

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 February 2025

DOCKET NUMBER: AR20240006292

APPLICANT REQUESTS:

- upgrade of her entry level separation from uncharacterized to honorable
- disability separation retirement

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

- DD Form 149 (Application for Correction of Military Record), 11 April 2024
- Medical document, 29 August 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 needs to change her records to a medical discharge as she had scoliosis upon entry in the Army. She never did anything wrong to get discharged. She tried to do everything required of her, but her drill sergeant said she had a personality clash. Her drill sergeant said her recruiter should never have let her in due to her scoliosis and she could not do straight pushups.
3. The applicant provides a medical document showing she was diagnosed with scoliosis, unspecified scoliosis type on 14 September 2023.
4. A review of the applicant's service record shows:
  - a. On 18 March 1983, in connection with an enlistment, she underwent a medical examination and gave a report of medical history at the Military Entrance Processing Station, Los Angeles. The examining physician noted scoliosis under musculoskeletal, spine in the clinical evaluation portion of her medical exam. In the summary the examining physician noted scoliosis of the dorsal spine CL2. The applicant noted she

was in good health, she was not taking any form of medication, and she had no allergies.

b. On 18 March 1983, the examining physician requested she undergo an orthopedic exam. A Standard Form 513 (Consultation Sheet) shows she was scheduled for an exam on 19 March 1983. The consultation report shows scoliosis of the dorsal spine at level asymptomatic; good motion (of the) spine, reflexes (illegible) CL2.

c. On 25 May 1983, she enlisted in the Regular Army for 3 years, and on the same date she was transferred to Fort Jackson, SC.

d. On 4 June 1983, she was assigned to Company E, 9th Battalion, 2d Basic Training Brigade, Fort Jackson.

e. She was counseled:

- for poor duty performance on 6 June 1983, late to formations, failing to execute push-ups properly, and lack of motivation, and a recommendation for training at the Military Adjustment Unit (MAU)
- for inability to execute facing movements and not knowing rank insignia, not spending time wisely, on 7 June 1983
- for low training scores and poor reaction to commands, inattentiveness at formations on 10 June 1983
- for no motivation to improve on her physical training, not rendering the proper hand salute respect towards an officer, poor ratings on appearance, attentiveness, conduct, motivation, and training skills, on 16 June 1983
- on 16 June 1983 after being returned from MAU after 7 days with a recommendation that no further attempt be made to salvage or train her, with a recommendation that she be separated from service
- on 17 June 1983 for a recommendation of New Start training; she should be retrained

f. On 1 July 1983, her company commander notified her of his intention to recommend her separation under the provisions of Chapter 11, Army Regulation 635-200 (Personnel Separations – Enlisted Separations) under the Trainee Discharge Program and he notified him of his rights. The specific reasons for his proposed actions were lack of self-discipline, motivation, and attitude made her unsuitable for further military service. She had sufficient time for improvement since her last counseling session, but none had been noted. she understood that she had a right to consult with consulting counsel or obtain civilian counsel at her own expense; she had the right to obtain copies of documents that would be sent to the separation authority supporting the proposed separation; she had a right to request a separation physical; and she had a right to submit statements in her own behalf.

g. On the same date, she acknowledged notification of her company commander's proposal to recommend her separation and she elected her rights. She waived her right to consultation with counsel, she waived her right to submit statements in her own behalf, she waived her right to request a separation physical, and she requested copies of the documents being sent to the separation authority.

h. On 2 July 1983, her company commander recommended her discharge under the under the provisions of Army Regulation 635-200, Chapter 11 Trainee Discharge Program. He noted her substandard performance and inability to meet minimum standards based on lack of motivation, self-discipline, and negative attitude toward training. She continued to fail the most basic tasks even after extensive one on one training and appeared to not even attempt to correct her deficiencies. She was sent to MAU for 7 days and made no effort whatsoever to improve her performance.

i. On 11 July 1983, the intermediate commander recommended her separation.

j. On 12 July 1983, the separation authority approved her discharge under the provisions of Army Regulation 635-200, Chapter 11-trainee discharge program, waived her reassignment for rehabilitation purposes. Her character of service was uncharacterized.

k. On 22 July 1983, the applicant was discharged. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was separated under the provisions of Army Regulation 635-200, Chapter 11-3a, by reason of entry level status performance and conduct with her service characterized as entry level status (uncharacterized). She completed 1 month and 28 days of net active service and was not awarded a military occupational specialty.

5. There is no evidence indicating she applied to the Army Discharge Review Board for an upgrade of her discharge within that board's 15-year statute of limitations.

