification. She consulted with counsel and was advised of the basis for the contemplated separation and its effects; the rights available to her; and the effect of waiving her rights. She waived a personal appearance and consideration of her case by an administrative separation board and elected not to submit a statement in her own behalf.

8. The immediate commander formally recommended her separation. On 3 November 2008, the intermediate commander concurred with the recommendation.

9. The separation authority approved the recommended separation action on 17 November 2008 and directed an uncharacterized entry level separation.

10. The applicant was discharged on 20 November 2008, under the provisions of AR 635-200, paragraph 5-11, by reason of failed medical/physical/procurement standards. Her DD Form 214 confirms her service was uncharacterized, with separation code JFW and reentry code RE-3. She was credited with 4 months and 19 days of net active service. She was not awarded a military occupational specialty.

11. The applicant provides 61 pages of civilian medical records which will be reviewed and summarized in the "Medical Review" section of this Record of Proceedings (ROP).

12. Soldiers are considered to be in an entry-level status when they are within their first 180 days of active-duty service. The evidence of record shows the applicant was in an entry-level status at the time of her separation. An uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It simply means the Soldier was not in the Army long enough for his or her character of service to be rated as honorable or otherwise.

13. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

14. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a change of her uncharacterized service to honorable or under honorable conditions (general). She contends she experienced mental health conditions including PTSD that mitigates her discharge. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) The applicant enlisted in the Regular Army on 2 July 2008; 2) On 10 October 2008, Entrance Physical Standards Board found the applicant was experiencing a physical condition prior to service, which made her retention in the Army impractical. The applicant concurred and requested discharge from the Army; 3) The applicant was discharged on 20 November 2008, Chapter 5-11, by reason of failed medical/physical/procurement standards. Her service was uncharacterized, with separation code JFW and reentry code RE-3. She was credited with 4 months and 19 days of net active service. She was not awarded a military occupational specialty.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) and hardcopy medical documentation provided by the applicant were also examined.

c. The applicant asserts mental health conditions including PTSD are related to her request for a change to her discharge. There was evidence the applicant was diagnosed physical concerns during her initial training, and she reported some symptoms of depression and insomnia secondary to her physical concerns. However, she was never diagnosed with a mental health condition beyond insomnia, including PTSD, and she was not engaged in behavioral health treatment. In addition, she was not found to be exposed to a potentially traumatic event during her training.

d. A review of JLV was void of medical documentation, and the applicant does not receive any service-connected disability. The applicant provided civilian medical documentation. There is evidence she has been diagnosed with Major Depression and PTSD since 2021. There is insufficient evidence these mental health diagnoses are

related to her military experience, and her reported potentially traumatic experiences associated with her diagnosis of PTSD were unrelated to her military experience.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a mental health condition or experience that mitigates her discharge.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts she experienced mental health conditions including PTSD while on active service. There is evidence the applicant reported insomnia and depressive symptoms secondary to her physical symptoms during her initial training. She was later diagnosed with Major Depression and PTSD by civilian providers after her discharge in 2021.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts she experienced mental health conditions including PTSD while on active service. There is evidence the applicant reported insomnia and depressive symptoms secondary to her physical symptoms during her initial training.

(3) Does the condition experience actually excuse or mitigate the discharge? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition including PTSD during her active service. The applicant was experiencing physical conditions, which were determined to have existed prior to her enlistment. She was reporting some difficulty secondary to her physical symptoms and, but these mental health symptoms did not meet full criteria of a mental health condition and were not the primary reason for her separation from service.

BOARD DISCUSSION:

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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The available evidence shows the applicant was found to have a preexisting condition which does not meet the enlistment standard in chapter 2 of AR 40-501, Standards of Medical Fitness, that was neither incurred on active duty nor permanently aggravated by service. As a result, she was separated for not meeting medical fitness standards for enlistment or retention. She completed 4 months and 19 days of net active service. She did not complete initial entry training and was not awarded an MOS. Her service was uncharacterized. 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. The Board found no error or injustice in her separation processing. Also, the Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official and agreed that there is insufficient evidence to support the applicant had a mental health condition or experience that mitigates her discharge. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation 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.

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 (USC), 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. Section 1556 of Title 10, USC, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.

3. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 3 provides that a separation will be described as entry level with uncharacterized service if the Soldier has less than 180 days of continuous active duty service at the time separation action is initiated.

b. 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.

c. 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.

d. Paragraph 3-9, in effect at the time of the applicant's separation, provided that a separation would be described as entry level with uncharacterized service if processing was initiated while a Soldier was in an entry-level status, except when:

(1) a discharge under other than honorable conditions was authorized, due to the reason for separation and was warranted by the circumstances of the case; or

(2) the Secretary of the Army, on a case-by-case basis, determined a characterization of service as honorable was clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty. This characterization was authorized when the Soldier was separated by reason of selected changes in service obligation, for convenience of the government, and under Secretarial plenary authority.

e. Paragraph 5-11 provides that Soldiers who are not medically qualified under procurement medical fitness standards when accepted for enlistment or who become medically disqualified under these standards prior to entrance on active duty, active duty for training, or initial entry training will be separated. A medical proceeding, regardless of the date completed, must establish that a medical condition was identified by appropriate medical authority within 6 months of the Soldier's initial entrance on active duty, that the condition would have permanently or temporarily disqualified the Soldier for entry into military service had it been detected at that time, and the medical condition did not disqualify the Soldier from retention in the service. The character of service for Soldiers separated under this provision would normally be honorable but would be uncharacterized if the Soldier was in an entry-level status.

4. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; traumatic brain injury; sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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 on the basis of 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.

//NOTHING FOLLOWS//