

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 June 2025

DOCKET NUMBER: AR20240011036

APPLICANT REQUESTS: honorable physical disability discharge in lieu of honorable administrative discharge under the Trainee Discharge Program

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 her discharge should have been an honorable medical discharge because of her broken feet in Basic Combat Training (BCT).
3. The applicant enlisted in the Regular Army on 10 March 1981.
4. On 9 April 1981, the applicant received a Letter of Reprimand from her immediate commander based on a security violation regarding the safety of lockers, personal, and Government items and identification on 8 April 1981.
5. DA Form 2627 (Record of Proceedings under Article 15 of the Uniform Code of Military Justice (UCMJ)) shows the applicant accepted nonjudicial punishment (NJP) under Article 15 of the UCMJ on 16 April 1981, for disobeying a lawful order to secure her personal property on 11 April 1981.
6. On 5 May 1981, the applicant received a second Letter of Reprimand from her immediate commander for failing to return from her pass at the time instructed on 3 May 1981.
7. Three Training and Doctrine Command (TRADOC) Forms 871-R (Trainee Discharge Program (TDP) Counseling) shows the applicant was counseled as follows by her company commander, her drill sergeant, and her first sergeant on 11 June 1981:

a. On 3, 5, and 8 June 1981, she was counseled for failing to meet the minimum standards in physical fitness.

b. On 9 June 1981, she was counseled for lack of motivation and for being a 3-time failure on her final Army Physical Fitness Test (APFT).

c. On 10 June 1981, she was counseled for being unable and unwilling to meet minimum physical fitness standards required for graduation from BCT. She had been recycled twice for her inability to perform with the expectation that she would be able to increase her body strength and pass the APFT with an acceptable score.

d. She was given various types of remedial physical training (PT) and in all sessions she made excuses why she couldn't perform. After taking the final APFT, the test evaluators commented that she just wasn't trying. Her discharge under the TDP was recommended, as all rehabilitative efforts would only be wasting personnel, time, and resources the Army couldn't afford to waste.

8. On 11 June 1981, the applicant was notified by her immediate commander of his initiation of action to separate her under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 5-33, under the TDP. The specific reasons for the proposed action were her inability to pass the PT test and her lack of motivation to become a productive Soldier. She was advised of her right to present statements in her own behalf and to request a separation physical if she felt her physical status had changed since her last examination.

9. On 11 June 1981, the applicant acknowledged notification of her proposed honorable separation from the Army under the provisions of Army Regulation 635-200, under the TDP. She indicated she desired to have counsel assist her in explaining the separation, she did not desire to make statements in her own behalf, and she did desire to have a separation physical.

10. The applicant's separation physical is not in her available records for review.

11. On 26 June 1981, the applicant's battalion commander recommended approval of her discharge under the provisions of Army Regulation 635-200, TDP.

12. On 29 June 1981, the approval authority directed the applicant's honorable discharge under the provisions of Army Regulation 635-200, paragraph 5-33, under the TDP.

13. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was honorably discharged on 1 July 1981, under the provisions of

Army Regulation 635-200, paragraph 5-33, due to marginal or non-productive performance, with corresponding Separation Code JET. She completed 3 months and 22 days of net active service.

14. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of a change to her uncharacterized discharge to medical disability.

b. 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:

- The applicant enlisted into the Regular Army on 10 March 1981.
- The applicant received a Letter of Reprimand from her immediate commander based on a security violation regarding the safety of lockers, personal, and Government items and identification on 8 April 1981.
- She received a second Letter of Reprimand from her immediate commander for failing to return from her pass at the time instructed on 3 May 1981.
- Three TRADOC forms shows the applicant was counseled by her company commander, her drill sergeant, and her first sergeant on 11 June 1981 for failing to meet the minimum standards in physical fitness and for lack of motivation.
- On 11 June 1981, the applicant was notified by her immediate commander of his initiation of action to separate her under the provisions of Army Regulation 635-200, paragraph 5-33, under the TDP. The specific reasons for the proposed action were her inability to pass the PT test and her lack of motivation to become a productive Soldier.
- The applicant was honorably discharged on 1 July 1981 and was credited with 3 months and 22 days of net active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts she should have had a medical discharge because of broken feet in basic training. The application was void of any mental health or medical records. There was insufficient evidence that the applicant was diagnosed with a psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which contains medical and mental health records for both DoD and VA, was reviewed and showed no history of mental health related treatment or diagnoses.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a

mental health condition or experience that warrants a medical discharge. There were no mental health records from her time in service or post-discharge.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? NA; request is for a medical discharge

(2) Did the condition exist or experience occur during military service? NA; request is for a medical discharge

(3) Does the condition or experience actually excuse or mitigate the discharge? NA; request is for a medical discharge

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 Board carefully considered the applicant's request, supporting documents, evidence in the records, the medical advisor's review and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, her misconduct, and the reason for separation. The applicant was separated for TDP with the commander citing her inability to pass the PT test and her lack of motivation to become a productive Soldier. The Board found no error or injustice in the separation proceedings under the regulation and subsequent characterization of service assigned at separation. Based upon the actions leading to the applicant's separation, the Board concurred with the medical review that her record was void of any mental health issues, and there was insufficient evidence that the applicant was diagnosed with a psychiatric condition while on active service. Therefore, the Board determined relief was not warranted.

2. Based upon the misconduct leading to the applicant's separation and the following recommendation found in the medical review related to the liberal consideration:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? NA; request is for a medical discharge

(2) Did the condition exist or experience occur during military service? NA; request is for a medical discharge

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 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.

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.

4. Army Regulation 635-200 (Personnel Separations Enlisted Personnel), sets forth the basic authority for the separation of enlisted personnel from the Army.

a. Paragraph 5-33 (Trainee Discharge Program), in effect at the time, shows the Trainee Discharge Program provided for the expeditious separation of service members who lacked the necessary motivation, discipline, ability, or aptitude to become productive Soldiers or who failed to respond to formal counseling.

b. For discharge under the Trainee Discharge Program, the service member must:

- have voluntarily enlisted
- be in basic, advanced individual, on-the-job, or service school training prior to award of a military occupational specialty
- have not completed more than 179 days of active duty on their current enlistment by the date of separation

c. Soldiers could be separated under this provision when they demonstrated that they:

- were not qualified for retention due to failure to adapt socially or emotionally to military life
- could not meet minimum standards prescribed for successful completion of training because of lack of aptitude, ability, motivation, or self-discipline,
- demonstrated character and behavior characteristics not compatible with satisfactory continued service

5. 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.

//NOTHING FOLLOWS//