

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE:

DOCKET NUMBER: AR20240003871

APPLICANT REQUESTS: Her DD Form 214 (Certificate or Release or Discharge from Active Duty) to reflect:

- Item 24 (Character of Service): honorable vice uncharacterized
- Item 26 (Separation Code): something else vice KFN
- Item 28 (Narrative Reason for Separation): something else vice Physical Disability Prior to Entry on Active-Duty Medical Board

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored letter
- Support letter, A.S.
- Support letter, J.A.
- Support letter, B.S.
- Support letter, D.A.
- Department of Veterans Affairs (DVA) letter
- Spiritt Family Centers letter
- HEAL class completion letter
- Mantram reception group letter
- Volunteers of America letter
- Certificate of Completion
- Psychologist letter
- Psychotherapy sessions letter

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 is requesting the change because she would like to be able to utilize her GI Bill to further her education. In a self-authored letter, she states:

a. She is a 100% disabled veteran of the United States Army. She has three boys 16, 11, and 7. She entered the Army with the plan that it was going to be a life career. However, those dreams were shattered when she took a bad fall off a wire while crossing upside down during a training exercise. She landed on her neck and left shoulder. This caused permanent nerve damage on C-7 and has affected her entire spine, knees, and both feet.

b. She endured sexual harassment while in Advanced Individual Training and an attempted rape. Due to all her injuries she has a very hard time falling and staying asleep. She is constantly in pain; however, she wants and needs better for herself and family. She wants to make her family proud and give them an example to follow.

c. She exited the Army after being forced to sign a document under duress. Due to her signing she is not currently given the opportunity to return to college. She is a good person; she helps in her community with parents in need of help getting their children back from the department of children and family services. Which, she too had to face. She found out the hard way that the system is broken. Her son was in the system for 14 ½ months, until she was finally given sole physical custody of her son.

d. She is still in counseling trying to get better after all the trauma her family has been put through. She is asking for the opportunity to get her upgrade so she may go back to college and be able to provide college for her oldest. He will be graduating next year as he is an 11th grader this year.

e. When she needed help no one was there to pick up the pieces and she wishes to go back to school and back to work. Please make this a possibility for her. (The entire letter is available for review).

3. The applicant enlisted in the Regular Army on 18 November 1992. She held military occupational specialty 94B (Food Service Specialist).

4. On 17 March 1993, an Existing Prior to Service (EPTS) Narrative Summary for medical board shows:

a. Present Conditions: She has an EPTS condition of severe bilateral pes cavus. She is not able to tolerate boots. She has difficulty in running, jumping, prolonged standing, squatting, bending, and kneeling and it is felt that continued military service would do nothing but aggravate her ongoing EPTS condition.

b. Discharge Diagnosis:

- Bilateral severe pes cavus EPTS
- Patellar femoral joint syndrome bilateral, EPTS

c. Recommendation: Per Army Regulation (AR) 40-501 (Standards of Medical Fitness), the service member is being referred to the Physical Disability Board (PEB) for strong consideration for medical separation due to the above conditions.

5. A Medical Evaluation Board convened on 31 March 1993, and after consideration of clinical records, laboratory findings, and physical examination, the Board found she had the following medical conditions:

a. Bilateral severe pes cavus EPTS and Patellar femoral joint syndrome bilateral, EPTS.

b. The Board recommended she should be discharged under the provisions of AR 635-40 (Physical Evaluation for Retention, Retirements, or Separation), chapter 5 for EPTS medical condition.

c. The findings and recommendation of the board were approved on 31 March 1993.

d. The applicant agreed with the board's findings and recommendation on 1 April 1993.

6. On 2 April 1993, the PEB Liaison Officer notified the applicant's command of his EPTS physical disability. He had been fully counseled and offered an expeditious discharge pursuant to the provisions of AR 635-40, Chapter 5 and has requested separation from military service by reason of an EPTS physical disability.

7. On 13 April 1993, the separation authority approved separation under the provisions of AR 635-40, chapter 5. He directed his service be uncharacterized with a separation processing designator code of KFN.

8. Accordingly, on 16 April 1993, he was discharged. His DD Form 214 shows he completed 4 months and 29 days net active service this period. It also shows:

- Item 25 (Separation Authority): AR 635-40, chapter 5
- Item 26 (Separation Code): KFN
- Item 27 (Reentry Code): 3
- Item 28 (Narrative Reason for Separation): Physical Disability Prior to Entry on Active-Duty Medical Board

9. During the processing of this case a request was made to U.S. Army Criminal Investigative Division. A response was received on 9 October 2024, which stated a search of the Army criminal file indexes, utilizing the information provided, revealed no Sexual Assault/Harassment records pertaining to the applicant. Be advised that records at this agency are Criminal Investigative and Military Police Reports and are indexed by personal identifiers such as names, social security numbers, dates and places of birth and other pertinent data to enable the positive identification of individuals.

