

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 January 2025

DOCKET NUMBER: AR20240007499

APPLICANT REQUESTS:

- an honorable discharge in lieu of uncharacterized administrative discharge due to failed medical/physical procurement standards
- a video/telephonic 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) Benefit Information, 12 January 2024
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 19 March 2008

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 the VA has already reviewed her records and listed her discharge as honorable. She is rated 80 percent with rating of 100 percent individual unemployability total and permanently disabled. She was told her discharge was honorable. The applicant annotates post-traumatic stress disorder (PTSD) and other mental health as conditions/issues related to her request.
3. The applicant provides her VA benefit information, which shows her VA disability rating information at 80 percent combined service-connected evaluation and that she is paid at the 100 percent rate because she is unemployable due to her service-connected disability.
4. A review of the applicant's service record shows:

a. She enlisted in the U.S. Army Reserve on 20 September 2007. She entered active duty for initial entry training on 20 November 2007.

b. A DA Form 4707 (Entrance Physical Standards Board (EPSBD) Proceedings), dated 5 March 2008 and approved by the medical approving authority on the same date shows:

(1) The applicant was seen by the medical treatment facility at Fort Jackson, SC for a history of depression, anxiety, and attention deficit hyperactivity disorder (ADHD) and treatment with psychotropic medications. The applicant has a history of abuse and a family history of depression and anxiety. She has been in and out of counseling since her early twenties and was seen regularly until August 2007 when she decided to join the military. She has been treated with various psychotropic medications and stopped her Wellbutrin XL, Concerta, and Xanax in August 2007. She discontinued her medication in order to join the military. Records have been obtained confirming her psychiatric history. She was currently hospitalized for suicidal ideation.

(2) The subjective findings were listed as a 38 year old female who reports depressed mood, anxiety, poor sleep, decreased appetite, feelings of guilt, and feelings of hopelessness and worthlessness.

(3) The objective findings were listed as alert and oriented. She has good eye contact. Her speech was coherent and articulate. Her mood was "scared." Her affect was anxious and depressed. Her thought process was logical and goal directed. Her thought content was without SI or HI. She displays no evidence of psychosis. Her insight and judgement are fair.

(4) Her diagnosis was listed as depressive disorder and ADHD.

(5) The recommendation was that the applicant be separated from the U.S. Army for failure to meet medical procurement standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), Chapter 2-27a and d. Existed Prior to Service: Yes. Permanently Service Aggravated: No.

(6) The applicant, having been informed of the medical findings, concurred with the proceeding and requested to be discharged from the U.S. Army without delay. She authenticated the form with her signature on 11 March 2008.

(7) On 12 March 2008, the discharge authority approved the separation from the Army.

c. On 19 March 2008, the applicant was discharged with an uncharacterized discharge. Her DD Form 214 shows she was discharged under the provisions of Army

Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 5-11 for failed medical/physical procurement standards with separation code JFW and reentry code 3. She completed 4 months of active service.

5. 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.

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting to change her uncharacterized discharge to honorable. She contends that she experienced mental health conditions including PTSD, which are related to her request. 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 U.S. Army Reserve on 20 September 2007, and she entered active duty for initial training on 20 November 2007; 2) The applicant was recommended for separation from the U.S. Army for failure to meet medical procurement standards, and her conditions existed prior to service and were not aggravated by military service; 3) On 19 March 2008, the applicant was discharged by Chapter 5-11 for failed medical/physical procurement standards. Her service was determined to be uncharacterized. She completed 4 months of active service.

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

c. The applicant was hospitalized on 02 March 2008 following reports of suicidal ideation, depression, and anxiety. During this encounter, the applicant stated that she had continued psychiatric care and suicidal ideation prior to service. This was re-affirmed within the DA Form 4707 by the evaluating active-duty psychiatrist that pre-service mental health treatment records had been provided by her previous provider. Her final diagnosis shown on this form was depressive disorder NOS and attention deficit hyperactivity disorder (ADHD).

d. A review of JLV provided insufficient evidence the applicant has ever been diagnosed with any service-connected mental health condition. She had engaged in mental health treatment the month before her enlistment in the military and only discontinued treatment due to her desire to join the military. She has been connected with VA medical and mental health services since 11 December 2019. During her initial

VA mental health triage, she indicated historical PTSD, anxiety, and depression without further detail. She explicitly denied experiencing military sexual trauma (MST) during this encounter. Since that time, the applicant appeared to be consistently treated through the VA for housing, medical and mental health concerns including for PTSD through psychiatry and outpatient individual therapy. However, as recently as 21 Oct 2024 during a mental health encounter, her PTSD has not been explicitly connected to or appeared to be exacerbated by military service.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence at this time the applicant was experiencing a mental health condition or experience to warrant a change to her uncharacterized discharge status.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts mental health conditions including PTSD are related to her request to change her uncharacterized discharge. There is sufficient evidence the applicant was appropriately identified as experiencing mental health conditions prior to and during her active service. Specifically, the applicant had a history of depressive symptoms and ADHD. After her discharge she has been diagnosed with non-service-connected mental health conditions including PTSD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant reported previous diagnoses of depression, anxiety, and ADHD prior to her military service. Following her enlistment, she was treated and diagnosed with depression and ADHD.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is sufficient evidence the applicant was experiencing a mental health condition prior to her enlistment to active service. There is insufficient evidence the applicant's previously diagnosed mental health conditions were exasperated by her short military service. She was appropriately identified early in her military training as not meeting military procurement standards, and she was appropriately assessed and discharged accordingly. However, the applicant's contention a mental health condition mitigates her discharge status is sufficient for the board's consideration per Liberal Consideration.

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 regulatory guidance related to separations initiated within the first 180 days of military service and the following findings outlined in the medical review:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes

(2) Did the condition exist or experience occur during military service? Yes

(3) Does the condition or experience actually excuse or mitigate the misconduct? No

the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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**

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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. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets for the basic authority for the separation of enlisted personnel.

a. Paragraph 5-11 (Separation of personnel who did not meet procurement medical fitness standards), in effect at the time, shows 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 active duty or active duty training for initial entry training, may be separated. Such conditions must be discovered during the first 6 months of active duty. Such findings will result in an entrance physical standards board. This board, which must be convened within the Soldier's first 6 months of active duty, takes the place of the notification procedure required for separation.

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 of active duty for Regular Army or active duty training for Army National Guard of the United States and U.S. Army Reserve that:

(1) would have permanently or temporarily disqualified the Soldier for entry into the military service or entry on active duty or active duty training for initial entry training had it been detected at the time

(2) does not disqualify the Soldier for retention in the military service per Army Regulation 40-501, chapter 3. As an exception, Soldiers with existed prior to service conditions of pregnancy or HIV infection will be separated.

3. 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.

4. Army Regulation 635-40 (Standards of Medical Fitness) 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.

5. 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 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.

6. 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.

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. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised post-traumatic stress disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

9. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD, traumatic brain injury, sexual assault, or sexual harassment. Boards are to give liberal

consideration to Veterans petitioning for discharge relief when the application for relief is based, in whole or in part, on those conditions or experiences. The guidance further describes evidence sources and criteria and requires boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

10. 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.

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 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.

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.

//NOTHING FOLLOWS//