

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 October 2024

DOCKET NUMBER: AR20240001391

APPLICANT REQUESTS: physical disability separation in lieu of administrative discharge due to a condition, not a disability

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

- DD Form 149 (Application for Correction of Military Record)
- VA Rating Decision, dated 22 December 2021

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 the narrative reason for separation is incorrect. It shows "not a disability." She is currently receiving a VA disability for the conditions for which she was separated from the Army.
3. A physical profile is used to classify a Soldier's physical disabilities. PULHES is the acronym used in the Military Physical Profile Serial System to classify a Soldier's physical abilities in terms of six factors, as follows: "P" (Physical capacity or stamina), "U" (Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric) and is abbreviated as PULHES. Each factor has a numerical designation: 1 indicates a high level of fitness, 2 indicates some activity limitations are warranted, 3 reflects significant limitations, and 4 reflects one or more medical conditions of such a severity that performance of military duties must be drastically limited. Physical profile ratings can be either permanent (P) or temporary (T).
4. A DD Form 2808 (Report of Medical Examination) shows the applicant underwent medical examination on 5 May 2020, for the purpose of Regular Army enlistment and was found medically qualified for enlistment with a PULHES of 111111. There are no listed significant or disqualifying medical diagnoses.

5. A DD Form 4 (Enlistment/Reenlistment Document) shows the applicant enlisted in the Regular Army on 5 May 2020, for a period of 8 years. She was assigned to Fort Jackson, SC for training.

6. A DA Form 3081 (Periodic Medical Examination – Statement of Exemption), dated 18 June 2020, shows the applicant signed the form indicating she underwent a medical examination in conjunction with a physical on 18 May 2020 at the West Virginia Military Entrance Processing Station (MEPS) and to the best of her knowledge there had been no significant change in her medical condition since that medical examination.

7. A DA Form 4856 (Developmental Counseling Form) shows:

a. The applicant was counseled on 23 June 2020 to inform her of her pending separation under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 5-17, for other designated physical or mental conditions.

b. Her medical provider diagnosed her with multiple stress fractures that happened during Basic Combat Training (BCT) and recommended her discharge under the provisions of Army Regulation 635-200, paragraph 5-17. Based on these findings, her condition was unlikely to respond to any efforts at rehabilitation or any treatment methods currently available in any military treatment facility.

8. On 26 June 2020, the applicant was notified by her immediate commander of his initiation of action to separate her with an uncharacterized discharge under the provisions of Army Regulation 635-200, paragraph 5-17, for other designated physical or mental conditions. The reason for his proposed action was medical issues not amounting to a disability, specifically, the multiple stress fractures annotated in her medical file that precluded her from continuing her training. She was advised of her right to consult with counsel and submit statements in her own behalf.

9. On 26 June 2020, the applicant acknowledged receipt of notice from her commander informing her of the basis for the contemplated action to separate her under the provisions of Army Regulation 635-200, paragraph 5-17. She acknowledged having been advised of her right to consult with counsel prior to submitting her election of rights. She did not submit statements in her own behalf and waived consulting counsel representation.

10. On 28 June 2020, the applicant's battalion commander recommended her uncharacterized discharge under the provisions of Army Regulation 635-200, paragraph 5-17, for other designated physical or mental conditions.

11. On 1 July 2020, the approval authority directed the applicant's uncharacterized discharge under the provisions of Army Regulation 635-200, paragraph 5-17, for other designated physical or mental conditions.

12. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was given an uncharacterized discharge on 8 July 2020, under the provisions of Army Regulation 635-200, paragraph 5-17, due to a condition, not a disability, with corresponding separation code JFV and Reentry Code 3. She was not awarded a Military Occupational Specialty (MOS) and was credited with 1 month and 20 days of net active service.

13. The applicant's available service records do not contain a DA Form 3349 (Physical Profile) show:

- she was issued a permanent physical profile rating
- she suffered from a medical condition, physical or mental, that affected her ability to perform the duties required by her MOS and/or grade or rendered her unfit for military service
- she was diagnosed with a medical condition that warranted her entry into the Army Physical Disability Evaluation System (PDES)
- she was diagnosed with a condition that failed retention standards and/or was unfitting

14. A VA Rating Decision, dated 22 December 2021, shows the applicant was granted a service-connected disability rating for the following conditions effective 9 July 2020:

- patellofemoral pain syndrome, left knee with tibial stress fracture, 10 percent
- patellofemoral pain syndrome, right knee with tibial stress fracture, 10 percent
- unspecified depressive disorder, service-connection granted for treatment purposes only

15. The Army rates only conditions determined to be physically unfitting at the time of discharge, which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career. The VA does not have authority or responsibility for determining physical fitness for military service. The VA may compensate the individual for loss of civilian employability.

