

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 December 2024

DOCKET NUMBER: AR20240004997

APPLICANT REQUESTS: an upgrade of her uncharacterized discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) letter

FACTS:

1. The applicant did not file within the three-year time frame provided in Title 10, United States Code (USC), section 1552 (b); however, the Army Board for Correction of Military Records 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 was medically honorably discharged [sic].

3. The applicant provides VA letter, dated 29 January 2024, which certifies that she was discharged from the U.S. Armed Forces after having entered active duty on 29 August 1995 and discharged 13 February 1996, with a character of service of honorable.

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

- a. She enlisted in the Army National Guard of the United States on 31 March 1995.
- b. The complete facts and circumstances surrounding her separation are not available for review.
- c. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was released from active duty training and discharged from the Reserve of the Army and returned to Army National Guard of the State of New York on 13 February 1996, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-11, failure to meet procurement medical fitness

standards, with a character of service of uncharacterized. She served 5 months and 15 days of active service.

d. State of New York orders 053-028, dated 14 March 1996, reflects the applicant was discharged from the Army National Guard, with an effective date of 14 February 1996.

5. There is no evidence that the applicant applied to the Army Discharge Review Board for review of her discharge within the board's 15 year statute of limitations.

6. AR 635-200 states, when a commander determines Soldiers who were not medically qualified under procurement medical fitness standards when accepted for enlistment or who became medically disqualified under these standards prior to entrance on active duty, active duty training, or initial entry training will be separated.

7. An uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It merely means the Soldier has not been in the Army long enough for his or her character of service to be rated as honorable or otherwise.

8. AR 635-40 states, the disability evaluation system is typically conducted in coordination with a medical condition that fails medical retention standards as confirmed by a medical evaluation board and a determination of unfitness which is done by a physical evaluation board.

9. An award of a rating by another agency does not establish error by the Army. Operating under different laws and their own policies the VA does not have the authority or the responsibility for determining medical unfitness for military service. The VA may award ratings because a medical condition related to service (service-connected) affects the individual's civilian employability.

MEDICAL REVIEW:

1. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, 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 a discharge upgrade from uncharacterized to honorable. She contends that she was medically honorably discharged. She presents as evidence benefits related correspondence from the VA dated 29Jan2024 indicating that her service was characterized as 'Honorable'.

2. The ABCMR ROP summarized the applicant's record. The complete discharge record was not available for review. The applicant enlisted in the Army National Guard.

She entered active duty 19950829 to 19960213. Her time in service was 5 months 15 days and an MOS was not listed on the DD Form 214. The applicant was discharged under provisions of AR 635-200 para 5-11 due to failure to meet procurement medical fitness standards. Her military service was designated as 'Uncharacterized' per DD Form 214.

3. The applicant underwent an Entrance Physical Standards Board (EPSBD) Proceeding Proceedings on 30Jan1996 during which it was reported the applicant first started having knee pain prior to entry into service when she was trying to get into shape. The bilateral leg pain progressively worsened while in service. The pain was interfering with her ability to train. A bone scan showed heel uptake consistent with stress over use reaction. Diagnosis: Stress Overuse Reaction Lower Extremities. She was recommended to be separated from service under AR 40-501, chapter 2 para 2-39c for this condition which existed prior to service (EPTS) due to failure to meet procurement medical fitness standards. It was determined that the condition had not been permanently aggravated by service. The condition met retention standards of AR 40-501 chapter 3.

4. Summary/Opinion

a. It should be noted that stress injuries are overuse injuries and therefore frequently preclude completion of military physical train-up activities. They would be expected to heal without sequelae, with time and appropriate care and compliance to treatment. In general, they were not considered to rise to the level of permanently disabling conditions warranting medical disability discharge processing.

b. Concerning the request for change in characterization of service, Liberal Consideration guidance was considered. The record did not show a DoD or VA mental health diagnosis. It was noted during JLV search, that several decades after discharge from service, the applicant was given mental health diagnoses by VA mental health specialists; however, it was also noted that the applicant has not been service connected by the VA for a mental health diagnosis. There was no indication in the applicant's statements or in the available records, that would lead one to reasonably conclude that she experienced psychosis or MST; or performed an extreme act of heroism while in the military that might warrant a change in characterization of service from 'Uncharacterized'. Based on review of the applicant's record, the chapter separation was appropriate.

5. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? No. The applicant did not claim and has not been diagnosed with a service-related mental health condition.

(2) Did the condition exist, or did the experience occur during military service? No. The applicant did not claim and has not been diagnosed with a service-related mental health condition.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant has not been diagnosed with a service-related mental health condition and the applicant did not claim that a mental health condition contributed to the reason for her separation from service.

BOARD DISCUSSION:

1. After reviewing the application and all supporting documents, 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. The governing regulation provides that a separation will be described as an entry-level separation, with service uncharacterized, if the separation action is initiated while a Soldier is in entry-level status. Soldiers in the U.S. Army Reserve are authorized an honorable discharge while in entry-level status only if they complete their active duty schooling and earn their designated military occupational specialty. The applicant did not complete training and was released from active duty due to failure to meet procurement medical fitness standards. The Board determined her DD Form 214 properly shows the appropriate characterization of service as uncharacterized.

2. An uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It merely means the Soldier has not been in the Army long enough for his or her character of service to be rated as honorable or otherwise. As a result, there is no basis for granting the applicant's request.

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, USC, section 1552(b), provides that applications for correction of military records must be filed within three years after discovery of the alleged error or injustice. This provision of law also allows the Army Board for Correction of Military Records (ABCMR) to excuse an applicant's failure to timely file within the three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), sets forth the basic authority for the separation of enlisted personnel.

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 3-7a(1) provides that only the honorable characterization may be awarded a Soldier upon completion of his/her period of enlistment or period for which called or ordered to active duty (AD) or active duty training (ADT) or where required under specific reasons for separation, unless an entry-level status separation (uncharacterized) is warranted.

c. Paragraph 5-11 states Soldiers who were not medically qualified under procurement medical fitness standards when accepted for enlistment or who became medically disqualified under these standards prior to entrance on active duty, active duty training, or initial entry training will be separated. A medical proceeding, regardless of the date completed, must establish that a medical condition was identified by appropriate medical authority within six months of the Soldier's initial entrance on active duty, that the condition would have permanently or temporarily disqualified the Soldier for entry into the military service had it been detected at that time, and that the medical condition does not disqualify the Soldier from retention in the service under the provisions of Army Regulation 40-501, chapter 3. The characterization of service for Soldiers separated under this provision will normally be honorable but will be uncharacterized if the Soldier is in an entry-level status.

d. Entry-level status is defined as, for Regular Army Soldiers, the first 180 days of continuous AD or the first 180 days of continuous AD following a break of more than 92 days of active military service.

3. AR 635-40 establishes the Army disability 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 or her office, grade, rank, or rating. It states there is no legal requirement in arriving at the rated degree of

incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. 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.

4. 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. 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 based on 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//