

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 January 2025

DOCKET NUMBER: AR20240005697

APPLICANT REQUESTS: change to the narrative reason for separation to reflect "disability."

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

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

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, she was released after completing at least 90 days in basic training, during which she developed asthma due to being in barracks that had just been painted. This exposure resulted in her asthma condition while she was in training, as documented in her military medical file. She was not medically boarded because the drill sergeant at the time took her to administration and arranged for her to receive an airplane ticket home. He advised her to leave out the back door of the barracks when she received the ticket from him. Additionally, she experienced sexual harassment twice while in the showers during basic training.

3. The applicant provides

a. VA letter, dated 13 March 2024, which certifies the applicant is receiving service-connected disability compensation. It also shows that her combined evaluation is 20 percent, with an effective date of 1 December 2023.

b. VA Summary of Benefits letter, dated 13 March 2024, outlines the applicant's military service, her combined service-connected evaluation of 20 percent, the currently monthly award amount of \$338.49, and the effective date of 1 December 2023.

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

a. She enlisted in the Georgia Army National Guard on 2 October 2008.

b. 3rd Chemical Brigade memorandum, dated January 2009 [sic], Subject: Sexual Assault Identification, alerts the Fort Leonard Wood Transition Office that he is the initiating commander of an administrative action against the applicant. Further certifying that the applicant was not a victim of sexual assault for which an unrestricted report was filed within the past 24 months and that the applicant does not believe that this separation action is a direct or indirect result of the sexual assault itself or of filing the unrestricted report, if the above is true.

c. DA Form 4707 (Entrance Physical Standards Board (EPSBD) Proceedings), reflect the following:

(1) On 12 January 2009, a physical examination was conducted by a Physician, who noted the following: "blood pressure 136/94, heart rate 95, saturation 100% on room air, respirations 16, temperature 97, no pain currently. Previous blood pressures had systolic readings between 84 and 97. Head is normocephalic, atraumatic. Eyes are PERRLA. EOMs are intact. Tympanic membranes are translucent. The oropharynx is clear. The neck is supple with no jugulovenous distention or thyromegaly. Lungs are clear to auscultation and percussion and are symmetric. Abdomen: Positive bowel sounds, soft, nontender. The heart is regular rate and rhythm. Genitourinary is deferred. Extremities showed symmetric strength and range of motion." Assessment: Asthma. A recommendation was made that the applicant be separated under AR 40-501, chapter 2-23d, asthma, including exercise-induced bronchospasm, is disqualifying for enlistment.

(2) On 15 January 2009, the Deputy Commander of Clinical Services approved the findings.

(3) On 21 January 2009, the applicant was informed of the medical findings. She indicated that she understood that legal advice of an attorney employed by the Army is available to her or that she may consult civilian counsel at her own expense. She also indicated that she understood that she may request to be discharged from the Army without delay or to request retention on active duty. The applicant concurred with the proceedings and requested to be discharged from the U.S. Army without delay.

(4) On 21 January 2009, the applicant's commander recommended the service member be discharged/separated.

(5) On 2 February 2009, the separation approving authority directed the service member be discharged/separated from the Army.

d. DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 9 February 2009, under the provisions of AR 635-200 (Active Duty Enlisted Administrative Separations), paragraph 5-11, failed medical/physical/procurement standards, separation code JFW, reentry code 3, and a character of service of uncharacterized. She served 2 months and 28 days of net active service this period and 1 month and 4 days of total prior inactive service. She had lost time from 27 December 2008 to 2 January 2009. Item 11 (Primary Specialty) reflects "None//Nothing Follows."

5. U.S. Army Criminal Investigation Command memorandum, dated 5 December 2024, Subject: Request for Redacted CID/MP reports pertaining to Military Sexual Trauma, states, "a search of the Army criminal file indexes, utilizing the information you provided revealed no Military Sexual Trauma (MST) investigation pertaining to the applicant. Be advised that records at this agency are Criminal Investigative and Military Police Reports and are indexed by personal identifiers such as names, social security numbers, dates and places of birth and other pertinent data to enable the positive identification of individuals."

6. 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.

7. 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.

8. 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.

9. 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.

10. 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 referral to the disability Evaluation System (DES). She states:

“I was released after doing at least 90 days in basic, where I developed asthma due {to} the fact I was in barracks that we had just painted and staying in for basic training in which caused me to have asthma while in training. This is stated in my military medical file.

