

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 February 2025

DOCKET NUMBER: AR20240004440

APPLICANT REQUESTS:

- medical discharge
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- NGB Form 22 (National Guard Report of Separation and Record of Service)
- NGB Form 23B (Army National Guard (ARNG) Retirement Points History Statement)
- Department of Veterans Affairs (VA) Rating Decision
- Master Military Pay Account

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 wants her discharged changed to a medical discharge since this is what she was told by her company commander. At the time, she was sent home thinking she has a medical discharge.
3. The applicant's service record contains the following documents:
 - a. She had prior honorable enlisted service in the Regular Army (RA) 1985 to 1990.
 - b. DD Form 4 (Enlistment/Reenlistment Document), shows the applicant enlisted in the RA on 11 May 2000.
 - c. Her Statement of Medical Examination and Duty Status, 5 July 2000 reflects she

was an out-patient at the General Leonard Wood Army Community Hospital on 7 June 2000 for an injury to her left shoulder (dislocation). The medical opinion noted she was not under the influence of alcohol, was mentally sound, and the injury was incurred in the line of duty. Her injury was determined to be "temporary". She dislocated her shoulder during an obstacle course. She was negotiating the course when she attempted to lower herself off of a wall and slipped, causing her arm to become disjointed at the shoulder. No formal line of duty investigation was required.

d. DA Forms 4187 (Personnel Actions), reflects she was in an absent without leave (AWOL) status after her convalescent leave on 9 July 2000 and was dropped from the rolls (DFR) on 8 August 2000.

e. DA Form 616 (Report of Return of Absentee) reflects the applicant was apprehended by civil authorities on 12 October 2006 and was transferred to military control.

f. Personnel Action shows her duty status changed from DFR to present for duty, effective 12 October 2006.

g. DD Form 458 (Charge Sheet), 23 October 2006, shows charges were preferred against the applicant for being AWOL from 9 July 2000 until on or about 12 October 2006.

h. On 23 October 2006, the applicant submitted a Request for Discharge in Lieu of Trial by Court-Martial. She acknowledged the following:

- she made this request of her own free will and was not subjected to any coercion
- she understood the elements of the offense was guilty of the charge, in which a bad conduct discharge or dishonorable discharge is authorized
- she had been afforded the opportunity to consult with counsel and was fully advised of the nature of her rights under the Uniform Code of Military Justice, the elements of the offense with which she was being charged
- she understood that, if her request for discharge is accepted, she may be discharged under conditions which are other than honorable and be furnished an Under Other Than Honorable Discharge Certificate
- she understood that she will be deprived of many or all Army benefits, that she may be ineligible for many or all benefits administered by the Department of Veterans Affairs and that she may be deprived of her rights and benefits as a Veteran under both Federal and State law
- she further understood that there is no automatic upgrading or automatic review of a less than honorable discharge by any Government agency or

the ABCMR, and if she desired and upgrade, she would have to apply to the ABCMR

i. On 31 October 2006, her request for discharge in lieu of trial by court-martial was recommended for approval and on 3 November 2006, her request was approved. It was directed that she receive an Under Other Than Honorable Conditions Discharge, and that she be reduced to the lowest pay grade of E1 prior to her discharge.

j. Orders 311-13, dated 7 November 2006 reflects she was to be discharged in the pay grade of E-1, with an effective date of 3 November 2006 with a UOTHC Discharge.

k. On 22 November 2006, the applicant was discharged accordingly with an UOTHC in lieu of a trial by court-martial, chapter 10. She completed 3 months and 9 days of active service. She received a separation code of "KFS", a reentry code of "4" and it was noted that she had lost time from 9 July 2000 to 11 October 2006. Her DD Form 214 reflects she received the following awards:

- Army Achievement Medal (3rd Award)
- Army Good Conduct Medal
- National Defense Service Medal
- Army Service Ribbon
- Overseas Service Ribbon (2nd Award)

5. The applicant's record is void of any medical board evaluations or a physical evaluation board.

6. On 11 July 2008, the applicant submitted a request to the Army Discharge Review Board for an upgrade to her character of service. The Board noted that after carefully examining the applicant's record of service during the period of enlistment, the Board determined the reason for her discharge and the characterization of service were both proper and equitable and voted to deny relief.

7. On 15 January 2025, the Case Management Division sent a letter to the applicant requesting additional medical documents to support her request for a medical discharge; however, no response was received.

