IN THE CASE OF: [redacted]

BOARD DATE: 26 November 2024

DOCKET NUMBER: AR20240004383

APPLICANT REQUESTS:

- in effect, revision of item 23 (Authority and Reason for Discharge) on her National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) to show a medical separation
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Army Discharge Review Board)

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 enlisted in [redacted] Army National Guard ([redacted]ARNG) to make a difference for her country and her family; however, the recruiters and her [redacted]ARNG leadership left out some important information. For example, they failed to tell her about the GI Bill and what one must do to be eligible; also, they did not mention that she could reenter the military up to age 60.

a. The applicant is asking the Board for a medical separation because it would help her save money on housing, and she would be better able to provide for her family. The [redacted]ARNG separated her due to hardship.

b. The applicant notes she would like to serve again, but likely would not qualify because of the medications she has been prescribed for her service-connected disability. She also reports that, when she sought employment with her State, they told

her she could not get any Veterans' points due to her DD Form 214 (Certificate of Release or Discharge from Active Duty).

3. A review of the applicant's service record shows:

a. On 30 September 1999, the applicant enlisted in the [redacted]ARNG for 8 years. On 8 March 2000, the applicant entered initial active duty for training (IADT) to complete her initial entry training (IET). On 16 August 2000, after being awarded military occupational specialty 92A (Automated Logistical Specialist), orders released her from active duty (REFRAD) with an uncharacterized characterization of service and returned her to the [redacted]ARNG. Her DD Form 214 shows she completed 5 months, and 9 days of active service.

b. On 10 February 2003, the applicant entered active duty in support of Operation Enduring Freedom; on 25 March 2003, the Army honorably released her and returned her to the [redacted]ARNG; her REFRAD orders state, "Declared Non-Deployable due to Medical." The applicant's DD Form 214 shows she completed 1 month and 16 days of active service.

c. On 7 June 2004, the [redacted]ARNG honorably discharged the applicant. Her NGB Form 22 shows she completed 4 years, 8 months, and 8 days of net service. The report additionally reflects the following:

(1) Item 9 (Command to Which Transferred) – not applicable

(2) Item 15 (Decorations, Medals, Badges, Commendations):

- Army Service Ribbon
- National Defense Service Medal
- Army Reserve Components Achievement Medal
- Active Duty Basic Training Ribbon of Alabama
- Global War on Terrorism Service Medal
- Armed Forces Reserve Medal with "M" Device
- Army Lapel Button

(2) Item 23 (Authority and Reason for Discharge) – "MPMO-PSB Orders 211-054, 29 JUL 04 and PARA 8-26b(7), National Guard Regulation 600-200 (Enlisted Personnel Management).

(3) Item 26 (Reenlistment (RE) Eligibility) – RE-3 (waivable disqualification).

d. On 9 June 2004, the applicant's unit generated a DA Form 4187 (Personnel Action) addressing the applicant's separation. Section IV (Remarks) states:

(1) "Discharge IAW (in accordance with) NGR 600-200 8-26b(7)"

(2) "Assign To: U.S. Army Reserve (USAR) Control Group (Individual Ready Reserve (IRR))."

(3) "Reason: Hardship"; "Member has not incurred (a) physical disability…."

e. On 29 July 2004, the [redacted]ARNG issued Orders Number 211-054, which announced, effective 7 June 2004, the applicant was honorably discharged from the [redacted]ARNG and the Reserve of the Army. The order cites paragraph 8-26b(7), NGR 600-200 as its authority; no loss codes are included.

4. Army Regulation 15-185, currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

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 (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and 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 requesting, in essence, a referral to the Disability Evaluation System (DES) stating:

> "I was discharged on a hardship. I did not have family that will look after my daughter while I go off to War and I was also nursing her at the time. But I was not aware that I could join at a later time ... I would like to Serve again, but I cannot go to Basic Training with prescription drugs that I take as part of my service connection disability. If I receive this type of discharge, I can obtain better housing for my Family by having a Medical Discharge."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's Report of Separation and Record of Service (NGB Form 22) shows she entered the Army National Guard on 15 January 1999 and was honorably discharged from [redacted] Army National Guard ([redacted]ARNG) on 7 June 2004 under provisions provided in paragraph 8-26b(7) of NGR 600-200, Enlisted

