

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 November 2024

DOCKET NUMBER: AR20240003373

APPLICANT REQUESTS: in effect, correction of her military records to show she was medically discharged due to a permanent disability.

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

- DD Form 293, Application for the Review of Discharge
- Personal Statement

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 indicates that her request is related to post-traumatic stress disorder (PTSD), sexual assault/harassment, and other mental health conditions. She states, in effect, she was honorably discharged due to a medical foot condition. After a 10-year period, her discharge was changed to uncharacterized. She would like it changed back to honorable due to a medical injury. This injury caused her to be paralyzed for four months.
3. On 16 August 2007, the applicant enlisted in the Mississippi Army National Guard (MSARNG).
4. She enrolled in the U.S. Army Senior Reserve Officers' Training Corps (ROTC) on 18 August 2008 and accepted a two year academic scholarship.
5. On 23 February 2010, the applicant was notified that she was being disenrolled from the ROTC program under the provisions of Army Regulation (AR) 145-1, ROTC-Senior Reserve Officers' Training Corps Program: Organization, Administration, and Training, paragraph 3-43a(5), medical condition, ankle/foot injury (the origin of her injury is not listed), which precludes appointment as a commissioned officer. Further as a member of the Simultaneous Membership Program (SMP), the provisions of AR 601-210,

paragraph 10-14a were applicable. She would remain assigned to the Troop Program Unit and serve in an enlisted status until her expiration term of service obligation.

6. The applicant was disenrolled from the Senior ROTC program with Mississippi State University effective 18 February 2010.

7. On 6 June 2010, the applicant's commander recommended her for separation from the MSARNG under the provisions of AR 135-178, chapter 9-2a(3), unsatisfactory performance-a likelihood that the circumstances forming the basis for initiation of separation proceedings will continue to recur. He cited the following reasons for his recommendation:

a. Failure to be able to complete all required training and become military occupational specialty qualified within 24 months of enlistment. The Soldier was enlisted on 16 August 2007 into the SMP and was disenrolled from the program on 18 February 2010 with a medical condition which precludes appointment as a commissioned officer.

b. Disposition based on AR 135-178, chapter 9, paragraph -9-2a(3), there is a likelihood that the circumstances forming the basis for initiation of separation proceedings will continue or recur.

c. The Soldier does not have the potential to perform useful service if ordered to active duty to meet mobilization requirements.

8. The Adjutant General's Office, Jackson, MS published:

a. Orders 189-826, 8 July 2010, which discharged the applicant from Detachment 4, Recruiting and Retention Battalion (Recruit Sustainment Program) on 28 June 2010.

b. Orders 189-825, 8 July 2010, which discharged the applicant from the Army National Guard and as a reserve of the Army, effective 28 June 2010.

9. On 28 August 2010, the applicant was discharged from the ARNG after completing 2 years, 10 months, and 13 days of net service for the period. Her NGB Form 22, Report of Separation and Record of Service, does list a primary military occupational specialty. The remarks section of the NGB Form 22 shows in:

- Block 18, Remarks, the entry: "Individual Member of Simultaneous Membership Program (SMP) For Period 2000-08-18 to 2010-02-17"
- Block 23, Authority and Reason: National Guard Regulation 600-200, Personnel-General-Enlisted Personnel Management, 6-35d(4) Failure to attend Initial Entry Training (Phase I or Phase II) within 24 months
- Block 24, Character of Service - Uncharacterized

10. The Criminal Investigation Division conducted a search of the Army criminal file and did not find Military Sexual Trauma records pertaining to the applicant.

11. The applicant did not provide medical documentation related to a diagnosis of PTSD or other mental health condition.

12. By regulation –

a. The Commanding General, ROTC Cadet Command, may grant waivers only when the medical condition or physical defect (1) is static in nature or, for prior service applicants, no longer exists (2) Will not preclude satisfactory completion of ROTC training (including camp training) (3) Will not be complicated or aggravated by ROTC training or by military training and duty after appointment.

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 his or her office, rank, grade, or rating.

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

14. 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.

MEDICAL REVIEW:

The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. There was insufficient medical evidence to support DES Referral for ankle/foot injury: There were no in-service medical records or physical profiles available for review. The first available record concerning a bilateral ankle condition was in 2024 (per JLV search).

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 if record shows the applicant was discharged from the ARNG for Failure to attend Initial Entry Training (Phase I or Phase II) within 24 months. She received an uncharacterized discharge. The Board reviewed and agreed with the medical reviewers determination that there was insufficient medical evidence to support referral to the disability evaluation system for ankle/foot injury: There were no in-service medical records or physical profiles available for review. The first available record concerning a bilateral ankle condition was in 2024. Based on the preponderance of the evidence, the Board determined a disability separation is not warranted.

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 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. Army Regulation (AR) 40-501, Medical Services-Standards of Medical Fitness, in effect at the time, provides information on medical fitness standards for induction, enlistment, appointment, retention, and related policies and procedures. It states:

a. Retention of cadets and midshipmen at the United States Armed Forces academies and students enrolled in ROTC. (However, the Commander, ROTC Cadet Command (ROTCCC) or the Superintendent, U.S. Military Academy has the authority to grant medical waivers for continuation in these programs, provided the cadet meets the retention standards of chapter 3, Medical Fitness Standards for Retention and Separation, Including Retirement, of this regulation.)

b. Nonscholarship and scholarship cadets will be disenrolled for medical disqualification when determined and approved by Headquarters ROTCCC, or higher authority. A medical condition that precludes appointment will be cause for disenrollment.

3. AR 145-1, Reserve Officers' Training Corps-Senior Reserve Officers' Training Corps program Organization, Administration, and Training, prescribes policies and general procedures for administering the Army's Senior Reserve Officers' Training Corps Program. It states medical fitness standards prescribed in AR 40-501, chapter 2 will be used to determine a cadet's or student's medical fitness for enrollment, continuation in the advanced course, and appointment. The Commanding General, ROTC Cadet Command, may grant waivers only when the medical condition or physical defect –

a. Is static in nature or, for prior service applicants, no longer exists.

b. Will not preclude satisfactory completion of ROTC training (including camp training).

c. Will not be complicated or aggravated by ROTC training or by military training and duty after appointment.

If no waiver is granted, a cadet enrolled in the SROTC Program who is found medically disqualified will be disenrolled.

4. National Guard Regulation 600-200, Personnel-General-Enlisted Personnel Management, prescribes the following reasons, applicability, and board requirements for administrative separation or discharge from the Reserve of the Army, the State ARNG only or both.

a. All soldiers will be notified of a commander's recommendation for their involuntary discharge. Paragraph 6-35d(4) states, in part, a Soldier who fails to attend Initial Entry Training (Phase I or Phase II) within 24 months will be administratively separated or discharge from the Reserve of the Army, the State Army National Guard only, or both.

b. When medical condition was incurred in line of duty, the procedures of AR 600-8-4, Personnel-General-Line of Duty Policy, Procedures, and Investigation, will apply. Discharge will not be ordered while the case is pending final disposition. This paragraph also includes those Soldiers who refuse or are ineligible to reclassify into a new military occupational specialty.

c. An honorable characterization is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel, or is otherwise so meritorious that any other characterization would be clearly inappropriate.

d. A general, under honorable conditions characterization of service is awarded to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

e. An uncharacterized characterization of service is awarded if separation processing is initiated while a Soldier is in an entry level status.

5. 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 his or her office, grade, rank, or rating. 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 his or her office, rank, grade, or rating.

6. 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.

7. 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.

8. 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.

9. 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.

10. AR 15-185, ABCMR, 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.

//NOTHING FOLLOWS//