

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 January 2025

DOCKET NUMBER: AR20240002343

APPLICANT REQUESTS, in effect:

- a discharge or retirement due to disability
- personal appearance before the Board

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

- DD Form 149, Application for Correction of Military Record
- Marriage License
- DD Form 214, Certificate of Release of Discharge from Active Duty
- Personal Protection Order
- Divorce Decree
- Medical Records
- Department of Veterans Affairs (VA) document
- MyHealtheVet medical records

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:

a. She received an honorable characterization of service; however, she was discharged without finishing her medical board processing which started in October 2002. She is unsure why her medical processing was not completed but because of this error she is not eligible for TRICARE Health Insurance, and she did not receive a disability rating prior to being discharged.

b. On 4 October 2002, while on active duty, her doctor placed her on a permanent physical profile for a back disability. She contends this medical doctor initiated the medical board at the same time she received the physical profile. On 10 October 2002,

while she was still on active duty, she received a Line of Duty (LD) decision for her left upper back pain and shoulder strain. On 1 November 2002, her discharge due to a severe personality disorder diagnosis was approved. Her military career unfortunately ended early due to severe medical reasons.

c. At the time of her discharge, her military records showed a chronic history of medical visits for her back injury, to include physical therapy, which supports her contentions that a medical board should have evaluated her. Her military records also show the domestic violence she endured with her now ex-husband causing her to have severe post-traumatic stress disorder (PTSD) and a right hand injury. Prior to being discharged, she was seen by a licensed psychologist and diagnosed with personality disorder when she was actually suffering from severe PTSD due to the physical and sexual trauma she sustained. In addition, her military records show a history of a permanent chronic gynecologic issues. Because of her in-service gynecology issues, she had to have a hysterectomy on 5 May 2022.

d. During the hysterectomy, at [REDACTED] VA Medical Center, the surgeon cut her left ureter. This surgical error caused her to lose her left kidney. On 21 September 2022, Emory Healthcare did a left nephrectomy. She has been seen on an ongoing basis through Community Care (not TRICARE) for her chronic health conditions sustained during her military service. She would like this error corrected to be eligible for TRICARE Health Insurance benefits. She continues to have ongoing permanent medical issues which she incurred during her military service. She feels that she was denied physical disability processing, and she was improperly discharged. If she had been properly discharged, she might still have two healthy kidneys. Her right kidney is currently in Stage 2 renal failure.

3. On 16 November 2000, the applicant enlisted in the Regular Army and was awarded military occupational specialty 56M, chaplain assistant.

4. The record contains a Screening Note of Acute Medical Care which shows the applicant was treated for upper back pain on the left side on 13 January 2001 and 25 January 2001.

5. She received a temporary physical profile for left back and shoulder pain on 3 September 2002.

6. On 4 October 2002, the applicant received a permanent profile for chronic left shoulder pain/rhomboid strain. The DA Form 3349, Physical Profile, indicates that a MEB was initiated.

7. The record contains a DA Form 2172, Statement of Medical Examination and Duty Status, 10 October 2002. This form states that per the applicant's statement, during a

road march, and as a result of carrying her own and her battle buddy's rucksack, she strained her upper left back and shoulder during basic training. Her injury was determined to be in the LD.

8. On 30 October 2002, her commander notified the applicant of his intent to initiate separation action against her under the chapter 5-13, AR 635-200, based on a personality disorder. He stated that her condition was a deeply ingrained, maladaptive pattern of behavior of long duration which interfered with her ability to perform her duties. The disorder was so severe that her ability to function effectively in the military environment was significantly impaired. Her commander recommended the applicant's service be characterized as honorable.

9. On the same day, she acknowledged receipt of the notification of her pending separation action. She was subsequently advised by counsel of the basis for the contemplated separation action. She elected not to submit statements in her own behalf and requested consulting counsel and representation by military counsel.

10. On 1 November 2002, her commander formally recommended the applicant be discharged under the provisions of AR 635-200, paragraph 5-13.