Personnel Management (1 March 1997): Dependency or hardship affecting the soldier's immediate family.

d. No medical documentation submitted with the application, and there are no clinical encounters in AHLTA.

e. The applicant requested a hardship discharge which was approved on 9 June 2004. From her request:

> "Member has not incurred physical disability, has turned in all clothing and equipment, has remaining obligation, has no payroll stoppage or any investigative action pending."

f. JLV shows she has been awarded several VA service-connected disability ratings, including ratings for chronic maxillary sinusitis (30% in 2022), labyrinthitis (10% in 2021), and tinnitus (10% in 2021). However, there is no evidence these or any other medical condition(s) would have failed the medical retention standards of chapter 3, AR 40-501 prior to her voluntary discharge. Thus, there was and remains no cause for referral to the Disability Evaluation System.

g. The DES compensates an individual only for service incurred medical condition(s) which have been determined to disqualify him or her from further military service. 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; or which did not cause or contribute to the termination of their military career. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

h. It is the opinion of the ARBA Medical Advisor that a referral of her case to the DES is not warranted.

BOARD DISCUSSION:

1. 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 record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant's petition, available military records, and the medical review, the Board majority concurred with the advising official finding that the

applicant's Department of Veterans Affairs rating determinations are based on the roles and authorities granted by Congress to the Department of Veterans Affairs and executed under a different set of laws. Based on this, the Board majority determined referral of her case to the Disability Evaluation System (DES) is not warranted. The Board minority non-concurred with the medical advisor's review and voted to refer the applicant to DES based on the applicant's statement.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
:	[redacted]	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
[redacted]	:	[redacted]	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.

4/2/2025

X[redacted]

CHAIRPERSON

[redacted]

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.

ADMINISTRATIVE NOTE(S):

Per a change in Army policy, delete the current character of service listed in item 24 (Character of Service) of the applicant's DD Form 214, for the period ending 16 August 2000, and replace it with "Honorable."

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. Title 10, USC, section 1556 (Ex Parte Communications Prohibited) 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 applicant’s (and/or their counsel) prior to adjudication.

3. The version of National Guard Regulation (NGR) 600-200 (Enlisted Personnel Management) that was in effect in 2004 and showing the separation criteria for paragraph 8-26b(7) is unavailable for review.

4. Army Regulation (AR) 135-178 (Army National Guard (ARNG) and Army Reserve – Enlisted Administrative Separations), in effect at the time, prescribed policies and procedures for enlisted administrative separations. Chapter 6 (Convenience of the Government) addressed the following types of separations:

a. Paragraph 6-2 (Dependency or Hardship). Upon the request of a Soldier and approval of the separation authority, separation could be directed when it was considered that continued membership and service on active duty (AD), full-time National Guard Duty (FTNGD), or Active Duty for Training (ADT) would result in genuine dependency or undue hardship.

(1) A hardship existed when, in circumstances not involving death or disability of a member of a Soldier’s family, separation from the service would materially affect the care or support of the Soldier’s family by materially alleviating undue hardship.

(2) The separation criteria included the following:

- The hardship was not temporary

- Conditions had arisen or were aggravated to an excessive degree after the Soldier entered the ARNG, and the Soldier had made every reasons effort to remedy the situation
- Administrative separation would alleviate the situation
- There were no other reasonable means to favorably affect the situation

b. Paragraph 6-5 (Involuntary Separation due to Parenthood). A Soldier could be separated by reason of parenthood if it was determined the Soldier was unable satisfactorily to perform his or her duties or was unavailable for worldwide assignment or deployment if ordered to annual training, AD, FTNGD, or ADT. Before recommending a Soldier for separation under this paragraph, commanders had to ensure the Soldier was adequately counseled about any deficiencies and given the opportunity to overcome those deficiencies.

c. Paragraph 6-7 (Other Designated Physical or Mental Conditions). A separation authority could approve discharge under this paragraph on the basis of other physical or mental conditions not amounting to disability (as outlined in AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation)) that potentially interfered with assignment to or performance of military duty.

