

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 November 2024

DOCKET NUMBER: AR20240003614

APPLICANT REQUESTS: correction of her records to show she was discharged due to service-incurred medical disabilities instead of "physical condition, not a disability."

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States in lieu of DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) benefits decision letter, dated 24 May 2017
- VA Board of Veterans' Appeals decision letter, dated 15 June 2020
- VA Board of Veterans' Appeals decision letter, dated 19 May 2023
- VA Rating Decision, dated 18 December 2023
- VA Board of Veterans' Appeals decision letter, dated 26 December 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 she was discharged due to a mental disorder, getting hurt during basic combat training, and harassment.
3. The applicant enlisted in the Army National Guard (ARNG) on 17 August 2012. She entered initial active duty for training on 24 September 2012.
4. A DA Form 4856 (Developmental Counseling Form) shows the applicant was counseled on 16 April 2013 based on her back and leg injuries and possible separation from the service under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 5-17 (Other designated physical or mental conditions). The form further shows that during training, she sustained injuries to her lower leg and back. She was transferred to the Physical Training and Rehabilitation Program and after treatment and rehabilitation for about two months, little to no

progress had been made. Based on these reasons, her medical provider recommended her separation from the service. She was advised that if her condition did not improve, she could be processed for separation.

5. On 2 May 2013, the applicant was informed by her company commander that he was initiating action to separate her under the provisions of Army Regulation 635-200, paragraph 5- 17. based on her chronic back pain diagnosis. The applicant was also advised of her rights to consult with counsel and to submit statements in her own behalf. She waived consulting counsel and did not submit statements in her own behalf.

6. On 3 May 2013, the applicant's commander formally recommended her separation from the service. The commander stated the reason for his recommendation was the applicant's chronic back pain diagnosis and that the prognosis and recovery time unreasonably interfered with her ability to successfully ship to training.

7. On 13 May 2013, the separation authority approved the separation action under the provisions of Army Regulation 635-200, paragraph 5-17 with and honorable character of service.

8. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was honorably released from active duty training and transferred to her State's ARNG on 20 May 2013 under the provisions of Army Regulation 635-200, paragraph 5-17. The DD Form 214 further shows in:

- block 12 (Record of Service), she was credited with 7 months and 27 days of active service
- block 26 (Separation Code), JFV
- block 27 (Reentry Code), 3
- block 28 (Narrative Reason for Separation), "condition, not a disability"

9. Orders issued by the applicant's State's ARNG on 21 May 2013 directed her discharge from the ARNG and as a Reserve of the Army effective 20 May 2013.

10. The applicant provided a VA documents showing she was granted service-connected disability compensation for acquired psychiatric disorder, to include bipolar II disorder, generalized anxiety disorder, and adult attention deficit/hyperactive disorder (claimed as depression and anxiety) and for an ankle conditon.

11. 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. The VA does not have authority or responsibility for determining physical fitness for military service. The VA may compensate the individual for loss of civilian employability.

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 has applied to the ADRB in essence requesting a referral to the Disability Evaluation System. She had indicated on her DD 293 that Other Mental Health Conditions and Sexual Assault/Harassment are issues related to her request. She states:

“Please reconsider my discharge to be change from Honorable to honorable with medical/disability discharge as I was discharged due to a mental disorder, getting hurt during basic training, and harassment. Please find attached my VA rating decision. All documents can also be accessed in my health military records.”

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The former Army National Guard Soldier's DD 214 shows she entered active duty for initial entry training on 24 September 2012 and received an honorable discharge on 20 May 2013 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.

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. AHTLA encounters reveal she was first seen for a musculoskeletal complaint on 4 October 2012 at which time she presented right ankle pain after falling off the monkey bars. The examination revealed some tenderness to palpation about the ankle and plain radiographs of the ankle were consistent with an inversion ankle sprain. The applicant was diagnosed with an ankle sprain, placed on crutches, and started on conservative treatment to include physical therapy. Pain persisted and a 26 October 2012 MRI of the right ankle revealed "Nondisplaced occult fractures transversely across the subchondral distal tibia as well as obliquely across the posterior malleolus." She was evaluated by orthopedics on 29 October 2012, diagnosed with closed non-displaced fractures of the right ankle, and placed in a short leg walking case for 4 weeks. Follow-up radiographs revealed the fractures remained non-displaced, were healing, and on/about 3 December she was placed on 30 days of unit convalescent leave.

f. The applicant continued to have some right ankle pain in January 2013 and continued with physical therapy. At her final physical therapy appointment on 25 March 2013, her ankle pain was 1 out of 10 both before and after treatment.

