

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 October 2024

DOCKET NUMBER: AR20240002111

APPLICANT REQUESTS:

- Upgrade of her under other than honorable conditions discharge in the U.S. Army Reserve
- Restoration of her former rank/grade of specialist (SPC)/E-4
- Disability separation vice the current reason for separation

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 was placed on orders. Her chain of command was aware of the trauma and hardships that she was facing. The chain of command failed to exercise due diligence in trying to prevent the failure and demise of her career. The chain of command neglected her in her efforts to seek treatment the treatment she needed to remain a proud and deserving Soldier. [Note: On her application, the applicant marked PTSD (post-traumatic stress disorder), TBI (traumatic brain injury), Other Mental Health, and Sexual Assault/Harassment) but did not provide any documentary evidence in support of these issues].
3. Regarding the discharge upgrade and restoration of her grade, the applicant currently has another application before the Army Discharge Review Board regarding the discharge upgrade. Since she was discharged in February 2012 and she is still within 15 years of discharge date, the Army Discharge Review Board is the appropriate board to address her discharge upgrade and restoration of her grade. The ABCMR will only address her specific issue of disability separation.
4. The applicant enlisted in the U.S. Army Reserve on 5 November 2003.

a. She entered active duty for training (ADT) on 29 July 2004 and completed training for award of military occupational specialty 92F, Petroleum Supply Specialist.

b. She was released from ADT on 15 December 2004 after completing 4 months and 26 days of active service. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she received an uncharacterized character of service. [Note: her character of service should reflect honorable, not uncharacterized. This correction will be made in the Administrative Notes without any Board action.]

c. The applicant's DA Form 2-1 (Personnel Qualification Record) shows she was advanced to SPC/E-4 on 30 November 2005 and was assigned to the 371st Chemical Company, a troop program unit of the U.S. Army Reserve, on 22 June 2006.

d. On 6 February 2010, she executed a 6-year reenlistment in the U.S. Army Reserve.

e. On 13 March 2010, while on inactive duty training, she was seen on an outpatient basis after she complained of chest pain, shortness of breath, and abdominal pain. Her DA Form 2173 (Statement of Medical Examination and Duty Status) shows: 'Applicant was complaining about a pain in her stomach from a possible ulcer she had. She informed First Sergeant [Name] that she had some medication to take for the pain, but it would make her drowsy. First Sergeant [Name] informed her that it was okay to take the medicine and that she would be in the rear for training while under medication. While [Applicant] was in the rear, she started complaining about feeling dizzy and having sharper pains in her side. First Sergeant [Name] was informed of her worsening situation and he instructed SPC [Name starts with C] to take [Applicant] to the hospital for observation.

f. There is no separation packet in her official record and she does not provide one. So, the specific facts and circumstances surrounding her discharge from the U.S. Army Reserve are unknown. Her service record contains Orders 12-045-00053, issued by Headquarters, 81st Regional Support Command on 14 February 2012 directing tow things:

(1) The applicant's reduction in grade from SPC/E-4 to private (PV1)/E-1 on 14 February 2012 in accordance with paragraph 10-5 of Army Regulation 600-8-19 (Enlisted Promotions and Reductions)

(2) The applicant's discharge from the U.S. Army Reserve effective 19 February 2012 in accordance with Army Regulation 135-17 (Army Reserve – Enlisted Administrative Separations) with an under other than honorable conditions discharge. The Additional Instructions read: Soldier was non-compliant with medical board.

g. the applicant's DA Form 5016 (Chronological Statement of Retirement Points) shows she completed 6 years and 1 day of qualifying service towards non-regular retirement.

5. On 15 March 2024, the U.S. Army Criminal Investigation Command (CID) responded to a request for sanitized copies of Law Enforcement Reports from Department of the Army, Criminal Investigation Division. CID indicated that a search of the Army criminal file indexes utilizing the information provided revealed no Sexual Assault records pertaining to [Applicant]. The records at this center are Criminal Investigative and Military Police Reports and are indexed by personal identifiers such as names, social security numbers, dates and places of birth and other pertinent data to enable the positive identification of individuals.

6. The U.S. Army Reserve Command provided an advisory opinion in the processing of the applicant's case. The Chief of Enlisted Management Branch referenced the applicant's application and Army Regulation 135-178, Enlisted Administrative Separations. The Chief stated his Headquarters conducted extensive research and provides the following:

a. Records indicate [Applicant] enlisted into the Army Reserve on 20031105 and served exclusively in the Army Reserve until her discharge on 20120219. With the exceptions of 2008 and 2011, she performed satisfactorily and received at least 50 qualifying points towards retirement. In February 2010, [Applicant] reenlisted in the Army Reserve for 6 years.

b. According to TAPDB-R, [Applicant] received a permanent profile with a PULHES of 1-1-1-1-3 and was identified for Non-Duty Related PEB processing. Her iPERMS records only shows one LOD (Line of Duty) for an unrelated incident which occurred in March 2010. In October 2011, [Applicant] attended her last Battle Assembly with the Army Reserve, in which she took an APFT [Army Physical Fitness Test] and failed. Additionally, she became noncompliant with the PEB (physical evaluation board) process and was terminated from the IDES (Integrated Disability Evaluation System) process prior to her discharge in February 2012. She was reduced to PV1 at discharge and received an Other Than Honorable Conditions characterization.