6. Soldiers are considered to be in an entry-level status when they are within their first 180 days of active-duty service. The evidence of record shows the applicant was in an entry-level status at the time of her separation. An uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It simply means the Soldier was not in the Army long enough for his or her character of service to be rated as honorable or otherwise.

#### 7. 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 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 to her uncharacterized conditions discharge to Characterization of Service of Honorable or medical discharge. She states:

“I need to change my records to honorable or medical discharge. I had scoliosis.”

c. Because of the period of Service under consideration, there are no encounters in AHLTA, JLV, and no documents in iPERMS, e-PEB or MEDCHART.

d. The applicant’s entrance report of medical examination dated 18 MAR 1983, block 38 checked abnormal for spine other musculoskeletal – “Scoliosis”.

e. Consultation report from Orthopedic dated 19 MAR 1983 documented that the applicant had scoliosis of the dorsal spine.

f. Based on the evidence above, the applicant had scoliosis diagnosis prior to entering the service.

g. Given the current available documentation, it is the opinion of the Agency Medical Advisor that an upgrade of her discharge is not warranted, and her current Uncharacterized discharge is proper and equitable.

#### 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. The Board reviewed and concurred with the medical advisor’s review finding her uncharacterized discharge proper and equitable based on the applicant having scoliosis prior to military service. 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:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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. Army Regulation 15-185 (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 applicant has the burden of proving an error or injustice by a preponderance of the evidence.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set 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.

a. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the soldier'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. Chapter 11 provides guidance for the separation of personnel because of unsatisfactory performance, or conduct (or both) while in an entry level status. Chapter 11-3a applies to Soldiers who were voluntarily enlisted in the Regular Army, Army National Guard, or U.S. Army Reserve are in an entry level status and, before the date of the initiation of separation actions, have completed no more than 180 days of creditable continuous active duty or initial active duty training; and have demonstrated they cannot or will not adapt socially or emotionally to military life.

4. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) establishes the Physical Disability Evaluation System (PDES) 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 their office, grade, rank, or rating. It provides that a Medical Evaluation Board (MEB) is convened to document a Soldier's medical status and duty limitations insofar as duty is affected by the Soldier's status. A decision is made as to the Soldier's medical qualifications for retention based on the criteria in Army Regulation 40-501. 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.

a. Paragraph 2-1 provides that 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 their office, rank, grade, or rating. The Army must find that a service member is physically unfit to reasonably perform their duties and assign an appropriate disability rating before they can be medically retired or separated.

b. Paragraph 2-2b(1) provides that when a member is being processed for separation for reasons other than physical disability (e.g., retirement, resignation, reduction in force, relief from active duty, administrative separation, discharge, etc.), his or her continued performance of duty (until he or she is referred to the PDES for evaluation for separation for reasons indicated above) creates a presumption that the member is fit for duty. Except for a member who was previously found unfit and retained in a limited assignment duty status in accordance with chapter 6 of this regulation, such a member should not be referred to the PDES unless their physical defects raise substantial doubt that they are fit to continue to perform the duties of their office, grade, rank, or rating.

c. Paragraph 2-2b(2) provides that when a member is being processed for separation for reasons other than physical disability, the presumption of fitness may be overcome if the evidence establishes that the member, in fact, was physically unable to adequately perform the duties of his or her office, grade, rank, or rating even though he or she was improperly retained in that office, grade, rank, or rating for a period of time and/or acute, grave illness or injury or other deterioration of physical condition that occurred immediately prior to or coincidentally with the member's separation for reasons other than physical disability rendered him or her unfit for further duty.

d. Paragraph 4-10 provides that MEBs are convened to document a Soldier's medical status and duty limitations insofar as duty is affected by the Soldier's status. A decision is made as to the Soldier's medical qualification for retention based on criteria in Army Regulation 40-501, chapter 3. If the MEB determines the Soldier does not meet retention standards, the board will recommend referral of the Soldier to a Physical Evaluation Board (PEB).

e. Paragraph 4-12 provides that each case is first considered by an informal PEB. Informal procedures reduce the overall time required to process a case through the disability evaluation system. An informal board must ensure that each case considered is complete and correct. All evidence in the case file must be closely examined and additional evidence obtained, if required.

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. Title 38, U.S. Code, Sections 1110 and 1131, permits the Veterans Affairs (VA) to award compensation for medical conditions incurred in or aggravated by active military service. The VA, however, is not empowered by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual may have a medical condition that is not considered medically unfitting for military service at the time of processing for separation, discharge, or retirement, but that same condition may be sufficient to qualify the individual for VA benefits based on an evaluation by that agency.

7. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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//