

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 March 2025

DOCKET NUMBER: AR20240009627

APPLICANT REQUESTS:

- Reconsideration of her request to change her narrative reason to a medical discharge
- A new request to change her separation date from 12 June 1999 to 17 February 2000
- A new request to change her separation code

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Department of Veterans Affairs letter, 3 May 2024, indicating she has a combined service-connected rating of 40 percent (%)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20120009927 on 17 January 2013.
2. The applicant states she served less than 20 years of active service but has a disability rating of 40 percent. She would like to buy back her military time for retirement and is unable to with an incorrect discharge date.
3. A review of the applicant's service record shows:
 - a. The applicant initially entered military service on 16 September 1998, with an expiration term of service of 15 September 2004 and a statutory military obligation date of 15 September 2006.

b. DA Form 2173 (Statement of Medical Examination and Duty Status), 29 June 1999, shows while on active duty for training in advanced individual training (AIT), on or about 12 May 1999, she developed a right leg stress fracture while performing physical training, and she was treated, diagnosed, and given a profile for stress fractures. The injury was considered to be in line of duty.

c. The complete facts and circumstances related to the applicant's discharge are not available for review; however, the DD Form 214 (Certificate of Release or Discharge from Active Duty), shows her department, component, and branch as Army/ARNG (Army National Guard); she served 7 months and 23 days net active service and 1 month and 4 days inactive service; she was honorably released from active duty (REFRAD) and transferred to her reserve ARNG; and awarded the military occupational specialty Administrative Specialist. It also shows:

- Item 12a (Date entered AD This Period): 20 October 1998
- Item 12b (Separation Date This Period): 12 June 1999
- Item 23 (Type of Separation): Release from Active Duty Training
- Item 25 (Separation Authority): AR 635-200 (Personnel Separations – Enlisted Personnel), Chapter 4
- Item 26 (Separation Code): MBK
- Narrative Reason: Completion of Required Active Service

4. In her previous request (AR20120009927) on 17 January 2023, after reviewing the application and all supporting documents, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned. The application submitted was denied by the ABCMR.

5. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

6. 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, the Army Aeromedical Resource Office (AERO), 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 the Board reconsider their prior denial of her request for a referral to the Disability Evaluation System (DES). She states:

“I would also like to have my Separation Code changed to medical retirement or separation. I served less than 20 years of active service but have disability rating of 40 percent.”

c. The Record of Proceedings for this and the prior case denial detail the applicant’s military service and the circumstances of the case.

d. This request was previously denied by the ABCMR on 17 January 2013 (AR20120009927). Rather than repeat their findings here, the board is referred to the record of proceedings from that case. This review will concentrate on the new evidence submitted by the applicant.

e. Her period of service predates the EMR and MEDCHART.

f. There are limited supporting documents for this case and those for the prior case were not found in ACTS.

g. Excerpts from the prior ROP:

“A DA form 2173 reportedly shows the applicant had a stress fracture apparently during advanced individual training. A DD 214 shows she completed this training and was awarded the military occupational specialty (MOS) 71L (Administrative Specialist).”

“The G-1, COARNG (Colorado Army National Guard), states she was discharged from the COARNG on 17 February 2000 by reason of being medically unfit for retention. The NGB Form 22 documenting this discharge is not available for review nor is the second DD Form 214 mentioned in the G-1, COARNG MFR. It appears her "medical discharge" is documented on the NGB Form 22.”

h. This was unlikely due to the stress fracture as she completed AIT. Given the onset of this condition was during training, the fact that she completed training, the nature of these injury, and the treatment thereof in a healthy individual, it would be expected to heal.

i. Neither the applicant's separation packet nor documentation addressing her separation was in the supporting documentation of iPERMS.

j. There is insufficient probative medical evidence the applicant had any duty incurred medical condition which failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System.

k. JLV shows she has been awarded VA service-connected disability ratings for bilateral lower leg conditions. There is no evidence these were incurred while the Army National Guard Soldier was in a qualifying military status, i.e., duty related.

l. The DES only compensates an individual for permanent service incurred medical condition(s) which have been determined to disqualify him or her from further military service and consequently prematurely ends their career. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

m. It is the opinion of the ARBA medical advisor a referral of her case to the DES is unwarranted.

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.

a. 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. Based on this, the Board determined the applicant's case did not warrant referral to the Integrated DES for consideration of a physical disability retirement

b. 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 evidence of record shows the applicant entered active duty for training on 20 October 1998 and was honorably released from active duty on 12 June 1999 for completion of required active service. The governing regulation shows separation code MBK is the correct separation code for completion of training.

Additionally, the applicant's records do not support a separation date of 17 February 2000, and she does not provide documentation to support this request. Therefore, the Board denied relief.

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:

1. The evidence presented does not demonstrate the existence of a probable error or injustice as it pertains to her request for a medical discharge. Therefore, the Board determined the overall merits of this case are insufficient as a basis for amendment of the ABCMR decision rendered in Docket Number AR20120009927 on 17 January 2013.
2. The evidence presented does not demonstrate the existence of a probable error or injustice as it pertains to her new requests to change her separation date from 12 June 1999 to 17 February 2000 and to change her separation code.

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 1556 (Ex Parte Communications Prohibited) 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 applicant's (and/or their counsel) prior to adjudication.
2. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.
 - a. Chapter 3, Section II provides the authorized types of characterization of service or description of separation.
 - b. An Honorable discharge is a separation with honor and 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.
 - c. Chapter 4, establishes the policies and procedures for separating a Soldier upon expiration of enlistment or fulfillment of service obligation. The periods of military service required of all Army Soldiers will be in accordance with applicable laws. Periods for which enlistment is authorized are in NGR 600-200, AR 140-111, and AR 601-210. Periods for which Soldiers are ordered to AD are prescribed by law. Personnel who are physically unfit for retention (AR 40-501), Chapter 3), but who were accepted for, or continued in military service per AR 635-40, will not be separated because of ETS unless processing for separation because of physical disability is waived. Soldier enlisted or ordered to AD normally will be discharged or released from AD on the date he/she completes the period for which enlisted or ordered to AD. Personnel released from AD and transferred to the USAR upon completion of the term of service for which ordered into active Federal service, or released to their Reserve Component upon completion of AD. These Soldiers will not be discharged until completion of their reserve obligation.

d. Paragraph 4-4, states, a Soldier being separated upon expiration of enlistment or fulfillment of service obligation will be awarded a character of service of honorable, unless the Soldier is in entry-level status and service is uncharacterized.

3. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "MBK" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 4, for completion of required active service, who are eligible to reenlist or with a DCSS in force and who are REFRAD on completion of enlistment and transferred to the Reserve Components to complete Military Service obligation.

4. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) establishes the Army Physical Disability Evaluation System according to the provisions of title 10, United States Code (USC), chapter 61, (10 USC 61) and Department of Defense Directive (DODD) 1332.18. It 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. If a Soldier is found unfit because of physical disability, this regulation provides for disposition of the Soldier according to applicable laws and regulations. The objectives of this regulation are to maintain an effective and fit military organization with maximum use of available manpower and provide benefits for eligible soldiers whose military service is terminated because of a service-connected disability; and provide prompt disability processing while ensuring that the rights and interests of the Government and the Soldier are protected. Chapter 4 addresses the Eligibility for Disability Evaluation, Initiation of Medical Evaluation, Physical Disability Evaluation, Review and Confirmation of Physical Evaluation Board Action, Medical Processing Related to Disability Evaluation, and Disposition Subsequent to Adjudication.

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.

5. 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 on the basis of 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. 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//