

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 October 2024

DOCKET NUMBER: AR20240002376

APPLICANT REQUESTS: in effect, correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty) to show she was medically discharged and foreign service credit for her deployment to Bosnia-Herzegovina.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214, for the period ending 8 July 1998
- Joint Uniform Military Pay System, Leave and Earning Statements (9), dated 1 March 1997 to 30 November 1997
- Department of Veterans Affairs (VA) Health Summary, dated 17 November 2023

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 retaliation and sexual trauma were the reasons for her discharge. Her physical and mental health were not considered at the time of her discharge. She was not aware she had any recourse for military sexual trauma (MST). Following her discharge, she struggled in silence with her mental health issues. Additionally, her deployment to Bosnia-Herzegovina is not included on her DD Form 214, despite her having requested it. The applicant notes other mental health, sexual assault/harassment, and reprisal/whistleblower as conditions related to her request.
3. The applicant's complete military records are not available for review; therefore, this case is being considered using very limited documentation.
4. The applicant enlisted in the Regular Army on 21 August 1996 for a 4-year period. Upon completion of initial entry training, she was awarded military occupational specialty 92A (Equipment Record and Parts Specialist).

5. The complete facts and circumstances surrounding her discharge are not available for review. However, her DD Form 214 shows the applicant was released from active duty on 8 July 1998, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 8, by reason of pregnancy. Her character of service was honorable, with separation code MDF and reentry code RE-2. She completed 1 year, 10 months, and 18 days of net active service this period. She was authorized or awarded the following:

- National Defense Service Medal
- Army Service Ribbon
- Marksman Marksmanship Qualification Badge with Rifle bar

6. The applicant's DD Form 214 does not contain an entry in item 12f (Foreign Service). Nor does it contain an entry in item 18 (Remarks) which shows she deployed in support of any named operation(s).

7. On 30 August 2000, the Army Discharge Review Board considered the applicant's request to change her narrative reason for discharge from "pregnancy" to "hardship." After careful review, the Board determined the applicant was properly and equitably discharged. Her request was denied.

8. The applicant enlisted in the Army National Guard of the United States on 29 March 2001. She was subsequently discharged on 19 July 2001, under the provisions of National Guard Regulation 600-200 (Enlisted Personnel Management), paragraph 8-27f, by reason of unsatisfactory participation. Her service was characterized as under honorable conditions (general). She completed 1 year, 3 months, and 21 days of net service this period.

9. The applicant provides the following:

a. Nine Leave and Earning Statements (LES) printed from the Joint Uniform Military Pay System, dated between 1 March 1997 and 30 November 1997, which show she received Hazardous Duty Pay (HDP) and Imminent Danger Pay (IDP) during the time period covered on her LESs.

b. A VA Health Summary, dated 17 November 2023, shows the applicant was diagnosed with a mental disorder diagnosis of "Other Specified Trauma and Stressor Related Disorder."

10. The Board received a copy of the applicant's Master Military Pay Account from DFAS that shows she received Hostile Fire/Imminent Danger Pay for Bosnia from 970428 to 971103.

11. On 17 June 2024, the Army Review Boards Agency (ARBA) requested a copy of any un-redacted Inspector General (IG) Records, regarding whistleblower status, which pertained to the applicant. To date, no documentation has been received.

12. On 11 July 2024, in the processing of this case, the U.S. Army Criminal Investigation Division, searched their criminal file indexes, which revealed no MST records pertaining to the applicant.

13. Regulatory guidance states enlisted women who are medically diagnosed as being pregnant may, after the unit commander has counseled her concerning her options, entitlements, and responsibilities, voluntarily request separation under Army Regulation 635-200, Chapter 8, by reason of pregnancy.