I was also sexual harassed twice while in the showers during basic training.”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. The applicant’s DD 214 for the period of service under consideration shows the former Guard Soldier entered the regular Army for basic combat training (BCT) on 6 November 2008 and was discharged on 9 February 2009 under provisions provided by paragraph 5-11 of AR 635-200, Active Duty Enlisted Administrative Separations (6 June 2005): Separation of personnel who did not meet procurement medical fitness standards.

d. Paragraph 5-11a and 5-11b of AR 635-200:

“a. 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 entry on AD [active duty] or ADT [active duty for training] for initial entry training, may be separated. Such conditions must be discovered during the first 6 months of AD. Such findings will result in an entrance physical standards board [EPSBD]. This board, which must be convened within the soldier’s first 6 months of AD, takes the place of the notification procedure (para 2–2) required for separation under this chapter.

b. Medical proceedings, regardless of the date completed, must establish that a medical condition was identified by an appropriate military medical authority within 6 months of the soldier’s initial entrance on AD for RA or during ADT for initial entry training for ARNGUS and USAR that—

(1) Would have permanently or temporarily disqualified the soldier for entry into the military service or entry on AD or ADT for initial entry training had it been detected at that time.

(2) Does not disqualify the soldier for retention in the military service per AR 40–501 [Standards of Medical Fitness], chapter 3. As an exception, soldiers with existed prior to service (EPTS) conditions of pregnancy or HIV infection (AR 600–110) will be separated.”

e. The EMR shows she was first seen for shortness of breath (dyspnea) on 21 November 2008: “Dyspnea while jogging or running within 2 minutes of running, resolves within 15 minutes of stopping.” She was placed on an albuterol inhaler and referred to pulmonology for evaluation. She was again seen for dyspnea on 4 December 2008 and again 8 December 2008. At the 8 December visit, the provider felt the applicant had exercise induced asthma (EIA) and that if it continued not to improve, she would be referred for separation:

“Difficulty breathing (dyspnea): Patient with likely EIA though aspect of deconditioning. No bronchodilator response on PFT [pulmonary function tests] but has mixed obstructive appearance with FEV/FVC <90% at 83% and FEV1>90% at 82%.

Description of ED [emergency department] visit sounds more consistent with hyperventilation/panic attack. However, steroids were started. Will have patient go on trial of controller medications and return after exodus- If not improved will initiate separation based on MEDCOM guidelines from 2006 on EPTS Asthma.”

f. The applicant’s condition failed to improve and she was referred to an Entry Physical Standards Board (EPSBD) for pre-existing asthma under provisions provided in paragraph 5-11 of AR 635-200.

g. EPSBDs are convened IAW paragraph 7-12 of AR 40-400, Patient Administration. This process is for enlisted Soldiers who within their first 6 months of active service are found to have a preexisting condition which does not meet the enlistment standard in chapter 2 of AR 40-501, Standards of Medical Fitness, but does meet the chapter 3 retention standard of the same regulation. The fourth criterion for this process is that the preexisting condition was not permanently service aggravated.

h. From her 12 January 2009 Entry Physical Standards Board (EPSBD) Proceedings (DA Form 4707):

“CHIEF COMPLAINT: Shortness of breath.

HISTORY OF PRESENT ILLNESS: This is a 34-year-old African American Soldier in training with onset of shortness of breath with exertion since arrival at Initial Entry

Training. She notes that she had not done much exercise prior to coming in and had no known history of asthma before coming in. Upon arrival, she noted wheezing with exercise and wheezing, cough, and shortness of breath at night. She had been given Albuterol during her initial testing for asthma and felt there was not much improvement on it.

She had formal pulmonary function test (PFT) which showed a mixed obstructive pattern with an FEV/FVC of 83% and FEV1 at 82%. There was no significant change with bronchodilator, only 3% change.

The patient was placed on controller medication with Singulair and Advair over 4 weeks. She utilized these medications and notes she was not significantly improved. If anything, she feels more distressed on the medication with mild headaches and vision changes, most likely secondary to the Singulair.

The patient notes she has not yet passed a PT test, even with the assistance of medication ...

PHYSICAL EXAMINATION: ... Lungs are clear to auscultation and percussion and are symmetric.

ASSESSMENT: Asthma.