g. The applicant's more significant issue and the one which led to her separation was lower back pain. She was evaluated by orthopedics on 15 November 2012 at which time conservative treatment was continued. This included physical therapy, non-steroidal anti-inflammatory (NSAIDS) medications, and Tylenol with codeine.

h. At some point, she agreed to and was placed in the physical training and rehabilitation program (PTRP), now known as the Warrior Training and Rehabilitation Program or WTRP. This program provides a modified basic combat training (BCT) and/or one station unit training (OSUT) environment designed to return Soldiers to regular initial military training programs with higher levels of motivation, fitness, training, and education than when they entered, while providing them the quality health care they need to rehabilitate their injuries. Given her continued symptoms and abnormally low bone density, she would not have been a good candidate for this program.

i. Despite entrance into this program with continued conservative treatment, her low back pain failed to improve to the point where she could return to full training. Noted in her 16 April 2013 counseling statement from an NCO leader in the PTRP:

“SPC [Applicant], during your training you incurred injuries to your lower leg and back. After being transfer to PTRP for care and rehabilitation it was found that little to no progress has been made with any treatments over the past two months. It is for this reason that your medical provider has recommended you be separated from service.

Your injuries warrant the completion of a Line of Duty (LOD) investigation. These LOD's should be completed and in your possession prior to your departure from Fort Jackson, SC.

This office CONCURS with the medical recommendation for separation IAW AR 635-200 Chapter 5, Paragraph 5-17.”

j. The applicant agreed with the counseling without comment.

k. In a 2 May 2013, her commander notified her of his initiation of separation actions under paragraph 5-17 of AR 635-200:

“The reasons for my proposed action are: You have been diagnosed as having a chronic back pain. The prognosis and recovery time will unreasonably interfere with your ability to successfully ship to training.”

l. This separation action was approved by the brigade commander on 13 May 2013.

m. There were no behavioral health related evaluations or encounters in the EMR during this period of service.

n. The natural history of mechanical low back pain in a healthy individual is complete healing and resolution of symptoms when the offending stressors are removed (e.g., running). There is no evidence these injuries went on to become problematic. This appears to be the case as she did not seek care for these issues at a Veterans Hospital Administration facility for these conditions until 2017. Furthermore, there is no evidence the applicant's condition(s) would have permanently failed the medical retention standards of chapter 3, AR 40-501 prior to her discharge. Thus, there would have been no cause for referral to the Disability Evaluation System.

o. JLV show the applicant has received several service-connected disability ratings:

Rated Disability	Extremity	Original Eff Date
Bipolar Disorder (100% SC)		Jul 28,2016
Lumbosacral Or Cervical Strain (20% SC)		Jul 28,2016
Limited Motion Of Ankle (10% SC)	Right Lower	Jul 28,2016
Paralysis Of Sciatic Nerve (10% SC)	Right Lower	Sep 10,2021
Paralysis Of Sciatic Nerve (10% SC)	Left Lower	Sep 10,2021
Hypertensive Vascular Disease (0% SC)		Jul 28,2016

p. However, the DES only compensates an individual for service incurred medical condition(s) which have been determined to permanently 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.

q. It is the opinion of the Agency Medical Advisor that referral of her case to the Disability Evaluation System is not warranted.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation and the findings and recommendations outlined in the medical review, the Board determined a change to the applicant's narrative reason for separation was 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.

X	
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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 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel. Paragraph 5-17 of the regulation in effect at the time states commanders may approve separation under this paragraph on the basis of other physical or mental conditions not amounting to disability per Army Regulation 635-40 (Disability Evaluation for Retention, Retirement or Separation) and excluding conditions appropriate for separation processing under paragraph 5-11 (Separation of personnel who did not meet procurement medical fitness standards) or 5-13 (Separation because of personality disorder) that potentially interfere with assignment to or performance of duty. Such conditions may include, but are not limited to chronic air or seasickness, enuresis, sleepwalking, dyslexia, severe nightmares, claustrophobia, 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.

(1) When a commander determines that a Soldier has a physical or mental condition that potentially interferes with assignment to or performance of duty, the commander will refer the Soldier for a medical examination and/or mental status evaluation in accordance with Army Regulation 40-501 (Standards of Medical Fitness). A recommendation for separation must be supported by documentation confirming the existence of the physical or mental condition.

(2). 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.

3. Title 38, U.S. Code, Sections 1110 and 1131, permit the 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.

4. Title 38, Code of Federal Regulations, Part IV is the VA Schedule for Rating Disabilities. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge. 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. Section 1556 of Title 10, U.S. Code, 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 ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//