

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 February 2025

DOCKET NUMBER: AR20240005183

APPLICANT REQUESTS: in effect, correction of her record to show she was discharged due to a disability.

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

- DD Form 149, Application for Correction of Military Record
- Medical Records

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, in effect, that she had an undiagnosed mental health condition at the time of her discharge.
3. On 30 November 2010, the applicant enlisted in the U.S. Army Reserve for a period of six years.
4. She completed a period of active duty from 5 April 2011 to 29 October 2011. Her DD Form 214 shows in:
 - Item 23, Type of Separation – Release from Active Duty Training
 - Item 24, Character of Service – Honorable
 - Item 25, Separation Authority – Army Regulation 635-200, Personnel Separations-Active Duty Enlisted Administrative Separations, chapter 4
 - Item 28, Narrative Reason for Separation – Completion of Required Active Service
5. On 4 December 2018, the applicant was discharged from the U.S. Army Reserve.
6. The record is void of a line of duty determination for any injury or illness.

7. The applicant provides medical records which show:

a. On 28 September 2011, she sought emergency care. She reported feeling depressed and having suicidal ideations after she broke up with her boyfriend. She received psychiatric therapy for 30 minutes and the provider conducted a safety screening. The provider discussed ways of processing and normalizing thoughts and feelings and elaborated on realistic and appropriate coping skills. The applicant was returned to duty with a recommendation for buddy watch and to have the cadre dispense her medications.

b. The applicant has the following active behavioral health problems: panic disorder (2017), major depression (2017), mood disorder with depressive features (2017), and adjustment disorder with depressed mood (2016).

8. By regulation

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 service.

b. The mere presence of impairment does not of itself justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the member reasonably may be expected to perform because of his or her office, rank, grade, or rating.

9. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting correction of her record to show she was discharged due to a mental health condition. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) The applicant enlisted in the US Army Reserves on 20 November 2010; 2) On 4 December 2018, the applicant was discharged from the U.S. Army Reserves.

b. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) and hardcopy VA and military medical provided by the applicant were also examined.

c. The applicant is requesting a medical discharge for an "undiagnosed mental health condition" at the time of her discharge. The applicant engaged in behavioral

health services during her initial military training in 2011 for reported suicidal ideation related to a recent break up with her boyfriend. She was seen for two sessions, and she reported improvement with supportive counseling. She was not diagnosed with a mental health condition.

d. A review of JLV provided evidence the applicant began to engage with the VA in 2016. She completed a Compensation and Pension Evaluation for mental health conditions, but she was not diagnosed with a service-connected mental health condition. She did receive behavioral health treatment at the VA for symptoms of depression and anxiety related to criminal charges of child abuse and having her children removed from her custody. She was diagnosed with an Adjustment Disorder, and she was provided assistance with housing and employment. She attended individual and group therapy, and she was prescribed psychiatric medication. In 2017, the applicant did report some suicidal ideation, but there is insufficient evidence she was recommended for inpatient psychiatric treatment. In June 2017, the applicant was noted to say, she was transferred to IRR status due to her inability to pass her APFT due to a leg injury. The applicant was diagnosed again with an Adjustment Disorder. Later in 2017, the applicant was diagnosed with Panic Disorder and Major Depression. However, there is insufficient evidence the applicant was diagnosed with a mental health condition that did not medical retention standards while on active service, attended six months of consistent behavioral health treatment without improvement while on active service, required inpatient psychiatric hospital treatment, or was ever placed on a psychiatric permeant profile while on active service. In addition, the applicant has not been diagnosed with a service-connected mental health condition by the VA, and she does not receive any service-connected disability for a mental health condition at this time.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that the applicant was diagnosed with mental health conditions while on active service. However, there is insufficient evidence the applicant was diagnosed with a mental health condition that did not medical retention standards while on active service, attended six months of consistent behavioral health treatment without improvement while on active service, required inpatient psychiatric hospital treatment, or was ever placed on a psychiatric permeant profile while on active service. Therefore, there is insufficient evidence the applicant's case warrants a referral to DES from a behavioral health perspective, at this time.

BOARD DISCUSSION:

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 that the applicant was diagnosed with mental health conditions while on active service. However, there is insufficient evidence the applicant was diagnosed with a mental health condition that did not medical retention standards while on active service, attended six months of consistent behavioral health treatment without improvement while on active service, required inpatient psychiatric hospital treatment, or was ever placed on a psychiatric permeant profile while on active service. The Board concluded a referral to the Disability Evaluation System is not warranted and denied relief.

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

Signed by:

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. AR 635-40, Personnel Separations-Physical Evaluation for Retention, Retirement, or Separation, establishes the Physical Disability Evaluation System (PDES) and sets forth the 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 that after establishing the fact that a Soldier is unfit because of a physical disability, and that the Soldier is entitled to benefits, the Physical Evaluation Board must decide the percentage rating for each unfitting disability. The Veterans Affairs Schedule of Rating Disabilities (VASRD), as modified in the regulation, is used to establish this rating. This regulation further states:

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 service.

b. The mere presence of impairment does not of itself justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the member reasonably may be expected to perform because of his or her office, rank, grade, or rating.

c. Rating disabilities which are neither unfitting nor contribute to the physical unfitness of a Soldier is prohibited.

d. A condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting, or ratable condition, is one which renders the Soldier unable to perform the duties of their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty.

e. 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.

f. Permits for permanent retirement when the disability is rated at 30 percent or more under VASRD, or the Soldier has at least 20 years of active Federal service.

3. Title 38, U.S. Code, section 1110, General - Basic Entitlement: 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 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.

4. Title 38, U.S. Code, section 1131, Peacetime Disability Compensation - Basic Entitlement: 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.

5. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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, Boards 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.

6. 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.

7. AR 15-185, Board, Commissions, and Committees-Army Board for Correction of Military Records, prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The ABCMR will decide cases on the evidence of record. It is not an investigative body. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

//NOTHING FOLLOWS//