

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 November 2024

DOCKET NUMBER: AR20240003846

APPLICANT REQUESTS: her separation code be changed to JFR - Disability -Non EPTS [Existed Prior to Service] - Severance Pay.

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)

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 the learning environment at her advanced individual training was not fair to female Soldiers. Military Occupational Specialty (MOS) 62E had a zero percent rate female acceptance and graduation, at her time in service. The applicant suffered harassment, verbal and physical abuse, and mental degradation. She went to utilize Veterans Affairs benefits to purchase a house; however, she was told she was not eligible due to her limited time in service.
3. On her DD Form 149, the applicant notes military sexual trauma (MST) issues are related to her request.
4. On 22 February 1995, the applicant enlisted in the Regular Army for 4 years. Her record shows she was not awarded a MOS.
5. The applicant received formal counseling on 2 May 1995, for disobeying a lawful order and refusing to train.
6. On 3 May 1995, the applicant accepted non-judicial punishment under Article 15 of the Uniform Code of Military Justice, for failing to obey a lawful order by her first

sergeant, on or about 3 May 1995. Her punishment included forfeiture of \$184.00; and 14 days extra duty and restriction.

7. The applicant received additional counseling on 4 May 1995, for refusing to train. Additionally, she was notified that she was being recommended for entry level separation.

8. The applicant's commander notified her on 5 May 1995, that he was initiating actions to separate her under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 11, for entry level status performance and conduct. As the specific reason, the commander noted the applicant had stated she would not train anymore, that coming into the Army was a big mistake, and that she would do what she had to do to get out.

9. The applicant's commander formally recommended her separation under the provisions of Army Regulation 635-200, Chapter 11, prior to her expiration term of service.

10. The applicant acknowledged receipt of the separation notification. She waived her right to consult with counsel and elected not to make any statements in her own behalf.

11. The separation authority approved the separation recommendation on 10 May 1995, and directed the issuance of an entry level separation with uncharacterized service.

12. The applicant was discharged accordingly on 12 May 1995. Her DD Form 214 confirms she was discharged under the provisions of Army Regulation 635-200, Chapter 11, for entry level performance and conduct. Her service was uncharacterized. She was assigned Separation Code JGA and Reentry Code 3. She completed 2 months and 21 days of net active service this period.

13. 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 her 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.

14. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

15. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting her separation code to be changed to JFR-Disability-Non EPTS [Existed Prior to Service]- Severance Pay. On her application, she indicated Sexual Assault/Harassment is related to her request. In her statement, the applicant indicated that she suffered harassment, verbal and physical abuse, and mental degradation. 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: 1) the applicant enlisted in the Regular Army (RA) on 22 February 1995. Her record shows she was not awarded an MOS, 2), she received formal counseling on 02 May 1995 for disobeying a lawful order and refusing to train, 3) on 03 May 1995, she received an Article 15 for failing to obey a lawful order by her First Sergeant, 4) she received an additional counseling on 04 May 1995 for refusing to train and was notified she was being recommended for entry level separation, 5) her commander notified her on 05 May 1995 that he was initiating actions to separate her under the provisions of Army Regulation 635-200, Chapter 11, for Entry Level Status Performance and Conduct with the specific reason(s) noted as the applicant said she would not train anymore, that coming into the Army was a big mistake, and that she would do what she had to do to get out. She was discharged accordingly on 12 May 1995 with a separation code of JGA and reentry code of 3. She completed 2 months and 21 days of net active service.

b. 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. The VA's Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. There were no in-service medical records available for review.

d. A review of JLV shows the applicant is 80% service-connected through the VA for several medical conditions, none of which are BH-related. She initiated BH services through the VA on 28 March 2018 through the Social Work Homeless Program as a walk-in. She continued to seek out Social Work services on approximately a monthly basis through present day. An initial psychiatry note dated 08 October 2024 documented the applicant reported unspecified trauma during her time in the military to include being bullied, noting she was 'not good at the military, I was very clumsy all the time.' It was also documented that she reported a time where she feared for her life while in the military but refused to disclose the specifics at the time of the visit. She was diagnosed with Major Depressive Disorder, Recurrent, Mild (MDD) and Generalized Anxiety Disorder (GAD), with Panic Attacks. A VA BH note dated 29 October 2024 summarized the applicant's report of psychological trauma which described several instances of childhood sexual and physical abuse. The provider documented that the applicant had a history of Major Depressive Disorder (MDD) and Generalized Anxiety Disorder (GAD) and at the time of the visit was diagnosed with Anxiety, Unspecified,

with a rule out (R/O) of MDD. There was no documentation in the record that the applicant reported a history of military sexual trauma (MST). She completed a TBI Disability Benefits Questionnaire (DBQ) on 15 November 2019 due to reporting inadvertently being kicked in the head by a drill sergeant. The evaluator determined that there was no objective evidence of TBI and that the claimed condition was less likely than not incurred in or caused by the claimed in-service injury, event, or illness.