8. Based on the applicant's assertion she thought she had received a medical discharge, the Army Review Boards Agency Medical Section provided a medical review for the Board's consideration.

9. 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 requesting an upgrade of her 22 November 2006 discharge characterized as under other than honorable conditions and, in essence, a referral to the Disability Evaluation System (DES). She states:

"Change discharge type to medical. It's what I was told by my company commander. I was sent home thinking I was medically discharged."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. Her DD 214 shows she entered the Regular Army on 11 May 2000 and was discharged on 22 November 2006 under the separation authority provided chapter 10 of AR 635-200, Active Duty Enlisted Administrative Separations (6 June 2005): Discharge in Lieu of Trial by Court-Martial.

d. A Statement of Medical Examination and Duty Status (DA form 2173) shows she sustained what appears to have been a left shoulder dislocation while negotiating an obstacle course on 7 June 2000. There are no associated clinical encounters and the supporting documents and there are no encounters in the EMR.

e. A 23 October 2006 Charge Sheet (DD form 458) shows the applicant was charged with absence without leave (AWOL) from 9 July 2000 thru 12 October 2006.

f. On 23 October 2006, the applicant voluntarily requested discharge in lieu of trial by court-marital under chapter 10 of AR 635-200. The commander of the US Army Personnel Control Facility, Headquarters & Law Enforcement Command, USAARMC & Fort Knox, approved her request on 3 November 2006 with the directive she receive an under other than honorable characterization of service and be reduced to Private E-1.

g. There is insufficient probative medical evidence the applicant had duty incurred medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to her discharge. Thus, there was no cause for referral to the Disability Evaluation System.

- h. JLV shows the applicant has no behavioral health encounters or mental health diagnoses on her medical problem list.
- i. It is the opinion of the ARBA medical advisor that a referral of her case to the DES is unwarranted.

j. Kurta Questions:

- (1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? NO
- (2) Did the condition exist or experience occur during military service? N/A
- (3) Does the condition or experience actually excuse or mitigate the discharge? N/A

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 concurred with the advising official finding insufficient medical evidence the applicant had duty incurred medical condition which would have failed the medical retention standards. Based on this, the Board determined a medical discharge or referral of his case to the Disability Evaluation System (DES) are not warranted.
- 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

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XX	:XX	:XX	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 //signed//

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 (Personnel Separations – Active Duty Enlisted Administrative Separations) sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.
 - a. 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.
 - b. Paragraph 3-7b provides that a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
 - c. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.
3. Title 10, USC, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with Department of Defense Directive 1332.18 and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).
4. Army Regulation (AR) 635-40 (Disability Evaluation for Retention, Retirement, or Separation) establishes the Army Disability Evaluation System and sets forth policies,

responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

- a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with AR 40-501, chapter 3, as evidenced in an MEB; when they receive a permanent physical profile rating of "3" or "4" in any functional capacity factor and are referred by a Military Occupational Specialty Medical Retention Board; and/or they are command referred for a fitness for duty medical examination.
- b. The disability evaluation assessment process involves two distinct stages: the MEB and physical evaluation board (PEB). The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his or her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability are either separated from the military or are permanently retired, depending on the severity of the disability and length of military service. Individuals who are "separated" receive a onetime severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.
- c. The mere presence of medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of his or her office, grade, rank, or rating. Reasonable performance of the preponderance of duties will invariably result in a finding of fitness for continued duty. A Soldier is physically unfit when medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

5. Title 10, USC, section 1201, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30 percent. Title 10, USC, section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating of less than 30 percent.
6. Title 38, USC, sections 1110 and 1131, permits the VA to award compensation for disabilities that were incurred in or aggravated by active military service. However,

an award of a higher VA rating does not establish error or injustice on the part of the Army. The Army rates only conditions determined to be physically unfitting at the time of discharge which disqualify the Soldier from further military service. The VA does not have the authority or responsibility for determining physical fitness for military service. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge, to compensate the individual for loss of civilian employability. These two government agencies operate under different policies. 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.

7. 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 KFS is used for discharge In Lieu of Trial by Court-Martial.

8. 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 waivable.

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

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

9. Army Regulation 635-8 (Separation Documents), in effect at the time, prescribed the separation documents prepared for Soldiers upon retirement, discharge, or release from active duty service or control of the Active Army. It established standardized policy for preparing and distributing the DD Form 214. The instructions stated to list awards and decorations for all periods of service. In item 12b (Separation Date This Period): self-explanatory.

10. 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.

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//