

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 April 2025

DOCKET NUMBER: AR20240009682

APPLICANT REQUESTS:

- correction of her records to show she was medically discharged due to physical disability
- 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)

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 was discharged due to a knee injury (stress fractures). Her discharge should have been under medical disability. She was young and did not understand fully what happened. She works for Veteran Services now and has more awareness. She was injured while in training, therefore, it should have been a medical discharge. She was maybe 19 years old, away from home for the first time, injured and afraid, so when she was allowed to go home, she was ecstatic. Not realizing that she would have a lifelong injury.
3. A review of the applicant's service record shows:
 - a. She enlisted in the U.S. Army Reserve on 17 December 1996.
 - b. Orders Number 245-004, issued by the Military Entrance Processing Station, Memphis, TN on 17 December 1996 ordered the applicant to initial active duty for training (IADT) at Fort Leonard Wood, MO, with a reporting date on 16 September 1997.

c. Orders Number 184-10, dated 17 September 1997, amended the applicant's reporting date from 16 September 1997 to 17 September 1997.

d. The applicant was counseled for the following:

- 24 November 1997 – lack of physical ability
- 25 November 1997 – recommended for entry level separation for lack of physical ability and basic rifle marksmanship failure:
 - failure of diagnostic Army Physical Fitness Test (APFT) – 27 September 1997
 - failure of phase I APFT – 12 October 1997
 - failure of phase II APFT – 1 November 1997
 - failure to meet final APFT standards – 14 November 1997
 - failure to meet final APFT standards – 17 November 1997
- 3 December 1997 – referred for entry level separation due to APFT failure, showing little improvement, and not motivated to be successful

e. On 5 December 1997, her commander notified her of his intent to separate her under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 11, entry level performance and conduct. The commander listed the following reasons for the proposed action: she failed to pass the APFT which was needed to become an effective Soldier in today's Army. She acknowledged receipt on 5 December 1997.

f. She was advised by consulting counsel of the basis for the contemplated action to separate her and its effects; of the rights available to her; and the effect of any action she took in waiving her rights.

g. Her commander recommended an uncharacterized, entry level separation.

h. On 9 December 1997, the separation authority approved the separation and directed she receive an uncharacterized, entry level discharge.

i. She was discharged on 11 December 1997. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was discharged under the provisions of AR 635-200, chapter 11, by reason of entry level performance and conduct, in the rank/grade of private/E-1. This form also shows in:

- Item 11 (Primary Specialty): none
- Item 12c (Net Active Service This Period): 2 months, 25 days
- Item 24 (Character of Service): Uncharacterized

j. The applicant was discharged from the U.S. Army Reserve on 8 December 1998 and her service was uncharacterized.

4. There is no indication the applicant applied to the Army Discharge Review Board for review of her discharge processing within that Board's 15-year statute of limitations.

5. The Board should consider the applicant's overall 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 Veterans Affairs (VA) electronic medical record (JLV), the electronic Physical Evaluation Board (PEB), 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 a discharge upgrade of her uncharacterized separation and a referral to the Disability Evaluation System (DES). She states:

"I was discharged due to a knee injury (stress fractures). My discharge should've been under medical disability."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD Form 214 for the period of Service under consideration shows she entered the Regular Army on 17 September 1997 and received an uncharacterized discharge on 11 December 1997 under provisions provided in chapter 11 of AR 635-200, Personnel Separations – Enlisted Personnel (26 June 1996), for falling below entry level performance and conduct standards.

d. No medical documentation was submitted with the application and there are no encounters in the EMR. JLV shows the applicant is not registered with the VA. During her period of service, the applicant received a series of negative counseling statements for APFT failures and lack of motivation.

e. Her company commander informed her on 5 December 1997 that he was initiating action to separate her under provisions in chapter 11 of AR 635:

“Reasons for my proposed action are: You have failed to pass the Army Physical Fitness test which is needed to become an effective soldier in today's Army.”

f. There is insufficient probative evidence the applicant had any duty incurred medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge. Additionally, there is no probative evidence a medical condition was the cause for or substantially contributed to her overall poor performance as a Soldier. Thus, there was no cause for referral to the Disability Evaluation System.

g. An uncharacterized discharge is given to individuals who are separated 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.

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

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 applicant's contentions, the military record, and regulatory guidance were carefully considered. 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 applicant did not complete training and was released from active duty due to entry level performance and conduct. The Board concurred with the medical advisor's review finding that neither an upgrade of her discharge nor a referral of her case to the DES is warranted

2. The applicant's request for a video/telephonic hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a video hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	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.

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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 (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. Chapter 11 provided guidance for the separation of personnel because of unsatisfactory performance, or conduct (or both) while in an entry level status. Chapter 11-3 applied to Soldiers who enlisted in the Regular Army, Army National Guard, or U.S. Army Reserve, and in an entry level status and, before the date of the initiation of separation actions, had completed no more than 180 days of creditable continuous active duty or initial active-duty training. The Soldier have demonstrated that they are not qualified for retention. The following conditions are illustrations of conduct and/or performance that disqualify Soldiers:

(1) Cannot or will not adapt socially or emotionally to military life.

(2) Cannot not meet the minimum standards prescribed for successful completion of training because of lack of aptitude, ability, motivation or self-discipline.

(3) Have demonstrated character or behavior characteristics not compatible with satisfactory continued service.

b. Paragraph 11-8 states service will be described as uncharacterized under the provisions of chapter 11.

c. Entry-level status is defined as: for Army National Guard and U.S. Army Reserve Soldiers, entry level status begins upon enlistment in the Army National Guard or U.S. Army Reserve. It terminates for Soldiers ordered to initial active duty training for one continuous period – 180 days after beginning training.

3. 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; TBI; sexual assault; sexual harassment. Boards were directed to give liberal consideration to

Veterans petitioning for discharge relief when the application for relief is based in whole or in part to 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 that misconduct which led to the discharge.

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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards 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.

5. Section 1556 of Title 10, United States Code, 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.

6. Army Regulation 15-185 (ABCMR) 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, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//