RECOMMENDATION: Separation under Army Regulation 40-501, chapter 2-23d, asthma, including exercise-induced bronchospasm, is disqualifying for enlistment.“

i. Paragraph 2-23d of AR 40-501 (14 December 2007) states that a cause for rejection to enlistment is:

“Asthma , including reactive airway disease, exercise-induced bronchospasm, or asthmatic bronchitis, reliably diagnosed and symptomatic after the 13th birthday, is disqualifying. Reliable diagnostic criteria may include any of the following elements: substantiated history of cough, wheeze, chest tightness, and/or dyspnea that persists or recurs over a prolonged period of time, generally more than 12 months.”

j. The board recommended she be discharged for this pre-existing condition which failed the induction medical standards in AR 40-501, had not been permanently aggravated by her brief period of service, and was not compatible with continued service. The applicant concurred with the board’s findings on 21 January 2009, selecting the option “I concur with these proceedings and request to be discharged from the US Army without delay.”

k. An uncharacterized discharge is given to individuals on active duty who separate prior to completing 180 days of military service, or when the discharge action was initiated prior to 180 days of service. For the reserve components, it also includes discharges prior to completing initial entry training (IET). There are two phases - Basic Combat Training (BCT) and Advanced Individual Training (AIT). Because the applicant did not complete BCT, she was in an entry level status at the time of his discharge and so received an uncharacterized discharge. This type of discharge does not attempt to characterize service as good or bad. Through no fault of her own, she simply had a medical condition which was, unfortunately, not within enlistment standards.

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

m. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Applicant claims military sexual harassment.

(2) Did the condition exist or experience occur during military service? Applicant claims military sexual harassment.

(3) Does the condition or experience actually excuse or mitigate the discharge? There was no probative evidence submitted, found in AHLTA or other electronic records, or in JLV (to include VA endorsement), for military sexual trauma (MST) or a behavioral health disorder of any kind. Under liberal consideration, however, the applicant's self-assertion of MST is sufficient to establish that MST occurred. As such, it is the recommendation of the ARBA medical advisor the applicant's discharge be upgraded to Honorable with a narrative reason code of Secretarial Authority.

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 medical review, the Board concurred with the advising opinion of the ARBA medical advisor a referral to the DES is unwarranted.

2. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Applicant claims military sexual harassment.

(2) Did the condition exist or experience occur during military service? Applicant claims military sexual harassment.

(3) Does the condition or experience actually excuse or mitigate the discharge? There was no probative evidence submitted, found in AHLTA or other electronic records, or in JLV (to include VA endorsement), for military sexual trauma (MST) or a behavioral health disorder of any kind. Under liberal consideration, however, the applicant's self-assertion of MST is sufficient to establish that MST occurred. As such, it is the recommendation of the ARBA medical advisor the applicant's discharge be upgraded to Honorable with a narrative reason code of Secretarial Authority.

3. The Board acknowledged the ARBA medical advisor's recommendation under liberal consideration to upgrade the applicant's character of service to honorable and amend her narrative reason to Secretarial Authority based on the applicant's self-assertion of Military Sexual Trauma (MST). The Board noted there was no probative evidence found in AHLTA, JLV, or VA records to substantiate MST or any behavioral health disorder, liberal consideration standards permit acceptance of the applicant's self-report as sufficient basis to establish that MST occurred. However, the Board notwithstanding the recommendation to upgrade, found the applicant's character of service uncharacterized," consistent with the applicant's failure to meet medical/physical procurement standards and short period of service (2 months and 28 days of net active duty). Furthermore, the 3rd Chemical Brigade memorandum dated January 2009 explicitly states that the applicant was not a victim of sexual assault for which an unrestricted report was filed, and that the separation was not a direct or indirect result of such an incident. The U.S. Army Criminal Investigation Command also confirmed that no MST investigation was found in their records.

4. Additionally, evidence in the record reflects the applicant was separated following Entrance Physical Standards Board (EPSBD) proceedings, which determined that she did not meet medical procurement standards due to asthma, including exercise-induced bronchospasm. The applicant's condition was identified during initial training and was disqualifying under AR 40-501, chapter 2-23d. The applicant concurred with the findings and requested discharge without delay. Based on the preponderance of evidence, the Board found no basis to support a change in the applicant's narrative reason for separation to disability. Therefore, relief is denied.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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, 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//