

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 March 2025

DOCKET NUMBER: AR20240006641

APPLICANT REQUESTS:

- in effect, honorable physical disability discharge, due to a condition incurred in or aggravated by service in lieu of uncharacterized physical disability discharge due to disability, existed prior to service (EPTS)
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)

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:

a. She is requesting correction to her discharge to reflect her discharge type as medical discharge instead of uncharacterized.

b. She was discharged for medical reasons based on a pre-existing right knee injury that the Army National Guard (ARNG) knew of and still allowed her to enlist. She completed Basic Combat Training (BCT) and graduated.

c. She believes her right knee injury was aggravated by service. She was then discharged for medical reasons. Also, her medical records from that time are incorrect, as they reflect her left knee. She respectfully requests her discharge characterization of service be changed.

3. A DD Form 2807-2 (Medical Prescreen of Medical History Report) dated 15 October 2009, shows the applicant indicated on the form that she had anterior cruciate ligament

(ACL) surgery on 7 April 2000, to repair a torn ACL on her right knee with no further complications or limitations.

4. The applicant enlisted in the ARNG on 30 October 2009.

5. The complete facts and circumstances surrounding her discharge are unknown, as her discharge packet is not in her available service records for review.

6. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows:

- she entered active duty on 4 January 2010
- was discharged on 3 May 2010, under the provisions of Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), chapter 5, due to disability, EPTS – Medical Board, with corresponding Separation Code KFN
- her service was uncharacterized
- she was not awarded a Military Occupational Specialty (MOS)
- she was credited with 4 months of net active service

7. The applicant's National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) shows:

- she was discharged on 4 May 2010, under the provisions of National Guard Regulation 600-200 (Enlisted Personnel Management), paragraph 6-36p
- her service was uncharacterized
- she was credited with 6 months and 5 days of net service this period

8. Department of Crime Control and Public Safety Orders 133-830, 13 May 2010, discharged the applicant from the ARNG under the provisions of National Guard Regulation 600-200, effective 4 May 2010, with Assignment/Loss Code TK (Trainee Discharge Program Release from Initial Active Duty Training (IADT)).

9. An Army Review Boards Agency (ARBA) letter, 12 February 2025, shows the applicant was requested to provide any medical documents supporting her application, but she did not respond.

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 (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, in essence, a referral to the Disability Evaluation System. She states:

“I was discharged for medical reasons based on a preexisting right knee injury that the Army National Guard knew of and still allowed me to enlist. I completed basic training and graduated. I believe that my right knee injury was aggravated by service. I was then discharged for medical reasons.

Also, my medical records of that time are incorrect as they reflect my left knee. I respectfully request that my discharge character of service be changed.”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. Her DD 214 shows the former Army National Guard Soldier entered the regular Army on 4 January 2010 and received an uncharacterized discharge on 3 May 2010 under the provisions in Chapter 5 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (8 February 2006): Separation for Non-Service Aggravated, EPTS [existed prior to service] Conditions upon Soldier’s Waiver of PEB Evaluation. The military separation code KFN denotes “Disability, Existed Prior to Service, Med Board.”

d. Chapter 5 of AR 635-40 allows a Soldier to waive a physical evaluation board (PEB) for a medical condition which fails medical retention standards but would be non-compensable because it existed prior to service and was not permanently aggravated by service. A medical evaluation board (MEB) is completed to validate these criteria have been met and separation under chapter 5 is applicable. The Soldier is advised that a PEB evaluation is required for receipt of Army disability benefits, but waiver of the PEB will not prevent applying for VA benefits.

e. Noted on the applicant’s medical prescreening form in a right anterior cruciate ligament (ACL) repair on 7 April 2002. She stated she could do exercises every other day and play both tennis and basketball.

f. No medical documentation was submitted with the application.

g. At a follow-up visit (AHLTA) on 31 March 2010 for right knee pain, the applicant stated she now wanted out of the Army for degenerative joint disease which had existed

prior to service (EPTS). Radiographs revealed post-surgical changes of ACL reconstruction and moderate degenerative change.

h. She was evaluated by orthopedics on 9 April 2010. The provider wrote:

"This 39-year-old AIT [advanced individual training] student reports that she developed severe right anterior knee pain during the last 3 weeks of basic training while participating in a road march with all of her equipment on. Since that time, she has experienced severe pain, swelling and clicking in her knee.