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

15. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a correction of her DD Form 214 to show she was medically discharged and to add foreign service credit for her deployment to Bosnia-Herzegovina. On her DD Form 149, the applicant indicated that Other Mental Health Issues, Sexual Assault/Harassment, and Reprisal/Whistleblower are related to her request. More specifically, the applicant asserted that retaliation and sexual trauma were the reasons for her discharge and not pregnancy. Adding foreign service credit to her DD Form 214 is outside of the scope of this Advisory and will not be addressed. 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 (RA) on 21 August 1996, 2) the complete facts and circumstances surrounding her discharge are unavailable for review. Her DD Form 214 shows she was released from active duty on 08 July 1998 under the provisions of Army Regulation (AR) 635-200, Chapter 8, by reason of pregnancy. Her character of service was honorable, with a separation code of MDF, and a reentry code of RE-2, 3) the Army Discharge Review Board (ADRB) on 30 August 2000 denied the applicant's previous request to change her narrative reason for discharge from pregnancy to hardship, 4) the applicant enlisted in the Army National Guard (ARNG) on 29 March 2001. She was discharged on 19 July 2001 under the provisions of National Guard Regulation (NGR) 600-200 by reason of unsatisfactory participation. Her service was characterized as under honorable conditions (general), 5) on 11 July 2024, the U.S. Army Criminal Investigation Division (CID) indicated their criminal file indexes revealed no Military Sexual Trauma (MST) records pertaining to the applicant. To date, there were no records received regarding whistleblower status pertaining to the applicant.

b. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. There were no in-service medical records available for review.

d. A review of JLV shows the applicant is 10% service-connected through the VA for Tinnitus. She is not service-connected for any BH conditions. The applicant underwent two BH Compensation and Pension (C&P) evaluations through the VA dated 28 September 2023 and 23 February 2024. At the time of her initial evaluation, the applicant was diagnosed with Other Specified Trauma and Stressor Related Disorder. It was documented that the applicant reported experiencing MST while in-service. One of the stressors identified as traumatic during her service was reported as being stalked by another service member, noted as a noncommissioned officer, unit leadership, and threatened with retaliation. The evidence cited as substantiating the applicant's assertion was noted as her early separation from service, a service treatment record (STR) documenting that she had chest pain without significant findings, and an MST statement. The provider opined that the applicant's condition was at least as likely as not incurred or caused by the claimed in-service injury, event, or illness. Furthermore, the evaluator stated the applicant's trauma and stressor-related symptoms appear to be related to MST. At the time of her subsequent C&P examination, the diagnosis of Other Specified Trauma and Stressor Related Disorder was reaffirmed and attributed to MST.

e. The applicant is applying to the ABCMR requesting a correction of her DD Form 214 to show she was medically discharged. There were no in-service medical records available for review. Review of JLV shows the applicant is not service-connected for any BH conditions. The applicant has been diagnosed with Other Trauma and Stressor Related Disorder through the VA which the evaluating provider(s) attributed to MST. However, it is of note that VA examinations are based on different standards and parameters and do not address whether a medical condition met or failed Army retention criteria or if it was a ratable condition during the period of service. Therefore, a subsequent diagnosis of a medical condition through the VA or even a VA disability rating does not imply failure to meet Army Retention Standards at the time of service or that a different diagnosis rendered on active duty is inaccurate. A subsequent diagnosis of Other Trauma or Stressor Related Disorder through the VA is not indicative of a misdiagnosis or other injustice at the time of service. Furthermore, even an in-service diagnosis of Other Trauma or Stressor Related Disorder is not automatically unfitting per AR 40-501 and would not automatically result in medical separation processing. Thus, although there is evidence that the applicant has been diagnosed with a BH

condition post-discharge which was attributed to her military service by the evaluating provider(s), there is insufficient evidence that the applicant was diagnosed with a condition in-service that fell below medical retention standards in accordance with (IAW) AR 40-501. As such, a referral to IDES is not warranted.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted.
2. The Board carefully considered the applicant's request with supporting documents and the applicable regulatory guidance for her requested corrections. The Board considered her statement, her record of service, the information in the MMPA document and the reason for her separation. The Board considered the absence of DAIG documents and CID reports related to her claim. The Board considered the review by the medical advising official to include the identification of her VA service-connected condition (Tinnitus) and the conclusion that there is insufficient evidence that the applicant was diagnosed with a condition in-service that fell below medical retention standards in accordance with (IAW) AR 40-501. Based on a preponderance of evidence the Board determined that the applicant's reason for separation was not in error or unjust and that a medical separation or retirement was not warranted. The Board did determine that the evidence supported relief for her request to add foreign service credit for her deployment to Bosnia-Herzegovnia to her DD Form 214, in accordance with the MMPA document.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:                :                :                GRANT FULL RELIEF

██████      ██████      ██████      GRANT PARTIAL RELIEF

:                :                :                GRANT FORMAL HEARING

:                :                :                DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 8 July 1998 to show in item 18. Remarks her deployment to Bosnia-Herzegovnia (BK) from 970428 to 971103.

