

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 December 2024

DOCKET NUMBER: AR20240002774

APPLICANT REQUESTS: in effect, correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show she was discharged due to a disability.

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

- DD Form 149, Application for Correction of Military Record
- Applicant's Statement
- DD Form 214, Certificate of Release or Discharge from Active Duty
- Order for Change of Name

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, in effect, she was injured while participating in her initial training. Subsequent to her discharge, the Department of Veterans Affairs determined that the injury is service-connected. The narrative reason for separation currently states "Condition, not a disability," and this is preventing her from receiving a Home Loan Guarantee. She further states:
 - a. She completed monthly drills before departing for her initial training. She was very athletic and played on four sports teams. She never had any broken bones or even had stitches. On 6 August 2014, she began her Basic Combat Training (BCT) at Fort Jackson, SC. Shortly after the start of training, she began to have immense groin and knee pain. Each time she expressed concern about her injury her drill sergeants told her to stretch more because her body was not used to such an extreme change in physical activity and diet. One morning, she fell out of "60/120's" interval training and could no longer participate due to her groin and knee pain. She was then taken to sick call and sent for imaging. The bone scan, as seen in her records, showed she had multiple stress fractures in her pelvis and both lower extremities. She was given the option for convalescent leave, or discharge. It was a no brainer to her to go on convalescent leave

to try to heal and come back to continue her career. Upon returning, her stress fractures were healing, however not as fast as they would have liked. She started physical therapy and was transferred to Fitness Training Company, where she remained until March of 2015 to recover. During her second round of BCT, she was kept on profile to ensure the injury would not happen again and remained in physical therapy a few times a week.

b. After graduation, she went to Fort Gordon, GA for Advance Individual Training. She went to the doctors there to continue physical therapy because she was still having continued pain; the doctor there said because she had already been treated there was no reason for her to still be in pain. He removed her from the physical profile. From the end of May 2015 until the beginning of August 2015, she continued to have pain and go on multiple sick call visits with no relief. In the beginning of August 2015, a doctor recommended separation, which she agreed to, due to continued pain that interfered with her performance of duty. She was placed on a physical profile. She returned home and was discharged at the end of August.

3. The record shows the applicant enlisted in the Maryland Army National Guard on 26 March 2014. She entered active duty for training on 6 August 2014.

4. Her record contains a DA Form 2173, Statement of Medical Examination and Duty Status, 28 August 2014. This form shows that while in an active duty for training status the applicant reported being diagnosed with pelvic stress fractures which occurred during BCT. She reported that this condition occurred gradually over time after running. Her condition was found to be in the line of duty.

5. On 3 August 2015, her immediate commander notified the applicant of her intent to initiate separation action for other designated physical or mental conditions. The commander recommended the issuance of an honorable discharge. The reason for this action was based on a recommendation from a qualified medical professional at Fort Gordon Army Medical Center, GA, 22 June 2015, that the applicant be separated due to medical conditions. This condition severely affected her ability to effectively perform her duties in a military environment.

6. The applicant acknowledged receipt of the separation notification memorandum and subsequently consulted with legal counsel. She was advised of the basis for the contemplated separation action and its effects, the rights available to her, and the effect of a waiver of her rights. She did not submit a statement on her own behalf; and waived her right to counsel.

7. On 11 August 2015, the separation authority approved the applicant's discharge under the provisions of AR 635-200, chapter 5-17, by reason of other designated physical or mental condition with an honorable discharge.

8. The applicant was honorably discharged on 19 August 2015. Her DD Form 214 shows she was discharged under the provisions of AR 635-200, chapter 5-17, by reason of other designated physical or mental condition (Separation Code JFV and Reentry Code 3). She completed 1 year, and 14 days of net active service. She did not complete initial entry training and was not awarded a military occupational specialty.

9. On 20 August 2015, she was discharged from the ARNG, by reason of Trainee Discharge Program, released from initial active duty training.

10. The Board should consider the applicant's overall record and provided statement in accordance with the published equity, injustice, or clemency determination guidance.

11. By regulation:

a. A recommendation for separation under the provisions of AR 635-200, chapter 5-17 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.

b. The mere presence of impairment does not of itself justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the member reasonably may be expected to perform because of their office, rank, grade, or rating.

12. 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 requesting, in essence, a referral to the Disability Evaluation System (DES) and a change in her separation authority. She states:

“This correction should be made because the injury that I sustained while in training should have been at the time, and is now considered to be a service connected

disability. The narrative on the DD Form 214 is prevent mg me from receiving entitled benefits (Home Loan Guarantee)”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. The applicant’s DD 214 shows the former Army National Guard Solider entered active duty on 6 August 2014 and received an honorable discharge on 19 August 2015 under the separation authority provided by paragraph 5-17 of AR 635-200, Active Duty Enlisted Administrative Separations (17 December 2009): Other designated physical or mental conditions. It shows she did not complete advanced individual training (AIT).

