

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE:

DOCKET NUMBER: AR20240003621

APPLICANT REQUESTS:

- Correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 12 February 2004, item 28 (Narrative Reason for Separation) to read medical vice pregnancy
- Personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Letter of Support
- Statement in Support of Claim
- Medical Records

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 would like her discharge to reflect the reason she got out of the service was medical and not pregnancy. The reason she got out was because she could not pass her physical training test due to her legs still hurting and having mobility issues from when she broke them in basic training. She had stress fractures all up and down both of them. She cannot access Department of Veteran Affairs (VA) healthcare without showing her discharge was for medical reasons. She is making the request so she can have access to VA healthcare. She was pregnant when she got out and was not thinking clearly since she was four months pregnant and was trying to figure out what to do about having a baby. After that, she did not really think about it until now, when she needs VA healthcare. She was a single mom for years after service, and still is, and there was no other thought of changing it until now.

3. The applicant provides the following documents:

a. A letter from the applicant's sister, which states in 2003 the applicant joined the U.S. Army. In December she came home with multiple fractures in her legs. She was in pain and using crutches to get around. When she went back, she had to have more testing done on her legs to see exactly what was going on. When she went back, after Christmas, she had testing and then received news that she was pregnant. At the time she found out she was pregnant, they were going to discharge her for medical but she was sick with morning sickness and it was very stressful. They then offered a discharge for being pregnant she decided to go with that not realizing what that all means down the road.

b. A VA Statement in Support of Claim, which states in effect:

(1) In August 2003, the applicant enlisted in the active duty Army and completed basic training. When she got to advanced individual training, she started to have severe leg pains. This included bilateral hips, bilateral tibia, bilateral fibula, ankles, and foot.

(2) She then went to the doctor and he sent her in for x-rays and she was diagnosed with multiple stress fractures. He put her on light duty. She tried to complete her physical test and was unable to pass due to the pain in her legs. She continued on light duty.

(3) She was sent home for Christmas break. She then returned after the new-year. She had a magnetic resonance imaging (MRI) done on both legs and they stated she had a fracture on the 4th metacarpal and she still had more stress fractures.

(4) They offered her a medical discharge and she was contemplating this. A few days later, she had a random drug and pregnancy test. The pregnancy test came back positive. This was a shock since she was told at the age of 17 it would be hard for her to conceive.

(5) She continued on with treatment for her legs and decided to take the medical discharge. As the month went on, she had terrible morning sickness and just was miserable they then offered her an honorable discharge for pregnancy. She thought, at the time, this was in the best interest of herself and her child. They stated if she was to get shipped overseas she would have to send the child back to Illinois to a relative, so she chose that discharge.

(6) When she was signing papers, they stated to just sign and she would not get any separation pay or the GI Bill. She signed the papers and went home. A few months later she met with a VA employee and he stated she should change it to a medical discharge, but she was about to have a baby and did not have the time to even think

about it. She guesses time got away from her and now she is realizing the importance of how she was discharged. She has been treated for lower back pain and hip pain. Her legs go numb and so do her feet. When the weather gets wet or cold, it seems to be worse. Having jobs where she is on her feet seem to make it worse. The older she gets, the more the lower back, hips, legs, and feet bother her.

c. Medical documents, which show her injuries are available for the Board's review and will be reviewed by the Army Review Boards Agency (ARBA) Medical Section who will provide a medical review.

4. The applicant's service record contains the following documents:

a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows she enlisted in the Regular Army and entered active duty on 12 August 2003.

b. DA Form 3349 (Physical Profile), 4 January 2004, shows she was put on profile due to pregnancy with a temporary expiration date of 14 July 2004.

c. Memorandum For Record, 20 January 2004, which informed her of her options, entitlements, and responsibilities in connection with her pregnancy. She could request or elect to remain on active duty. The memorandum explained her maternity care and her maternity clothing and uniforms. She elected separation for pregnancy. The entire memorandum is available for the Board's review.

d. DA Form 4856 (Developmental Counseling Form), 20 January 2004, is her pregnancy counseling. She agreed with the counseling and signed the form.

e. DA Form 4187 (Personnel Actions), 28 January 2004, shows she was requesting separation due to pregnancy.

f. On 5 February 2004, the appropriate approval authority approved her separation due to pregnancy.

g. On 12 February 2004, she was honorably discharged due to pregnancy. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows her separation code was KDF and her reentry code was 3. She had completed 6 months and 1 day of active duty service.

h. Her service record is void of medical documentation regarding an injury to her legs or that there was a medical evaluation board being processed.

5. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. 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.

6. 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 in essence requesting a referral to the DES for leg pain with subsequent change in her separation authority. She states:

“I would like my discharge to reflect that the reason I got out of service was medical and not pregnancy. The reason I got out was because I could not pass my PT [Army Physical Fitness Test (APFT)] due to my legs still hurting and having mobility issues from when I broke them in basic training. I had stress fractures all up and down both of them. I cannot access VA healthcare without showing my discharge was for medical reasons.”

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 for the period of Service under consideration shows she entered the regular Army on 12 August 2003 and was discharged on 12 February 2004 under provisions provided in chapter 8 of AR 635-200, Active Duty Enlisted Administrative Separations (19 December 2003): Separation of Enlisted Women—Pregnancy.

d. The EMR shows she was first seen for lower extremity pains on 2 September 2003 and which she was treated conservatively. An 8 December 2003 bone scan of the pelvis and lower extremities revealed multiple stress reactions, and mild stress fractures of her right anterior tibia and left foot 5th metatarsal. Despite conservative treatment, a 6 January 2004 encounter states she had continued to have symptoms and had been unable to pass an APFT in advanced individual training for graduation purposes.

e. A 14 January 2004 pregnancy test revealed she was pregnant and so she was placed on a temporary pregnancy physical profile which exempted the application from multiple Soldier activities, including PT training and APFT testing.

f. The applicant was counseled on her options on 20 January 2004. These included to remain on active duty or to separate. She agreed without comment. The applicant elected to separate initialing the option: "I elect separation for the reason of pregnancy per AR 635-200, chapter 8."

g. A 4 February 2004 encounter shows she was experiencing and treated for "mild hyperemesis gravidarum." If her stress injuries had continued without the intervening pregnancy, it is likely she would have been separated with an uncharacterized discharge under either paragraph 5-11 (Separation of personnel who did not meet procurement medical fitness standards) or 5-17 (Other designated physical or mental conditions) of AR 635-200.

h. Her healing stress injuries/fractures did not constitute a disability IAW AR 635-40, Physical Evaluation for Retention, Retirement, or Separation. Given the nature of her injury and the treatment thereof in a healthy individual, the healing fractures would be expected to heal, and been quite unlikely to have gone on to fail the medical retention standards of chapter 3, AR 40-501 prior to her discharge. Thus, there was no cause for referral to the Disability Evaluation System.

i. It is the opinion of the ARBA medical advisor that a referral of her case to the DES 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 DA Form 4187, dated 28 January 2004, showing the applicant requested separation due to pregnancy and the findings and recommendations of the medical advisor, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's narrative reason for separation.

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.

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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, 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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. 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.

3. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel.

a. 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.

b. If a Soldier is beyond Entry Level Status, service will be characterized as honorable or under honorable conditions per Chapter 3, Section III. Prior to characterization as under honorable conditions, the soldier shall be advised of the specific factors in the service record that warrant such a characterization and the notification procedure shall be used.

4. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designator (SPD) Codes), in effect at the time, prescribes the specific authorities, reasons for separating Soldiers from active duty, and the SPD codes to be entered on DD Form 214. It shows code KDF is used for discharge for pregnancy.

5. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program) table 3-1 (U.S. Army reentry eligibility codes) states:

a. RE-1: Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army.

b. RE-3: Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation or disqualification is waiverable.

c. RE-4: Applies to: Person separated from last period of service with a nonwaiverable disqualification.

d. RE-4R: Applies to: A person who retired for length of service with 15 or more years active federal service.

6. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional

representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (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, BCM/NRs 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.

8. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) states:

a. The mere presence of an 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 Soldier reasonably may be expected to perform because of their office, grade, rank, or rating.

b. An enlisted Soldier may not be referred for, or continue, physical disability processing when action has been started under any regulatory provision which authorizes a characterization of service of under other than honorable conditions.

c. Exceptions to paragraph b above are if the case comes within the limitations above, the commander exercising general court-martial jurisdiction over the Soldier may abate the administrative separation. This authority may not be delegated. A copy of the decision, signed by the General Court Martial Convening Authority (GCMCA), must be



forwarded with the disability case file to the PEB. A case file may be referred in this way if the GCMCA finds the following:

(1) The disability is the cause, or a substantial contributing cause, of the misconduct that might result in a discharge under other than honorable conditions.

(2) Other circumstances warrant disability processing instead of alternate administrative separation.

9. Title 38, USC, 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.

10. Title 38, USC, 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.

11. 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.

//NOTHING FOLLOWS//