e. The applicant is applying to the ABCMR requesting her separation code to be changed to JFR-Disability-Non EPTS- Severance Pay. On her application she indicated Sexual Assault/Harassment is part of her request and stated that she suffered harassment, verbal and physical abuse and mental degradation during her military service. There were no in-service medical records available for review and there is no documentation available showing that the applicant was diagnosed with a BH condition in-service. The applicant is not service-connected for any BH conditions through the VA. Although she has been diagnosed with MDD, GAD, and Anxiety, Unspecified through the VA, she has not been service-connected for these conditions. The available records indicate she reported a history of childhood sexual and physical abuse though do not indicate a history of MST. Based on the available information, it is unclear based on the applicant's self-statement if she is asserting a history of MST or trauma due to other circumstances and there is no documentation in her VA medical records that she reported a history of MST. As such, BH mitigation is unclear. Furthermore, regarding her request to update her separation code to JFR-Disability-Non EPTS, there is no documentation available indicating she was diagnosed with a BH condition in-service that fell below medical retention standards in accordance with (IAW) AR 40-501. As such, there is not BH support to update her separation code based on disability and a referral to IDES is not warranted.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant indicated Sexual Assault/Harassment is related to her request.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? Unclear. There were no in-service medical records available for review and thus no documentation that the applicant was diagnosed with a BH condition in-service. Since being discharged from the military, the applicant has been 80% service-connected through the VA for several medical conditions, none of which are BH-related. The available VA records show that the applicant reported a history of childhood sexual and

physical abuse but did not specify a history of MST. On her application although the applicant marked 'Sexual Assault/Harassment,' in her statement, she specified that during her military service she suffered harassment, verbal and physical abuse and mental degradation, which does not specify a history of MST. Based on the available information, it is unclear if the applicant is asserting she experienced MST or if she experienced other non-MST related trauma. However, it is of note that if the applicant asserted she experienced MST, as there is an association between disobeying orders and a refusal to train, there would be a nexus between her misconduct and MST. However, due to the lack of clarity regarding the applicant's assertion, BH mitigation is unclear. Regarding her request to update her separation code to JFR-Disability-Non EPTS, there is no documentation available indicating she was diagnosed with a BH condition in-service that fell below medical retention standards in accordance with (IAW) AR 40-501. As such, there is not BH support to update her separation code based on disability.

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 Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The evidence of record shows the applicant was discharged under the provisions of AR 635-200, Chapter 11, for entry level performance and conduct. She completed 2 months and 21 days of net active service this period. She did not complete training and was not awarded an MOS. Her service was uncharacterized. She was assigned Separation Code JGA. Enlisted Soldier separated under the provisions of chapter 11 of AR 635-200 due to entry level performance and conduct are assigned Separation Code JGA. The Board found no error or injustice in this Separation Code, or a reason to change it. Additionally, the Board reviewed and agreed with the medical reviewer's determination that there is no documentation available indicating she was diagnosed with a behavioral health condition in-service that fell below medical retention standards in accordance with AR 40-501. As such, there is no behavioral health support to update her separation code based on disability and a referral to the disability evaluation system 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.

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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. Section 1556 of Title 10, U.S. Code, 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.

3. 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 "JGA" is the appropriate code to assign Soldiers separated under the provisions of Army Regulation 635-200, for entry level performance and conduct.

4. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) 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. Chapter 11 provides for the separation of personnel because of unsatisfactory performance or conduct (or both) while in an entry-level status. When separation of a Soldier in an entry-level status is warranted by unsatisfactory performance or minor disciplinary infractions (or both) as evidenced by inability, lack of reasonable effort, or failure to adapt to the military environment, he or she will normally be separated per this chapter. Service will be uncharacterized for entry-level separation under the provisions of this chapter.

d. 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.

//NOTHING FOLLOWS//