

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 December 2024

DOCKET NUMBER: AR20240003469

APPLICANT REQUESTS: reconsideration of her request for:

- service to be characterized as "Honorable" rather than "Uncharacterized"
- narrative reason for her separation as "Secretarial Authority"
- Reentry Eligibility (RE) code as "1" rather than "3"
- removal of derogatory information from her service record
- appearance before the Board (in person)

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

- DD Form 149 (Application for Correction of Military Record)
- Legal brief in support of application
- Army Board for Correction of Military Records (ABCMR), Record of Proceedings, Docket Number AR20220003199
- Various in-service documents

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Number AR20220003199 on 29 September 2022.

2. Counsel states, in pertinent part:

a. The applicant is a decorated veteran who has served our country with utmost dedication. She is earnestly requesting a reconsideration of the denial of her previous case, as she strongly believes that the Board failed to adequately analyze and consider her significant behavioral health issues. These issues, intricately connected to and mitigating the alleged misconduct, deserve a thorough examination to ensure a fair and just outcome.

b. There was both a procedural and substantive defense in the applicant's case. The request for administrative separation can be both command-initiated and initiated by the service-member. In this case, there was a hasty command-initiated request for

separation. The applicant did not know she had any underlying medical conditions nor was she given a chance to fix the problem. The command should have evaluated her as to whether she had a long-term problem or whether there was an immediate fix. She deserves favorable consideration and an upgrade, as the procedural flaws during her discharge undermine the basis for her separation. The adverse action was unfair at the time, and her current discharge is inequitable.

c. Additionally, it is important to note the applicant submitted advocacy letters and supporting documentation highlighting her post-service accomplishments, which were not adequately acknowledged by the Board during their evaluation process. However, no character reference letters were provided for consideration.

3. The applicant's complete military records, including a DA Form 4707 (Entrance Physical Standards Board (EPSBD)), or separation proceedings, are not available for review. Therefore, this case is being considered based upon the documents available in her service record.

4. A DD Form 2808 (Report of Medical Examination) shows on 23 August 2005, she underwent a pre-enlistment medical examination, and was found to be qualified for service.

5. The applicant enlisted in the Regular Army on 31 October 2005. She did not complete training and was not awarded a military occupational specialty.

6. The available record is void of a separation packet containing the specific facts and circumstances surrounding her discharge processing.

7. The applicant was discharged on 9 January 2006. She was credited with 2 months and 9 days of net active service this period. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) contains the following entries in:

- item 24 (Character of Service) – Uncharacterized
- item 25 (Separation Authority) – AR [Army Regulation] 635-200 (Active Duty Enlisted Administrative Separations), paragraph 5-11
- item 26 (Separation Code) – JFW
- item 27 (Reentry Code) – 3
- item 28 (Narrative Reason for Separation) – Failed Medical/Physical Procurement Standards

8. The applicant petitioned the ABCMR requesting upgrade of her uncharacterized service. On 29 September 2022, the Board voted to deny relief and concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's separation documents.

9. Soldiers are considered to be in an entry-level status when they are within their first 180 days of active-duty service. The evidence of record shows the applicant was in an entry-level status at the time of his separation. An uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It simply means the Soldier was not in the Army long enough for his or her character of service to be rated as honorable or otherwise.

10. The Board should consider the applicant's statement in accordance with the published guidance.

11. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of her request for an upgrade of her uncharacterized discharge to honorable, a change in narrative reason for separation to "Secretarial Authority," and her Reentry Eligibility (RE) code as "3" rather than "1". The applicant selected OMH on her application as related to her request.

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:

- The applicant enlisted in the Regular Army on 31 October 2005. She did not complete training and was not awarded a military occupational specialty.
- A DD Form 2808 (Report of Medical Examination) shows on 23 August 2005, she underwent a pre-enlistment medical examination and was found to be qualified for service.
- The available record is void of a separation packet containing the specific facts and circumstances surrounding her discharge processing.
- The applicant was discharged on 9 January 2006 under Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 5-11. She was credited with 2 months and 9 days of net active service this period. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows her service was uncharacterized, with narrative reason for separation listed as Failed Medical/Physical Procurement Standards, separation code JFW, and reentry code RE - 3.

c. Review of Available Records: The Army Review Boards Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. Counsel states, "the applicant is a decorated veteran who has served our country with utmost dedication. She is earnestly requesting a reconsideration of the denial of her previous case, as she strongly believes that the Board failed to adequately analyze and consider her significant behavioral health issues. These issues, intricately

connected to and mitigating the alleged misconduct, deserve a thorough examination to ensure a fair and just outcome.”

