

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 March 2025

DOCKET NUMBER: AR20240005018

APPLICANT REQUESTS:

- in effect, correction of her discharge documents to reflect physical disability discharge
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) letter, 16 February 2024

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 changed her gender from male to female
- she is presently on the Temporary Disability Retired List (TDRL)
- she did not serve in the military under a different name [note to the Board: she did serve under a different name]
- she received a general discharge due to disability, other involuntary
- she received non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ)
- she was injured in the service and wants her injuries to be acknowledged as the main reason for exiting the military
- she wants her discharge corrected to restore her right the GI Bill and other benefits because she was treated poorly by her chain of command

3. A National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) shows:

- the applicant enlisted in the Army National Guard (ARNG) on 27 April 2006
- she was given a general discharge on 24 August 2008, under the provisions of National Guard Regulation 600-200 (Enlisted Personnel Management), paragraph 8-35j due to unsatisfactory participation
- her assignment loss code is CW (Continuous Willful Absence)
- she was credited with 2 years, 3 months, and 26 days of net service
- she was transferred to the U.S. Army Reserve (USAR) Control Group (Annual Training)

4. State of Connecticut, Office of the Adjutant General Orders 279-005, 5 October 2008 show:

- the applicant was discharged from the ARNG and assigned to the USAR Control Group (Annual Training) effective 24 August 2008
- her type of discharge is general
- her assignment/loss code is CW

5. The acronym "PUHLES" describes the following six physical factors used in the profiling system to classify medical readiness: "P" (Physical capacity or stamina), "U" (Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric). Physical profile ratings are permanent (P) or temporary (T). A service member's level of functioning under each factor is represented by the following numerical designations: 1 indicates a high-level of fitness, 2 indicates some activity limitations are warranted, 3 reflects significant limitations, and 4 reflects one or more medical conditions of such a severity that performance of military duties must be drastically limited.

6. A review of the U.S. Army Human Resources Command (AHRC) Soldier Management System (SMS) shows:

- the applicant's last physical was on 2 February 2008
- she was transferred from the USAR (Control Group) to a USAR Troop Program Unit based on voluntary request on 7 April 2009
- her PULHES was 111111 with no limitations in all factors
- her last profile was June 2009
- she passed her Army Physical Fitness Test (APFT) in June 2009
- she exceeded body fat standards
- she was involuntarily discharged from the USAR on 9 January 2011, due to unsatisfactory participation and her records were archived on that date

- her character of service was other than honorable

7. Headquarters, 99th Regional Support Command Orders 11-004-00021, 4 January 2011 show:

- the applicant was reduced in rank/grade from private first class (PFC)/E-3 to private (PV1)/E-1 effective 4 January 2011
- she was discharged from the USAR under other than honorable conditions on 9 January 2011, under the provisions of Army Regulation 135-178 (ARNG and Reserve Enlisted Administrative Separations), paragraph and assignment loss reason unlisted

8. The applicant's available service records do not show:

- she was issued a permanent physical profile rating
- she suffered from a medical condition, physical or mental, that affected her ability to perform the duties required by her Military Occupational Specialty (MOS) and/or grade or rendered her unfit for military service
- she was diagnosed with a medical condition that warranted her entry into the Army Physical Disability Evaluation System (PDES)
- she was diagnosed with a condition that failed retention standards and/or was unfitting

9. There is no evidence of record the applicant was ever placed on the TDRL or was discharged due to disability.

10. A VA letter, 16 February 2024, shows she receives a combined service-connected disability rating of 100 percent effective 1 December 2023.

11. The Army rates only conditions determined to be physically unfitting at the time of discharge, which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career. The VA does not have authority or responsibility for determining physical fitness for military service. The VA may compensate the individual for loss of civilian employability.

12. 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/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 in essence requesting a discharge upgrade of her discharge characterized as under other than honorable conditions and a referral to the Disability Evaluation System. She states:

“I was injured in service. My injuries need to be acknowledged as the main reason for exiting military service.”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. Orders published by the 99th Regional Support Command (RSC) show the applicant was reduced in grade from private first class to private on 9 January 2011 and discharged that same day under provisions provided in paragraph 10-15 of AR 600-8-19, Enlisted Promotions and Reductions (15 November 2005): Approved for discharge from service under other than honorable conditions.

d. Neither the applicant’s separation packet nor documentation addressing his reduction in rank or involuntary separation were submitted with the application or uploaded into iPERMS. SMS screenshots show she had no physical profile limitations and was separated for unsatisfactory participation.

e. No medical documentation was submitted with the application and there are on in-service documents from this period of service in the USAR. Thus, there is insufficient probative medical evidence the applicant had a 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 his discharge. Thus, there was no cause for referral to the Disability Evaluation System.

f. JLV shows the applicant was first service connected for bipolar disorder on 18 June 2020.

g. It is the opinion of the ARBA medical advisor that a referral to the DES is unwarranted.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes: Bipolar disorder

(2) Did the condition exist or experience occur during military service? Yes: The condition has been service connected by the VA

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes: As there is an association between Bipolar Disorder and erratic, unpredictable behavior, there is a nexus between his diagnosis of untreated Bipolar Disorder and his multiple periods of absence without leave which led to her separation for unsatisfactory participation.