10. The applicant provides:

a. Support letter, A.S. describing the applicant as a loving person and great friend, a wonderful spouse, and a reliable person. She has helped domestic violence victims and other fellow veterans get out of difficult circumstances sharing resources and giving her time to help them with paperwork or appointments. (The entire letter is available for the Board's review).

b. Support letter, J.A. states while he was incarcerated, he started to take notes on filing an illegal incarceration. She assisted him in his case and recovery from a serious illness. She took him to rehab and the hospital. She helped save his life in so many difficult ways and he thanks her for that. (The entire letter is available for the Board's review).

c. Support letter, B.S. the nephew of the applicant states his aunt has been nothing but loving, supporting, and encouraging towards him and his goals. She has been a loving, nourishing, and caring mother to her son. Loyalty, truthful, and caring are some of the strongest attributes and characteristics that his aunt possesses. He says with confidence that she is an outstanding citizen and a person of high character and moral. Indeed, he has seldom met another person with such strong values, and it is admirable. (The entire letter is available for the Board's review).

d. Support letter, D.A. a longtime friend for over 24 years states the applicant has always been nothing but wonderful to her and all of her friends and family. She is considered family to her. She is very caring, hardworking, and thoughtful. She is a responsible and dependable person with a huge heart. She wrote about how the applicant has been a great single mother to her son. (The entire letter is available for the Board's review).

e. DVA letter stating the applicant is currently receiving mental health care at the VA Los Angeles Ambulatory Care Center since December 2020. The Psychologist described the applicant's ongoing therapy sessions related to stress related to legal involvement and coping with her family not currently being together, as well as difficulties related to a history of trauma, mood, and anxiety. (The entire letter is available for the Board's review).

f. Spiritt Family Centers letter stating she started with this organization on 14 April 2021. She has been cooperative and available for the weekly in-home visits. She completed parenting classes through Parents Anonymous prior to services starting with SPIRITT Family Preservation. In addition, she continues to work with a therapist at the V.A. for over 2 years. (The entire letter is available for the Board's review).

g. HEAL class completion letter showing she successfully completed the HEAL class at Rancho Cucamonga VA Healthcare Clinic.

h. Mantram reception group letter stating she completed 8-week Mantram repetition group on 17 September 2020.

i. Volunteers of America letter verifying her engagement in the program since 27 July 2016.

j. Certificate of Completion for nurturing parenting program of 40 hours completed on 27 May 2020.

k. Psychologist letter verifying her attendance to treatment in anger management group.

l. Psychotherapy sessions letter showing her son received psychotherapy sessions from 14 December 2018 – 26 November 2019.

11. By regulation (AR 635-40), governs the evaluation of physical fitness of Soldiers who may be unfit to perform their military duties because of physical disability. It states that according to accepted medical principles, certain abnormalities and residual conditions exist that, when discovered, lead to the conclusion that they must have existed or have started before the individual entered the military service. Examples are manifestation of lesions or symptoms of chronic disease from date of entry on active military service (or so close to that date of entry that the disease could not have started in so short a period) will be accepted as proof that the disease existed prior to entrance into active military service. Chapter 5 provides for separation of an enlisted Soldier for non-service aggravated EPTS conditions when Soldier requests waiver of PEB evaluation.

12. By regulation, AR 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214.

13. By regulation, (AR 635-200):

a. An uncharacterized separation is an entry-level separation; for Soldiers ordered to initial ADT, entry-level status terminates 180 days after beginning training. Soldiers are considered to be in an entry-level status when they are within their first 180 days of active-duty service.

b. Current guidance states Reserve Component Soldiers completing active duty that results in the award of an MOS, even when the active-duty period was less than 90 days (for example, completion of the advanced individual training component of Army National Guard (ARNG) Alternate Training Program or USAR Split Training Program) will receive a character of service of Honorable unless directed otherwise by the separation approval authority.

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

15. MEDICAL REVIEW:

1. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents (including multiple letters of support), the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The applicant requests change in character of service from Uncharacterized to Honorable. She also requests a change in separation code and narrative reason for discharge. She indicated that PTSD and Sexual Assault/Harassment were related to her request.

2. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The applicant enlisted in the Regular Army 18Nov1992. Her MOS was 94B, Food Service Specialist. She was discharged on 16Apr1993 under AR 635-40, chapter 5 per Medical Board for physical disability prior to entry on active duty. Her service was designated as uncharacterized.

3. 17Mar1993 MEB NARSUM (Narrative Summary). The applicant was referred for a MEB for evaluation of painful left foot and bilateral knees. These pain conditions were considered to not have been incurred while she was entitled to base pay; to have existed prior to service (EPTS); and to not have been permanently aggravated by her military service. She presented with difficulty running since basic training. She had difficulty wearing boots and jumping. She also had difficulty with prolonged standing which would be problematic for her MOS. The exam revealed severe bilateral pes cavus (high arch); however, only the left side was symptomatic. Bilateral meniscus

pathology was also suspected due to positive crepitus and Apley's signs. There was no knee effusion and no ecchymosis (bruising). The exam was also notable for bilateral hammertoes and increased callosoes of both metatarsal heads. Diagnoses: Bilateral, Severe Pes Planus EPTS; and Bilateral Patellofemoral Joint Syndrome EPTS. It was opined that her conditions were not compatible with military service. Per AR 40-501, she was recommended for PEB evaluation for fitness determination.