2. The Board further determined that the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains changing her reason for separation to a medical.

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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.

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 Army Board for Correction of Military

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

3. Title 10, USC, Section 1203 provides for the physical disability separation of a member who has less than 20 years of service and a disability rating at less than 30 percent (%).

4. Title 38, USC, Sections 1110 and 1131, permit the Department of Veterans Affairs (VA) to award compensation for disabilities which were incurred in or aggravated by active military service. However, an award of a VA rating does not establish an error or injustice on the part of the Army.

a. 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.

b. The VA does not have authority or responsibility for determining physical fitness for military service. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge, to compensate the individual for loss of civilian employability. As a result, the VA, operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform his duties. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

5. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that 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. It is not an investigative body.

6. Army Regulation 40-501 (Standards of Medical Fitness) governs medical fitness standards for enlistment, induction, appointment (including officer procurement programs), retention, and separation (including retirement). Once a determination of physical unfitness is made, the physical evaluation board (PEB) rates all disabilities using the Veterans Affairs Schedule for Rating Disabilities (VASRD).

a. Chapter 2, provides physical standards for enlistment, appointment, and induction with the purpose to ensure members medically qualified are medically capable of completing required to training, adapt to a military environment without geographical limitations, perform duties without aggravation of existing physical defects or medical conditions.

b. The standards in Chapter 2 are applicable to individuals who enlist in the Regular Army - for medical conditions or physical defects pre-dating original enlistment, standards are applicable for enlistee's first 6 months of active duty. It states that enlisted Soldiers identified within the first 6 months of active duty with a condition that existed prior to service that does not meet the physical standards may be separated following an evaluation by an Entrance Physical Standards Board, under the provisions of Army Regulation 635-200, Chapter 5; for Reserve Component members, these standards are applicable during the enlistee's first period of active duty for training (ADT).

7. Army Regulation 635-5 (Separation Documents), in effect at the time, prescribed the separation documents that must be prepared for Soldiers upon retirement, discharge, or release from active duty service or control of the Active Army. It also established standardized policy for preparing and distributing the DD Form 214.

a. The general instructions stated all available records would be used as a basis for preparation of the DD Form 214.

b. For item 12f, enter the total amount of foreign service completed during the period covered by the DD Form 214. Obtain the foreign service listed in the DA Form 2-1 for enlisted Soldiers to compute this entry. If necessary, verify the foreign service in the Military Personnel Records Jacket.

c. For item 18, use this block for Headquarters, Department of the Army, mandatory requirements when a separate block is not available and as a continuation for entries that are too long for their blocks.

d. There were no provisions for entering deployed service.

8. Army Regulation 635-5, effective 30 September 2000, included specific instructions for an active duty Soldier deployed with his or her unit during their continuous period of active service, which stated to enter "SERVICE IN (name of country deployed) FROM



(inclusive dates for example, YYYYMMDD-YYYYMMDD)" in the remarks block (item 18).

9. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) establishes the Army Disability Evaluation System (DES) 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. It states, in part:

a. Only the unfitting conditions or defects and those that contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability. The mere presence of impairment does not, in and of itself, justify a finding of unfitness because of physical disability.

b. The PEB-appointed counsel advises the Soldier of the Informal PEB (IPEB) findings and recommendations and ensures the Soldier knows and understands his or her rights. The Soldier records his or her election to the PEB on the DA Form 199 and has 10 calendar days from the date of receiving the PEB determination to make the election, submit a rebuttal, or request an extension.

10. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel. Chapter 8 establishes policy and procedures and provides authority for the voluntary separation of enlisted women because of pregnancy. This chapter applies to all Active Army enlisted women, Army National Guard, and U.S. Army Reserve enlisted women ordered to active duty. Enlisted women who are medically diagnosed as being pregnant may, after her unit commander has counseled her concerning her options, entitlements, and responsibilities, request separation under this chapter.

11. National Guard Regulation 600-200 (Enlisted Personnel Management), in effect at the time, established the standards, policies, and procedures for the management of Army National Guard Enlisted Soldiers.

12. 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 post-traumatic stress disorder (PTSD); traumatic brain injury (TBI); 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. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

13. 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, 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.

//NOTHING FOLLOWS//