c. After exhaustive review of this case, this Headquarters cannot recommend relief for [Applicant] regarding her request for discharge upgrade and medical disability. [Applicant] was afforded the opportunity to have a medical evaluation to determine fitness and retention in the Army Reserve. The Army Reserve identified her disqualifying condition and profiled her accordingly. [Applicant] was enrolled in the PEB process to determine retention potential. Unfortunately, she chose not to participate in the PEB process; therefore, she was discharged as an unsatisfactory participant.

7. The applicant was provided with a copy of this advisory opinion to give her an opportunity to submit a rebuttal. She failed to respond.

8. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of her under other than honorable conditions (UOTHC) discharge from the U.S. Army Reserve, restoration of her former rank/grade of specialist (SPC)/E-4, and disability separation. This opine will focus on her request for an upgrade and disability separation and defer the remaining request to the Board.

b. 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:

- Applicant enlisted in the U.S. Army Reserve on 5 November 2003.
- She entered active duty for training (ADT) on 29 July 2004 and completed training for award of military occupational specialty 92F, Petroleum Supply Specialist.
- Applicant's DA Form 2-1 (Personnel Qualification Record) shows she was advanced to SPC/E-4 on 30 November 2005 and was assigned to the 371st Chemical Company, a troop program unit of the U.S. Army Reserve, on 22 June 2006.
- On 6 February 2010, she executed a 6-year reenlistment in the U.S. Army Reserve.
- There is no separation packet in her official record, and she does not provide one. As a result, the specific facts and circumstances surrounding her discharge from the U.S. Army Reserve are unknown. Her service record contains Orders 12-045-00053, issued by Headquarters, 81st Regional Support Command on 14 February 2012 directing:
- Applicant's reduction in grade from SPC/E-4 to private (PV1)/E-1 on 14 February 2012 in accordance with paragraph 10-5 of Army Regulation 600-8-19 (Enlisted Promotions and Reductions)
- Applicant's discharge from the U.S. Army Reserve effective 19 February 2012 in accordance with Army Regulation 135-17 (Army Reserve – Enlisted Administrative Separations) with an under other than honorable conditions discharge. The Additional Instructions read: Soldier was non-compliant with medical board.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, "she was placed on orders. Her chain of command was aware of the trauma and hardships that she was facing. The chain of command

failed to exercise due diligence in trying to prevent the failure and demise of her career. The chain of command neglected her in her efforts to seek treatment, the treatment she needed to remain a proud and deserving Soldier.” On her application, she selected PTSD (post-traumatic stress disorder), TBI (traumatic brain injury), Other Mental Health, and Sexual Assault/Harassment but did not provide any medical documentation, evidence, or explanation in support of these asserted conditions.

d. Active-duty electronic medical records available for review does not evidence any mental health treatment or diagnosis. However, the U.S. Army Reserve Command provided an advisory opinion in the processing of the applicant’s case. The Chief of Enlisted Management Branch stated headquarters conducted extensive research and provided the following. According to TAPDB-R, she received a permanent profile with a PULHES of 1-1-1-1-3 and was identified for Non-Duty Related PEB processing. In October 2011, she attended her last Battle Assembly with the Army Reserve, in which she took an Army Physical Fitness Test and failed. Additionally, she became noncompliant with the physical evaluation board (PEB) process and was terminated from the Integrated Disability Evaluation System (IDES) process prior to her discharge in February 2012. She was reduced to PV1 at discharge and received an Other Than Honorable Conditions characterization of service. Per the Chief of Enlisted Management Branch, “after exhaustive review of her case, her request for discharge upgrade and medical disability was not recommended since she was afforded the opportunity to have a medical evaluation to determine fitness and retention in the Army Reserve. The Army Reserve identified her disqualifying condition and profiled her accordingly and she was enrolled in the PEB process to determine retention potential. Unfortunately, she chose not to participate in the PEB process; therefore, she was discharged as an unsatisfactory participant”. The applicant was provided with a copy of this advisory opinion and an opportunity to submit a rebuttal. She failed to respond. However, given the applicant received a permanent profile with a PULHES of 1-1-1-1-3, while in service, there is evidence of some psychiatric symptoms impacting her ability to perform her duties.