Aggravating activities include running, jumping, walking long distance and a road march, kneeling, squatting, sitting and stairclimbing. Because of her pain level she is unable to accomplish all of a soldier tasks in order to graduate from AIT

Since she is having increased difficulty with common soldier tasks which are interfering with her ability to train and complete her AIT, I recommend an EPTS medical board.

i. Neither the applicant's separation packet nor additional information addressing her separation were in the supporting documentation nor uploaded into iPERMS.

j. The facts of the case show the applicant was appropriately discharged. An uncharacterized discharge is given to individuals who separate prior to completing 180 days of military service, or when the discharge action was initiated prior to 180 days of service. This type of discharge does not attempt to characterize service as good or bad.

k. It is the opinion of the Agency Medical Advisor that neither a referral of her case to the DES nor a discharge upgrade is warranted.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation and the findings and recommendations outlined in the medical review, the board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service and/or narrative reason for separation.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 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.

//SIGNED//

X

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 (DES) 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 (Physical 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 (MMRB); 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 their 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 their 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.

c. The percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Ratings are assigned from the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD). The fact that a Soldier has 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. 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.

d. Chapter 5 (Separation for Non-Service Aggravated, Existed Prior to Service (EPTS) Conditions upon Soldier's Waiver of Physical Evaluation Board (PEB) Evaluation), in effect at the time, provides for the separation of an enlisted Soldier for non-service aggravated EPTS conditions when the Soldier requests a waiver of PEB evaluation. Separation under this authority is not to be confused with separation under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) chapter 5, which provides for the involuntary separation within the first 6 months of entry onto active duty for failure to meet procurement fitness standards.

e. The criteria for chapter 5 separation show the case must meet the conditions set forth below:

(1) Soldier is eligible for referral into the disability system.

(2) The Soldier does not meet medical retention standards as determined by the MEB.

(3) The disqualifying defect or condition existed prior to entry on current period of duty and has not been aggravated by such duty.

(4) The Soldier is mentally competent.

(5) Knowledge of information about their medical condition would not be harmful to the Soldier's well-being.

(6) Further hospitalization or institutional care is not required.

(7) After being advised of the right to a full and fair hearing, the Soldier still desires to waive PEB action.

(8) Soldier has been advised that a PEB evaluation is required for receipt of Army disability benefits, but waiver of the PEB will not prevent applying for VA benefits.

f. Paragraph 5-3 (Actions by physical evaluation board liaison officer (PEBLO)) provides that the PEBLO will inform the Soldier of his/her rights and conditions as outlined above. If the Soldier declines the opportunity to apply for discharge, the PEBLO will notify the commander in writing. The notice will state that the Soldier has been fully informed of the provisions of this chapter and declined to apply for discharge. If the Soldier requests to apply for discharge, the PEBLO will assist the Soldier in preparing a Request for Discharge for Physical Disability.

g. Service of enlisted Soldiers discharged by reason of physical disability normally will be characterized as honorable or described as uncharacterized for those in entry level status. However, characterization of general under honorable conditions is authorized for Soldiers beyond entry level status whose service is satisfactory, but not sufficiently meritorious to warrant honorable characterization.

4. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, sets forth the basic authority for the separation of enlisted personnel. Section II (Terms) of the Glossary defines entry-level status for Regular Army Soldiers as the first 180 days of continuous active duty or the first 180 days of continuous active duty following a break of more than 92 days of active military service. For ARNG and USAR Soldiers, entry-level status begins upon enlistment in the ARNG or USAR. For Soldiers ordered to IADT for one continuous period, it terminates 180 days after beginning training. For Soldiers ordered to IADT for the split or alternate training option, it terminates 90 days after beginning Phase II of Advanced Individual Training.

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 6-36 (State ARNG Separation) lists reasons for separation from the State ARNG not listed in paragraph 6-35. Paragraph 6-36p provides for discharge as a result of discharge from the Reserve of the Army.

7. 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.

8. 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.

a. 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.

b. 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.

//NOTHING FOLLOWS//