11. On 25 November 2002, she was honorably discharged. Her DD Form 214 shows she completed 2 years, and 10 days of creditable active service during this period. The narrative reason for separation lists "Personality Disorder."

12. The Criminal Investigation Division did not find records for a Military Sexual Assault pertaining to the applicant in the Army criminal file indexes.

13. The applicant provides:

a. A Personal Protection Order, 5 August 2003, which shows the applicant's ex-spouse was prohibited from entering the property where the applicant lived, assaulting, stalking, threatening to kill or injure her, and interfering with her place of employment because he posed a credible threat to the physical safety of the applicant.

b. Her divorce decree granted on 31 October 2003.

c. Numerous health records which include laboratory results, radiology reports, and her medical and surgical history during the period 2000-2023. These records show the applicant was treated for the following conditions:

- pain of left scapula
- lumbar pain

- pain of paraspinal muscle related to trauma from nephrostomy tube+/-muscle strain /spasm
- acute pain of both knees
- radicular pain in left arm
- left nephrectomy (September 2022)
- left ureteral injury during laparoscopic hysterectomy (May 2022)
- chronic kidney disease
- acquired absence of kidney
- spine pain
- neck pain
- depression
- anxiety
- PTSD
- asthma

d. A medical doctor's statement. This doctor reviewed the applicant's in-service and post-service records and determined that the applicant had chronic pelvic and abdominal pain, dysfunctional uterine bleeding, and abnormal vaginal discharge since her service. She had gynecological surgery of laparoscopy in 2003, laparoscopy in 2008, bilateral salpingectomy in 2019, and hysterectomy in 2022. Despite all treatment modalities the applicant continued to have severe chronic pelvic pain and white vaginal discharge. The symptoms were because of pelvic inflammatory disease (PID)(Chronic PID, nerve damage). Her heavy bleeding stopped on 5 May 2022 when she had the total hysterectomy. In addition, she was unable to have children as she was missing all her reproductive organs: Bilateral fallopian tubes, uterus, and cervix.

e. Her MyHealtheVet medical records. These records show the applicant communicated an adverse event to members of the VA medical team. She communicated her experiences with pain post-procedure and as an inpatient. She requested to continue to receive community care. She also provided the results of a C-Spine MRI.

f. Her VA claim documents which show she is currently receiving disability compensation at the 100% rate.

14. By regulation:

a. When a Soldier is being processed for separation or retirement for reasons other than physical disability, continued performance of assigned duty commensurate with their rank or grade until the Soldier is scheduled for separation or retirement, creates a presumption that the Soldier is fit. The presumption of fitness may be overcome if the evidence establishes that (a) The Soldier was, in fact, physically unable to perform adequately the duties of their office, grade, rank or rating for a period of time because of

disability. There must be a causative relationship between the less than adequate duty performance and the unfitting medical conditioner conditions.

b. All relevant evidence must be considered in evaluating the fitness of a Soldier. Findings with respect to fitness or unfitness for military service will be made on the basis of the preponderance of the evidence. Thus, if the preponderance of evidence indicates unfitness, a finding to that effect will be made.

15. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Applicants do not have a right to a hearing.

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 (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/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 referral to the Disability Evaluation System (DES). She states:

“I was discharged honorably from the U.S. Army for medical reasons. But I was not discharged honorably through medical separation or medical retirement which qualifies me for Tri-Care. The Army processed me directly as an Honorable discharge without finishing the process through the Medical Board which was started in October 2002.”