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

Commanders specified in paragraph 1–19 may approve separation under this paragraph on the basis of other physical or mental conditions not amounting to disability (AR 635–40) and excluding conditions appropriate for separation processing under paragraph 5–11 or 5–13 that potentially interfere with assignment to or performance of duty. Such conditions may include, but are not limited to —

(1) Chronic airsickness.

(2) Chronic seasickness.

(3) Enuresis.

(4) Sleepwalking.

(5) Dyslexia.

(6) Severe nightmares.

(7) Claustrophobia.

(8) Transsexualism/gender transformation in accordance with AR 40-501 paragraph 3-35.

(9) 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.

e. No medical documentation was submitted with the application.

f. The EMR shows the applicant's initial visit for atraumatic lower extremity and pelvic pain on was on 23 August 2014. A 25 August 2014 bone scan revealed diffuse stress injuries to include stress fractures in her left foot and left superior and inferior pelvic rami. The applicant was treated conservatively for these injuries over the next 11 months.

g. An 8 January 2015 physical therapy encounter shows that except for the stress injuries on the left side of her pelvis, the remainder had resolved and healed, both clinically and radiographically. The 22 June 2015 follow-up encounter shows the applicant had opted for separation under paragraph 5-17 of AR 635-200:

"SM [Service Member] arrives as instructed after discussing options with her family. She was seen on Friday by LT K. who recommended chapter 5-17. She states that she would like to pursue the chapter 5-17. MFR [memorandum for record] created and given to SM to give to her unit with our recommendations for chapter 5-17. Profile x 30 days. Follow-up as needed."

h. The applicant underwent a pre-separation medical examination on 2 July 2015. The examination per se is not available for review but no additional diagnoses were listed in the EMR encounter.

i. On 3 August 2015, her commander notified her of the initiation of separation actions under paragraph 5-17 of AR 635-200:

"The reasons for my proposed action are: You were recommended for separation due to medical conditions on 22 June 2015 by a qualified medical professional at the Fort Gordon Dwight David Eisenhower Army Medical Center. This condition severely affects your ability to effectively perform your duties in a military environment."

j. The brigade commander approved her separation on 11 August 2015.

k. Paragraph 5-17 of AR 635 200 authorizes discharges for conditions which interfere with military service but are not service incurred disabilities. This paragraph is frequently applied to stress fractures as they are not permanent disabilities 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.

l. There is insufficient probative evidence the applicant had a duty incurred medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to the applicant's discharge. Thus, there was no cause for referral to the Disability Evaluation System.

m. JLV shows he has been awarded multiple VA service-connected disability ratings, including ratings for Lumbosacral or Cervical Strain, Anxiety Disorder, and Right Thigh Condition. However, the DES only compensates an individual for 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. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

n. It is the opinion of the ARBA medical advisor that neither a change in her separation authority nor a referral of her case to the Disability Evaluation System is warranted.

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 evidence shows the applicant's chain of command initiated separation action against the applicant under AR 635-200, paragraph 5-17, for other physical or mental conditions. The Board found no error or injustice in the applicant's separation processing. The applicant's available service records do not show she was issued a permanent physical profile rating, she was diagnosed with a medical condition that warranted her entry into the Disability Evaluation System, or she was diagnosed with a condition that failed retention standards and/or was unfitting. The Board agreed with the medical reviewer's finding insufficient probative evidence the applicant had a duty incurred medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to the discharge. Therefore, the applicant's referral of the applicant's case to the Disability Evaluation System 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 (AR) 635-200, Personnel Separations-Active Duty Enlisted Administrative Separations, paragraph 5-17, states that commanders who are special court-martial convening authorities may approve separation under this paragraph on the basis of other physical or mental conditions not amounting to disability that potentially interfere with assignment to or performance of duty. 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, which includes those members suffering from a disorder manifesting disturbances of perception, thinking, emotional control, or behavior sufficiently severe that the Soldier's ability to effectively perform military duties is significantly impaired.
3. AR 635-40, Personnel Separations-Physical Evaluation for Retention, Retirement, or Separation, establishes the PDES and sets forth the policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of their office, grade, rank, or rating. fitting disability. This regulation states:
 - 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 service.
 - b. The mere presence of impairment does not of itself justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the member reasonably may be expected to perform because of their office, rank, grade, or rating.
 - c. Rating disabilities which are neither unfitting nor contribute to the physical unfitness of a Soldier is prohibited.
 - d. 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.

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. AR 15-185, Boards, Commissions, Committees-Army Board for Correction of Military Records, 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.

//NOTHING FOLLOWS//