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 and standard 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 opinion of the ARBA medical advisor that a referral to the DES should be unwarranted. Evidence shows the applicant was discharged from the Army National Guard and later the U.S. Army Reserve for unsatisfactory participation, with assignment/loss code CW (Continuous Willful Absence), and ultimately under other than honorable conditions following reduction in rank.

2. The Board noted the applicant's PULHES profile reflected no limitations, she passed her Army Physical Fitness Test, and there is no evidence she was ever issued a permanent physical profile, diagnosed with an unfitting medical condition, or referred into the Army Physical Disability Evaluation System (PDES). The Board determined the applicant was never placed on the TDRL. While the Department of Veterans Affairs has awarded her a 100 percent service-connected disability rating effective December 2023, VA ratings compensate for civilian employability and do not establish unfitness for military service at the time of separation. Based on the medical opinion and evidence in the record, the Board denied relief.

3. The Board considered the following Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes: Bipolar disorder

(2) Did the condition exist or experience occur during military service? Yes: The condition has been service connected by the VA

(3) Does the condition or experience actually excuse or mitigate the discharge?
 Yes: As there is an association between Bipolar Disorder and erratic, unpredictable behavior, there is a nexus between his diagnosis of untreated Bipolar Disorder and his multiple periods of absence without leave which led to her separation for unsatisfactory participation.

4. 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:

Mr 1	Mr 2	Mr 3	
:	:	:	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.

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. Title 10, U.S. Code, 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 DOD Directive 1332.18 (Discharge Review Board (DRB) Procedures and Standards) and Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation).

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in a Medical Evaluation Board (MEB); when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an Military Occupational Specialty (MOS) 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/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 or not 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 either are 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 one-time 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 a 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 a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

3. Army Regulation 635-40 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. Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in military service.

b. Soldiers who sustain or aggravate physically-unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

(1) The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

(2) The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

4. Army Regulation 40-501 provides information on medical fitness standards for induction, enlistment, appointment, retention, and related policies and procedures. Soldiers with conditions listed in chapter 3 who do not meet the required medical standards will be evaluated by an MEB and will be referred to a PEB as defined in Army Regulation 635-40 with the following caveats:

a. U.S. Army Reserve (USAR) or Army National Guard (ARNG) Soldiers not on active duty, whose medical condition was not incurred or aggravated during an active duty period, will be processed in accordance with chapter 9 and chapter 10 of this regulation.

b. Reserve Component Soldiers pending separation for In the Line of Duty injuries or illnesses will be processed in accordance with Army Regulation 40-400 (Patient Administration) and Army Regulation 635-40.

c. Normally, Reserve Component Soldiers who do not meet the fitness standards set by chapter 3 will be transferred to the Retired Reserve per Army Regulation 140–10 (USAR Assignments, Attachments, Details, and Transfers) or discharged from the Reserve Component per Army Regulation 135–175 (Separation of Officers), Army Regulation 135–178 (ARNG and Reserve Enlisted Administrative Separations), or other applicable Reserve Component regulation. They will be transferred to the Retired Reserve only if eligible and if they apply for it.

d. Reserve Component Soldiers who do not meet medical retention standards may request continuance in an active USAR status. In such cases, a medical impairment incurred in either military or civilian status will be acceptable; it need not have been incurred only in the line of duty. Reserve Component Soldiers with non-duty related medical conditions who are pending separation for not meeting the medical retention standards of chapter 3 may request referral to a PEB for a determination of fitness in accordance with paragraph 9–12.

5. Title 10, U.S. Code, 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, U.S. Code, 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. National Guard Regulation 600-200 (Enlisted Personnel Management) prescribes the criteria, policies, processes, procedures and responsibilities to classify, assign utilize, transfer within and between States, provides special duty assignment pay, separate and appoint to and from Command Sergeant Major ARNG and Army National Guard of the United States enlisted Soldiers. Paragraph 8-35j provides for the discharge of Soldiers for unsatisfactory participation.

7. Title 38, U.S. Code, section 1110 (General – Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

8. Title 38, U.S. Code, section 1131 (Peacetime Disability Compensation – Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was

discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

9. 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.

10. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. Paragraph 2-11 states applicants do not have a right to a formal hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//