d. Active-duty electronic medical records available for review show the applicant was first seen for asthma in the emergency department on 14 November 2005 and for follow-up at the troop medical clinic on 15 November 2005. She was provided with a metered dose inhaler and returned to duty. She was seen again on 21 November 2005 and the record states: "Patient with EPTS (existed prior to service) asthma. She has no acute complaint at this time, but says, "I can't do this." She also has some civilian medical records that show she was taking albuterol and Advair prior to basic (combat training)." Pulmonary function testing confirmed the applicant had reactive airway disease, and after failing to significantly improve on several medications, she was referred to an Entry Physical Standards Board (EPS.BD) for asthma under provisions provided in paragraph 5-11 of AR 635-200. Paragraph 2-23d of AR 40-501, Standards of Medical Fitness (29 August 2003): "Asthma, including reactive airway disease, exercise-induced bronchospasm or asthmatic bronchitis, reliably diagnosed at any age, is disqualifying as a cause for rejection for appointment, enlistment, and induction." Given her paragraph 5-11 of AR 635-200 administrative separation, it must be assumed the board determined her asthma had existed prior to service, had not been permanently aggravated by her military service, did not meet one or more medical enlistment/ induction standards, and was not compatible with continued military service.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected and there is no evidence she has been treated for a behavioral health condition.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition during military service that could potentially mitigate her discharge.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant selected OMH on her application as related to her request.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service or after her discharge. However, there is evidence she enlisted despite knowingly having a medically disqualifying condition.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, the VA has not service-connected the applicant for any BH condition, and there are no VA electronic records indicating she has been treated for any other mental health condition. And while the applicant selected OMH on her application, she did not provide any medical documentation substantiating any BH diagnosis. Despite her selection of OMH on her application, the applicant did not indicate the mental health diagnosis she is claiming as potentially mitigating her discharge. Overall, the applicant does not appear to have been discharge due to any misconduct. An uncharacterized discharge is given to individuals who separate prior to completing 180 days of military service, or when the discharge action was initiated prior to 180 days of service. This type of discharge does not attempt to characterize service as good or bad. Through no fault of her own, she simply had a medical condition which was, unfortunately, not within enlistment standards. It is the opinion of this ARBA Advisor that neither an upgrade of her discharge nor a change in her narrative reason for separation is warranted. Given her disqualifying medical condition, it is recommended her RE code remain unchanged.

h. Per Liberal Consideration guidelines, her selection of OMH on her application is sufficient to warrant consideration by the Board.

#### BOARD DISCUSSION:

The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, her record of service to include deployment, and the reason for her separation. The Board considered the applicant's mental health claim and the review and conclusions of the ARBA Behavioral Health Advisor. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official that her separation due to asthma that existed prior to service was fully supported by the evidence. The evidence confirms she was an entry-level Soldier at the time of separation, and therefore her service was uncharacterized in accordance with the governing regulation. Based on a preponderance of the evidence, the Board determined the applicant's uncharacterized service, the reason for her separation, and the associated codes are not in error or unjust.

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 that the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20220003199 on 29 September 2022.

12/8/2024

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 1556, 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 Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

2. 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.

a. Paragraph 2-9 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.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

c. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR. The applicant must provide new relevant evidence or argument that was not considered at the time of the ABCMR's prior consideration.

3. Army Regulation 601-210 (Regular Army and Army Reserve Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-6 provides a list of RE codes.

- RE code "1" applies to Soldiers completing an initial term of active service, who are considered qualified for enlistment if all other criteria are met
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable – they are ineligible unless a waiver is granted
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification

4. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. At the time, this regulation prescribed the separation code "JFW" is the appropriate code to assign Soldiers separated under the provisions of Army Regulation 635-200, paragraph 5-11, by reason of their failure to meet procurement medical fitness standards. Additionally, the SPD/RE Code Cross Reference Table established that RE code "3" was the proper reentry code to assign to Soldiers separated under this authority and for this reason. JFF was the appropriate SPD Code for involuntary discharges under Secretarial Authority.

5. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets policies, standards, and procedures to insure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. Chapter 3 provides that a separation will be described as entry level with uncharacterized service if the Soldier has less than 180 days of continuous active duty service at the time separation action is initiated.

b. Paragraph 3-7a provides that an honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member'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.

c. Paragraph 3-9 provides that a separation would be described as entry level with uncharacterized service if processing was initiated while a Soldier was in an entry-level status, except when:

(1) a discharge under other than honorable conditions was authorized, due to the reason for separation and was warranted by the circumstances of the case; or

(2) the Secretary of the Army, on a case-by-case basis, determined a characterization of service as honorable was clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty. This characterization was authorized when the Soldier was separated by reason of selected changes in service obligation, for convenience of the government, and under Secretarial plenary authority.

d. Paragraph 5-11 provided that Soldiers who were not medically qualified under procurement medical fitness standards when accepted for enlistment or who became medically disqualified under these standards prior to entrance on active duty, active duty for training, or initial entry training would be separated. Medical proceeding, regardless of the date completed, must establish that a medical condition was identified by appropriate medical authority within 6 months of the Soldier's initial entrance on active duty, that the condition would have permanently or temporarily disqualified the Soldier for entry into military service had it been detected at that time, and the medical condition did not disqualify the Soldier from retention in the service under the provisions of Army Regulation 40-501.

e. The character of service for Soldiers separated under this provision would normally be honorable but would be uncharacterized if the Soldier was in an entry-level



status. An uncharacterized discharge is neither favorable nor unfavorable; in the case of Soldiers issued this characterization of service, an insufficient amount of time would have passed to evaluate the Soldier's conduct and performance.

//NOTHING FOLLOWS//