16. 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/or 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). She states:

“Narrative reason for separation is incorrect, says condition not a disability. Currently receiving VA disability for conditions [I] was separated for.”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. The applicant’s DD 214 shows she entered the regular Army on 19 May 2020 and was discharged on 8 July 2020 under authority provided by paragraph 5-17 of AR 635-200, Active Duty Enlisted Administrative Separations (19 December 2016): Other designated physical or mental conditions.

d. Paragraph 5-17a of AR 635-200:

“Excluding conditions appropriate for separation under paragraph 5–10, commanders specified in paragraph 1–20 may initiate separation under this paragraph on the basis of other physical or mental conditions not amounting to disability (see DoDI 1332.18, AR 40 – 501, and AR 635 – 40) that interfere with assignment to or performance of duty. Such physical or mental conditions may include, but are not limited to:

- Airsickness, motion, and/or travel sickness.
- Phobic fear of air, sea, and submarine modes of transportation.
- Attention-Deficit/Hyperactivity Disorder.
- Sleepwalking.
- Enuresis.
- djustment Disorder (except Chronic Adjustment Disorder).
- Personality disorder.”

e. The applicant’s pre-entrance Report of Medical Examination shows she was in good health, without significant medical history of conditions/defects.

f. The EMR shows she was first seen for a two-week history of bilateral knee pain and new onset of left ankle pain early on 12 June 2020. A bone scan obtained on 12 June 2020 revealed multiple lower extremity stress injuries, including bilateral medical

tibial plateau stress fractures (knees) and stress fractures in both calcanei (heel bones). She was started on conservative treatment to include limited duty, oral medications, and physical therapy. The applicant's stress injuries remained symptomatic, continued to limit her training, and physical therapy subsequently recommended separation from the Army.

g. On 23 June 2020, the applicant's company commander counseled her on this development:

"Trainee [Applicant], your medical provider has diagnosed you with multiple stress fractures that has happened during BCT [basic combat training] and has recommended you be discharged IAW AR 635-200, Chapter 5-17 (Other designated physical or mental conditions).

Based on these findings, your condition is unlikely to respond to any efforts at rehabilitation nor any treatment methods currently available in any military treatment facility. I am in agreement with this recommendation and will ensure you are processed out of the United States Army."

h. The applicant agreed with the counseling without comment.

i. On 26 June 2020, the applicant's company commander informed her of his initiation of action to separated her under paragraph 5-17 of AR 630-200.:

"The reasons for my proposed action are: PVT [Applicant], separation under chapter 5-17 for medical issues not amounting to a disability. Specifically, the multiple stress fracture injuries that were annotated in your medical file precludes you from continuing on in your training."

j. The brigade commander approved the recommended separation action on 11 July 2020.

k. JLV shows he has been awarded three 10% VA service-connected disability ratings related to her knees. However, the DES only compensates an individual for service incurred medical condition(s) (disabilities) which have been determined to disqualify him or her from further military service and consequently prematurely ends their career. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service; These roles and

authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

l. Her stress injuries did not constitute a permanent disability IAW AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (19 January 2017). Given the nature of these injuries and the treatment thereof in a healthy individual, they would be expected to heal once she was removed for the rigors of military training.

m. It is the opinion of the ARBA medical advisor that a referral of her case to the DES is unwarranted.

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 applicant's contentions, the military record, and regulatory guidance were carefully considered. The applicant was separated under chapter 5 of AR 635-200, for other designated physical or mental conditions. Her medical issues not amounting to a disability, specifically, the multiple stress fractures annotated in her medical file precluded her from continuing her training. She was credited with 1 month and 20 days of active service. She did not complete initial entry training and was not awarded an MOS. Her service was uncharacterized. The Board found no error or injustice in her available separation processing. 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. Additionally, the Board reviewed and agreed with the medical reviewer's finding insufficient evidence to support the applicant's referral to the disability system. Therefore, the Board determined that a change to her uncharacterized discharge to a medical discharge is unwarranted.

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 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel.
 - a. Paragraph 5-17 states a service member may be separated for other designated physical or mental conditions that potentially interfere with assignment to or

performance of duty. not amounting to disability under Army Regulation 635-40 and excluding conditions appropriate for separation processing under paragraphs 5-11 (Separation of personnel who did not meet procurement medical fitness standards) or 5-13 (Separation because of personality disorder) Such conditions may include, but are not limited to, the following:

- chronic airsickness
- chronic seasickness
- enuresis
- sleepwalking
- dyslexia
- severe nightmares
- claustrophobia
- other disorders manifesting disturbances of perception, thinking, emotional control or behavior sufficiently severe that the Soldier's ability to effectively perform military duties is significantly impaired

b. When a commander determines a Soldier has a physical or mental condition that potentially interferes with assignment to or performance of duty, the commander will refer the Soldier for a medical examination and/or a mental status evaluation in accordance with Army Regulation 40-501. A recommendation for separation must be supported by documentation confirming the existence of the physical or mental condition. Members may be separated for physical or mental conditions not amounting to disability sufficiently severe that the Soldier's ability to effectively perform military duties is significantly impaired.

c. Separation processing may not be initiated under this paragraph until the Soldier has been counseled formally concerning deficiencies and has been afforded ample opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records. A Soldier being separated under this section will be awarded a character of service of honorable, under honorable conditions, or uncharacterized if in an entry-level separation. An under honorable conditions characterization of service which is terminated under this paragraph is normally inappropriate.

3. 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.

4. Army Regulation 635-40 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.

a. 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. 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. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Ratings are assigned from the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD). 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.

5. Title 10, U.S. Code, section 1201, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30 percent. Title 10, U.S. Code, section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating of less than 30 percent.

6. Title 38, U.S. Code, 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.

7. Title 38, U.S. Code, 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.

8. 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 applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//