e. The VA’s Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected. VA electronic medical records available for review indicate, she has not been treated by the VA, likely due to the characterization of her discharge and its impact on eligibility. A note dated 16 May 2013, shows the applicant was experiencing homelessness and was housed by the Salvation Army since 3 January 2013 with her three children. The applicant was pregnant with her fourth child and had an anticipated delivery date in May 2013. The applicant reported she had separated from her spouse which resulted in the family's homelessness, since he did not pay child support and was not supportive of the pregnancy. In addition, the applicant reported a history of childhood abuse as well as a mental health history of being treated for depression and anxiety. She was deemed ineligible for services via the VA due to her discharge status.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is minimal but sufficient evidence to support the applicant had psychiatric symptoms impacting her ability to perform her duties during military service. However, given the specific facts and circumstances surrounding the applicant's discharge are not available for review, this advisor cautiously supports mitigation of her discharge if her misconduct did not involve violence, bodily harm, or major crimes. However, regarding her request for disability, this Agency Behavioral Health Advisor concurs with the U.S. Army Reserve Command, Chief of Enlisted Management Branch. The applicant was identified for Non-Duty Related PEB processing and was afforded the opportunity to have a medical evaluation to determine fitness and retention. However, she became noncompliant with the physical evaluation board (PEB) process and was terminated from the Integrated Disability Evaluation System (IDES) process prior to her discharge. At this time, there is insufficient new evidence to support a referral to the IDES process.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant selected PTSD, OMH, TBI and Sexual Assault/Harassment on her application as related to her request.

(2) Did the condition exist or experience occur during military service? Yes. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service. However, she received a permanent profile with a PULHES of 1-1-1-1-3 and was identified for Non-Duty Related PEB processing, indicating the presence of psychiatric symptoms.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant selected PTSD, OMH, TBI and Sexual Assault/Harassment on her application as related to her request. However, she provides no medical documentation or indicates a rationale as the basis for her selecting these conditions. Per the U.S. Army Reserve Command advisory, the applicant received a permanent profile with a PULHES of 1-1-1-1-3 while in service, indicating the presence of psychiatric symptoms. Given the specific facts and circumstances surrounding the applicant's discharge are not available for review, and based on her PULHES of 1-1-1-1-3, this advisor cautiously supports mitigation of her discharge if her misconduct did not involve violence, bodily harm, or major crimes.

h. Per Liberal Consideration guidelines, her selection of PTSD, OMH, TBI and Sexual Assault/Harassment on her application is sufficient to warrant consideration by the Board.

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, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records, Headquarters, United States Army Reserve Command (USARC) – Enlisted Management Branch advisory opinion and medical review, the Board concurred with the advising official recommendation finding the applicant became noncompliant with the physical evaluation board (PEB) process and was terminated from the Integrated Disability Evaluation System (IDES) process prior to her discharge. At this time, there is insufficient new evidence to support a referral to the IDES process.
2. The Board considered the advising official finding that there is minimal but sufficient evidence to support the applicant had psychiatric symptoms impacting her ability to perform her duties during military service. The opine noted, the specific facts and circumstances surrounding the applicant's discharge are not available for review, this advisor cautiously supports mitigation of her discharge if her misconduct did not involve violence, bodily harm, or major crimes. The Board notwithstanding the medical opine, determined there is insufficient evidence of in-service mitigating factors to overcome her unsatisfactory performance and inability to pass her APFT. Based on the preponderance of evidence provided by the advising official and medical opine, the Board agreed the applicant's contentions for disability separation vice the current reason for separation is without merit. Therefore, the Board denied relief.
3. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is completed to more accurately depict the military service of the applicant.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

: : : GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

█ █ █ DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

Except for the correction addressed in Administrative Note(s) below, 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 for correction of the records of the individual concerned.

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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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's service record contains sufficient evidence to support administrative corrections that are not annotated on his DD Form 214 for the period ending on 15 December 2004 by showing in Block 24 (Character of Service) Honorable vice Uncharacterized.

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 635–40, Personnel Separations, Disability Evaluation for Retention, Retirement, or Separation, prescribes Army policy and responsibilities for the disability evaluation and disposition of Soldiers who may be unfit to perform their military duties due to physical disability.

a. Paragraph 5–4. Reasonable performance of duties: With the exception of cases adjudicated under the presumption of fitness rule, determining whether a Soldier's medical impairments preclude the Soldier from reasonably performing their duties will be determined based on the factors below. Congenital and developmental defects, Common military tasks, Army Physical Fitness Test, Inability of the Soldier to perform all of the required events of the standard APFT or to participate in local physical training requirements that exceed Army standards for a record APFT are inappropriate criteria on which to solely base an unfit determination; Ability to deploy; and other reasons.

b. Paragraph 4-2, the DES (disability evaluation system) applies to Active Army, RC (Reserve Component) Soldiers, recalled retirees, and cadets of the United States Military Academy.

(1) The non-duty related process applies to RC Soldiers who are not on active duty and who do not meet medical retention standards because of non-duty related impairments.

(2) RC Soldiers, who were called to active duty under the provisions of 10 USC 12301 but then released from active duty by the 30th day due to the identification of a pre-existing condition not aggravated by the current tour of active duty, and which fails retention standards, will come under the applicable DES process based on whether the pre-existing condition was previously incurred in the LOD (duty-related process) or was a condition incurred when not in a duty status (non-duty-related process).

(3) RC Soldiers on active duty orders specifying a period of more than 30 days will, with their consent, be kept on active duty for disability evaluation processing until final disposition, subject to the circumstances set forth in paragraph 4–2a(2)

//NOTHING FOLLOWS//