5. AR 40-501 (Standards of Medical Fitness), in effect at the time, prescribed policies and standards for determining medical fitness. Chapter 10 (ARNG) addressed procedures for ARNG Soldiers.

a. Paragraph 10-3 (Medical Standards). The standards outlined in chapter 3 (Medical Fitness Standards for Retention and Separation, Including Retirement) applied to the retention of ARNG Soldiers.

b. Paragraph 10-10 (Periodic Medical Examinations). Each officer, warrant officer, and enlisted Soldier not on active duty had to undergo a complete physical examination at least once every 5 years. The respective State Adjutants General, in consultation with their State Surgeon, were responsible for conducting a final review and determination of medical fitness.

c. Paragraph 10-26 (Soldiers Pending Separation for failing to Meet Medical Retention Standards). National Guard Soldiers with nonduty related medical conditions who are pending separation for failing to meet the medical retention standards of chapter 3 were eligible to request referral to a physical evaluation board (PEB) for a determination of fitness.

6. AR 40-400 (Patient Administration), then in effect, stated, in chapter 7 (Military Personnel Physical Disability Processing), that Soldiers with medical conditions or physical defects that were usually progressive in nature and the expectations for

reasonable recovery could not be established were to be referred to a medical evaluation board (MEB). Those individuals determined by the MEB to fail the medical retention standards outlined in AR 40-501 (Standards of Medical Fitness) were referred to a physical evaluation board (PEB) for a fitness determination.

7. AR 635-40, then in effect, prescribed policies, and procedures for disability separations.

a. Paragraph 3-1 (Standards of Unfitness Because of Physical Disability) stated the mere presence of an impairment did not, of itself, justify a finding of unfitness due to a physical disability. Each individual Soldier's case had to be assessed to determine whether the nature of the disability caused the Soldier to become unable to perform the duties expected of a Soldier of his/her rank.

b. Chapter 4 (Procedures), section IV (Physical Disability Evaluation) stated that PEBs were charged with investigating the nature, cause, degree of severity, and probable permanency of a Soldier's disabling conditions; assessing the Soldier's physical conditions against the physical requirements of the Soldier's particular office, grade, rank, or rating; and making findings and recommendations in accordance with the law.

c. The PEB's available dispositions for the Soldier were:

- returned to duty
- separated with severance pay when the combined disability rating was 20 percent or less
- Concerning combined ratings of 30 percent or more: when the PEB could not confirm the permanency of a disabling condition, it recommended the Soldier for the Temporary Disability Retired List; conditions not likely to change over time resulted in placement on the Permanent Disability Retired List

c. Chapter 8 (Reserve Components) outlined the rules for processing Reserve Component Soldiers who were on active duty for a period of less than 30 days or on inactive duty training.

(1) Paragraph 8-2 (Eligibility).

(a) Disability from injury. Reserve Component Soldiers eligible for processing were those who incurred a disability from an injury determined to be the proximate result of performing annual training or inactive duty for training.

(b) Disability from a Disease Incurred while Performing Duty on or after 15 November 1986. Referral for processing did not mean an automatic entitlement to

disability compensation. Once referred, a determination had to be made as to whether the disease was the proximate result of performing duty.

(2) Paragraph 8-9 (Disposition). Reserve Component Soldiers not on extended active duty who were determined to be unfit due to physical disability could be permanently retired or be placed on the Temporary Disability Retired List (TDRL) when their disability rating was 30 percent or more or that they achieved at least 20 qualifying years of service. Those with a disability rating of 20 percent of less could be separated with severance pay, assuming the disabling condition was incurred in the line of duty.

8. AR 601-210, in effect at the time, prescribed policies and procedures for the enlisting prospective and former Soldiers. Table 3-1 (U.S. Army RE Codes) showed the following:

- RE-1 – Fully qualified for immediate reenlistment
- RE-3 – Not eligible for reenlistment unless waiver consideration was permissible and was granted

9. 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.

10. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRBs) and Board for Correction of Military/Naval Records (BCM/NRs) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including Post Traumatic Stress Disorder (PTSD); Traumatic Brain Injury (TBI); sexual assault; or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

11. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs 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.

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.

12. AR 15-185 (ABCMR), currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

//NOTHING FOLLOWS//