4. Behavioral health condition:

There were no in-service BH treatment records that were available for this review. JLV search of her BH treatment records revealed that she reported being sexually harassed and sexually assaulted (attempted rape) while in AIT. She stated that she was sexually harassed by her drill SGT and cornered by him constantly. There was also an attempted rape by someone else. Other BH history included premilitary suicide attempt (hospitalized overnight) by pill ingestion in 10th grade after a relationship break up; and premilitary trauma of childhood sexual abuse ("most of her childhood") by several family members. She reported having nightmares about the abuse, tried to avoid people who remind her of abuse, had difficulty sleeping, was easily startled, hypervigilant, and had a feeling of detachment from activities. She reported that she used to experience these symptoms more in the past, but that they had abated for several years until very recent serious life stressors began. The applicant reported having been in therapy off and on since she was 19— she had some treatment at the VA outpatient clinic in Gardena when she was in her 20's. Those records were not available for this review. The current record in JLV showed that she initially sought BH services at the VA in 2013. She was assessed to have developed PTSD due to sexual trauma. As a result of these multiple traumatic experiences, she presented with anxiety, sleeplessness, depression and at times mood dysregulations. In addition to the sexual trauma, she also reported physical injury/trauma in the military (fall onto the neck/shoulder), work related (unemployed since 2004 when she was hurt at Ralph's, a regional grocery chain) and recreational (broken shoulder and other injuries from a skateboarding fall in 2020) all of which contributed to financial stressors.

5. JLV search showed that the applicant was service connected by the VA at 100% total. Of pertinence, she was rated for Hypochondriasis at 70%; Limited Flexion of the Knee at 10% each for right and left knee; and she also received disability ratings for both cervical and lumbar Intervertebral Disc Syndrome.

6. Summary/Opinion

a. The applicant contends that during a training exercise she fell off a wire, landing on the neck and shoulder causing injury to her entire spine, knees and both feet. There were no in-service treatment records concerning this injury that were available for this review. Due to Bilateral Pes Cavus and Bilateral Patellofemoral Pain Syndrome

conditions, the applicant was recommended for PEB evaluation for fitness determination. However, the applicant elected not to undergo a PEB. Under AR 635-40 chapter 5, per her decision, she waived a PEB evaluation and was expeditiously discharged.

b. Concerning the request for change in discharge from Uncharacterized to Honorable, Liberal Consideration policy guidance was considered. The record did not show misconduct; therefore, mitigation is not necessary. The applicant has been diagnosed with PTSD due to MST. As per ARBA policy, the PTSD/MST condition is treated as if it was diagnosed prior to discharge and is sufficient for the Board to consider upgrade to Honorable and change in separation code and change in narrative reason for discharge.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the circumstances leading to the applicant's separation, the regulatory guidance related to separation initiated within the first 180 days of military service, and the findings outlined in the medical review, the Board concluded there was insufficient evidence of an error or injustice which would warrant a change to the applicant's characterization of service, separation code and/or narrative reason for separation.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	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.

//SIGNED//
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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 (AR) 635-40 (Physical Evaluation for Retention, Retirement, or Separation) governs the evaluation of physical fitness of Soldiers who may be unfit to perform their military duties because of physical disability. It states that according to accepted medical principles, certain abnormalities and residual conditions exist that, when discovered, lead to the conclusion that they must have existed or have started before the individual entered the military service. Examples are manifestation of lesions

or symptoms of chronic disease from date of entry on active military service (or so close to that date of entry that the disease could not have started in so short a period) will be accepted as proof that the disease existed prior to entrance into active military service. Chapter 5 provides for separation of an enlisted Soldier for non-service aggravated EPTS conditions when Soldier requests waiver of PEB evaluation.

3. AR 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "KFN" as the appropriate code to assign Soldiers who are discharged under the provisions of Army Regulation 635-40, Chapter 5, for Physical disability prior to entry on active duty-medical board. SPD code of "JFF" as the appropriate code to assign Soldiers directed by service secretary under the provisions of AR 635-200, chapter 5, section II.

4. AR 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel. The regulation stated in:

a. Paragraph 3-7a – an honorable discharge was a separation with honor. The honorable characterization was appropriate when the quality of the member's service generally had met the standards of acceptable conduct and performance of duty for Army personnel, or was otherwise so meritorious that any other characterization would be clearly inappropriate.

b. Paragraph 3-7b – a general discharge was a separation from the Army under honorable conditions. When authorized, it was issued to a member whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 3-9 – a separation would be described as an entry level separation with service uncharacterized if processing was initiated while a Soldier was in entry level status. During the first 180 days of continuous active military service, a member's service was under review. When separated within the first 180 days, service was usually not characterized unless the circumstances of the separation warranted a discharge under other than honorable conditions (misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial).

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and 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. 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. 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.

//NOTHING FOLLOWS//