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 for the period of service under consideration shows she entered the regular Army on 16 November 2000 and received an honorable discharge on 25 November 2002 under the separation authority provided by paragraph 5-13 of AR 635-200, Active Duty Enlisted Administrative Separations (1 November 2000): Separation because of personality disorder. The DD 214 does not show a period of service in a hazardous duty or imminent danger pay area.

d. From paragraph 5-13 of AR 635-200:

“5-13. Separation because of personality disorder

Under the guidance in chapter. 1, section, I; a soldier may be separated for personality disorder (not amounting to disability (see AR .635-40), that interferes, with assignment or with performance of duty, when so disposed as indicated in 5-13a.

a. This condition is a deeply ingrained maladaptive pattern of behavior of long duration that, interferes with the soldier's ability to perform duty. (Exceptions:, combat exhaustion and other acute situational maladjustments.) The diagnosis of personality, disorder must have been established by a psychiatrist or doctoral-level clinical psychologist with necessary and appropriate professional credentials who is privileged to conduct mental health evaluations for the DOD components. It is described in the Diagnostic and Statistical Manual (DSM-IV) of Mental' Disorders,'4th edition.”

e. There are no clinical encounters in the EMR. The submitted medical records are from 2022-2024 and so of no probative value for the period of service under consideration.

f. Two contemporaneous medical documents show the applicant was conservatively treated for upper back pain, an upper respiratory infection, and left shoulder pain in January 2001.

g. She was placed on a temporary non-duty limiting physical profile for left back and shoulder pain on 3 September 2002. This was changed to a permanent duty-limiting physical profile on 4 October 2002 with the profiling officer writing “MEB initiated.” However, the profile was not validated by an approval authority and thus did not enter the applicant into the DES.

h. A Statement of Medical Examination and Duty Status (DA Form 2173) completed on 10 October 2002 states the applicant's symptoms began during a road march in December 2000 while she was in basic training:

“As per patient's statement, during a road-march and as a result of carrying her own and her battle buddy's rucksack, she strained her upper left back and shoulder while attending basic training.”

i. On 30 October 2002, the applicant's company commander recommended the applicant be separated under paragraph 5-13 of AR 635-200:

"The reasons for my proposed separation are: You have been diagnosed, by a Licensed Clinical Psychologist, as having a Personality Disorder NOS [not otherwise specified], Severe, under the meaning of the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV), and AR 635-200, Chapter 5-13. This condition is a deeply ingrained, maladaptive pattern of behavior of long duration which interferes with your ability to perform your duty. A disorder so severe that your ability to function effectively in the military environment is significantly impaired."

j. JLV shows he has been awarded multiple VA service-connected disability ratings in 2022, including ratings for PTSD, injury of bladder, and removal of kidney. However, the DES only compensates an individual for permanent service incurred medical condition(s) 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; or which did not cause or contribute to the termination of their military career. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

k. It is the opinion of the ARBA Medical Advisor there is insufficient evidence to warrant a referral of her case to the Disability Evaluation System.

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 review based on law, policy, and regulation. Upon review of the applicant's petition, available military records, and the medical review, the Board concurred with the advising official finding that the applicant's Department of Veterans Affairs rating determinations are based on the roles and authorities granted by Congress to the Department of Veterans Affairs and executed under a different set of laws. Based on this, the Board determined a referral of her case to the Disability Evaluation System (DES) is not warranted.
2. 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:

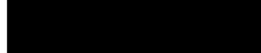
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:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
			DENY APPLICATION

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.

5/12/2025

X 

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. 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 (AR) 635-200, Personnel Separations-Enlisted Personnel, sets forth the basic authority for the separation of enlisted personnel. Paragraph 5-13 states:
 - a. A Soldier may be separated for personality disorder (not amounting to disability), that interferes with assignment or with performance of duty. The condition must be a deeply ingrained maladaptive pattern of behavior of long duration that, interferes with the Soldier's ability to perform duty.
 - b. The diagnosis of personality disorder must have been established by a psychiatrist or doctoral-level clinical psychologist with necessary and appropriate professional credentials who is privileged to conduct mental health evaluation for the Department of Defense components.
 - 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.
 - d. The fact that a soldier has a condition listed in the Veterans Affairs Schedule for Rating Disabilities (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.
 - e. 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. Any non-ratable defects or conditions will be listed on the DA Form 199, Physical Evaluation Board Proceedings, but will be annotated as not-ratable.
 - f. To ensure all Soldiers are physically qualified to perform their duties in a reasonable manner, medical retention qualification standards have been established in AR 40-501, Medical Services-Standards of Medical Fitness, chapter 3. These standards

include guidelines for applying them to fitness decisions in individual cases. These guidelines are used to refer soldiers to a Medical Evaluation Board. The major objective of these standards is to achieve uniform disposition of cases arising under the law. These retention standards and guidelines should not be interpreted to mean that possessing one or more of the listed conditions or physical defects signifies automatic disability retirement or separation from the Army. The fact that the soldier has one or more defects sufficient to require referral for evaluation, or that these defects may be unfitting for soldiers in a different office, grade, rank, or rating, does not justify a decision of physical unfitness.

g. Requirements for placement on the Temporary Disability Retired Listed are the same as for permanent retirement. The Soldier must be unfit to perform the duties of their office, grade, rank, or rating at the time of evaluation. The disability must be rated at a minimum of 30 percent, or the Soldier must have 20 years of service computed under section Title 10, U.S. Code, section 1208.

3. AR 635-40, Personnel Separations-Physical Evaluation for Retention, Retirement, or Separation, governs the evaluation for physical fitness of Soldiers who may be unfit to perform their military duties because of physical disability. It states -

a. The fact that the Soldier has one or more defects sufficient to require referral for evaluation, or that these defects may be unfitting for Soldiers in a different office, grade, rank, or rating, does not justify a decision of physical unfitness.

b. The overall effect of all disabilities present in a Soldier whose physical fitness is under evaluation must be considered. The effect will be considered both from the standpoint of how the disabilities affect the Soldier's performance and the requirements imposed on the Army to maintain and protect them during future duty assignments. A Soldier may be unfit because of physical disability caused by a single impairment or physical disabilities resulting from the overall effect of two or more impairments even though each of them, alone, would not cause unfitness.

c. All relevant evidence must be considered in evaluating the fitness of a Soldier. Findings with respect to fitness or unfitness for military service will be made on the basis of the preponderance of the evidence. Thus, if the preponderance of evidence indicates unfitness, a finding to that effect will be made.

d. When a Soldier is being processed for separation or retirement for reasons other than physical disability, continued performance of assigned duty commensurate with their rank or grade until the Soldier is scheduled for separation or retirement, creates a presumption that the Soldier is fit. The presumption of fitness may be overcome if the evidence establishes that (a) The Soldier was, in fact, physically unable to perform adequately the duties of their office, grade, rank or rating for a period of time because of

disability. There must be a causative relationship between the less than adequate duty performance and the unfitting medical conditioner conditions.

e. Functional impairment. Loss of function is the principal criterion for establishing the level of impairment resulting from mental illness. Loss of function is reflected in impaired social and industrial adaptability. Psychoses specifically include those disorders manifesting disturbances of perception, thinking, emotional control, and behavior, severe enough to hinder economic adjustment, which hinder the Soldier's capacity to perform military duties or to earn a living.

4. Title 38, U.S. Code, section 1110, General - Basic Entitlement: 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.

5. Title 38, U.S. Code, section 1131, Peacetime Disability Compensation - Basic Entitlement: 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.

6. 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.

7. 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.

8. TRICARE is a healthcare program. It is not an agency, and it does not determine eligibility. The sponsor's uniformed service decides who is eligible for TRICARE and reports it to the Defense Enrollment Eligibility Reporting System (DEERS).

a. Service members that are placed on the Temporary Disability Retired List or the Permanent Disability Retired List are eligible for TRICARE benefits for retired service member. If the service disability rating is less than 30% and they are separated from active duty, the member may qualify for transitional health care benefits such as Continued Health Care Benefits Program (CHCBP).

b. The CHCBP is a premium-based. This plan:

- gives you temporary health coverage for 18 to 36 months when you lose eligibility for TRICARE
- acts as a bridge between military health benefits and your new civilian health plan
- provides the same coverage as TRICARE Select, including prescriptions
- gives you minimum essential coverage required by the Affordable Care Act

9. AR 15-185, Boards, Commissions, and Committees-ABMCR, states 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. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Applicants do not have a right to a hearing.

//NOTHING FOLLOWS//