

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 June 2025

DOCKET NUMBER: AR20240011557

APPLICANT REQUESTS: correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty) to show:

- she was medically retired
- upgrade of her under honorable conditions (general) character of service
- her last name from [REDACTED] to [REDACTED]

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

- DD Form 293 (Application for Review of Discharge from the Armed Forces of the United States), with self-authored statement
- Exhibit 1, DD Form 214, for the period ending 19 July 2013
- Exhibit 2, Judgement of Divorce, dated 26 November 2014
- Exhibit 3, Department of Veterans Affairs (VA), Rating Decision, dated 7 May 2014
- Exhibit 4, DA Form 3947 (Medical Evaluation Board (MEB) Proceedings), dated 19 March 2013
- Exhibit 5, DA Form 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)) and associated documents, dated 23 January 2013
- Exhibit 6, memorandum, Advice on Appeal..., dated 14 February 2013
- Exhibit 7, memorandum, Treatment Summary and Continuing Care Plan, dated 21 March 2013
- Exhibit 8, email, "MyBoardFile" Notification, dated 6 December 2012
- Exhibit 9, Title 10, U.S. Code (USC), Section 1177, dated 2021
- Exhibit 10, excerpt, Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), dated 28 June 2021

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, USC, 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 that [REDACTED] was her married name at the time of her discharge from military service. However, she went through a divorce and resumed the use of her maiden name, [REDACTED], effective 26 November 2014. She served two 12-month deployments and was found by the VA to be 100 percent (%) disabled with multiple service-connected conditions. Her medical conditions were well documented during her service. The MEB recommended she be medically discharged from service, which generally takes precedence over other administrative separations. She turned to cannabis use to escape the crushing weight of post-traumatic stress disorder (PTSD), anxiety, and debilitating pain. She was referred to the Army Substance Abuse Program (ASAP) about one month before her positive urinalysis.

3. A review of the applicant's service record shows:

a. She enlisted in the Regular Army on 23 September 2003. She served in Iraq from 5 October 2005 to 19 September 2006 and in Afghanistan from 15 July 2009 to 14 July 2010.

b. She was enrolled in ASAP on 14 December 2012

c. She received nonjudicial punishment on 23 January 2013, for wrongfully using marijuana, between on or about 1 November 2012 and 7 November 2012. Her punishment included reduction to Sergeant/E-5.

d. On or about 19 March 2013, the MEB found she had the following conditions which failed medical retention standards; Obstructive Sleep Apnea; Chronic pain and fatigue syndrome with Fibromyalgia; and delayed union of the first metatarsal of right foot. The board referred her to the Physical Evaluation Board.

e. On 26 March 2013, Trial Counsel, Office of the Staff Judge Advocate (SJA), reviewed the action to separate her from the Army and deemed the action legally sufficient.

f. On 27 March 2013, her commander notified her of his intent to separate her under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12c(2), by reason of misconduct-abuse of illegal drugs, with an under honorable conditions (general) character of service.

g. 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 effects of any action taken by her to waive her rights. Defense Counsel submitted a memorandum in her behalf, requesting she be allowed to complete the MEB prior to final action being taken by the separation authority.

h. A memorandum from ASAP shows she was compliant with the program and completed 90+ days of outpatient treatment.

i. On 12 April 2013, her commander formally recommended her separation, prior to her expiration term of service. The intermediate commander concurred with the recommendation.

j. In a memorandum, dated 18 April 2013, the SJA noted the applicant's MEB was not initiated until after she tested positive for marijuana. The SJA concurred with the recommended separation action.

k. On 18 April 2013, after carefully considering the proposed administrative separation and the findings of the MEB, the separation authority approved the recommended separation action and directed the issuance of an under honorable conditions (general) character of service.

l. Accordingly, she was discharged on 19 July 2013, with an under honorable conditions (general) character of service. She completed 9 years, 9 months, and 27 days of net active service this period.

4. The applicant provides a Judgement of Divorce, VA decision letter, copies of Army Service Records, and regulatory and statutory guidance.

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 applicant is applying to the ABCMR requesting a discharge upgrade to a medical discharge with eligibility for permanent medical retirement. Specifically, she contends mental health conditions including PTSD 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 Regular Army on 23 September 2003; 2) She deployed to Iraq from 05 October 2005 to 19 September 2006 and to Afghanistan from 15 July 2009 to 14 July 2010; 3) She received NJP on 23 January 2013 for using marijuana between 1 November 2012 and 7 November 2012; 4) On 18 April 2013, the SJA noted the applicant's MEB was not initiated until after she tested positive for marijuana and subsequently concurred with the command recommended separation action of the applicant; 5) Per a 18 April 2013 memorandum, the applicant's commanding general determined that the applicant's administrative separation was approved and the applicant's MEB would not proceed; 6) The applicant was discharged on 19 July 2013, Chapter 14-12c, misconduct-abuse of illegal drugs. Her character of service was under

honorable conditions (general). The applicant completed 9 years, 9 months, and 27 days of net active service this period.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the applicant's available military and medical service records. The VA's Joint Legacy Viewer (JLV) and hardcopy VA medical records provided by the applicant were also examined. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts she experienced mental health conditions including PTSD while on active service, which mitigate her misconduct and warrant a medical discharge. The applicant was initially connected to FAP on 30 March 2009 upon her report of spousal abuse by her then husband. However, no additional documentation was provided regarding follow-up FAP services. The applicant initially connected with the mental health clinic on 02 April 2009 due to symptoms related to her previous deployment to Iraq and was subsequently diagnosed with anxiety disorder NOS. She was then referred to Military One Source for additional mental health care. In addition, she continued with military psychiatric medication management for depression/adjustment disorder through her primary care provider(s). She returned to the mental health clinic for care on 20 April 2011 for excessive sleepiness and recommended for continued mental health care. She was again diagnosed with anxiety disorder NOS on 20 June 2011 by psychiatry. She engaged in ongoing psychiatric care through the mental health clinic until her discharge for diagnoses generalized anxiety disorder, depressive disorder NOS, and chronic pain disorder. The applicant was recommended to ASAP on 05 October for reported cannabis use and was medically referred for ASAP evaluation. The applicant did not voluntarily choose to attend an ASAP evaluation. Following a pending positive urinalysis for cannabis, on 07 November 2012, the applicant noted panicking and requested psychiatric hospitalization (for a brief, unknown period of time) due to suicidal ideation. The applicant was command referred to ASAP on 09 November 2012 as a result of this positive urinalysis and the applicant attended her ASAP intake on 16 November 2012. She was diagnosed initially with cannabis abuse on 14 December 2012 by ASAP and the diagnoses of opioid dependence and alcohol abuse were added as treatment progressed. The applicant was referred to the PEB for obstructive sleep apnea on 22 January 2013. The applicant was hospitalized again for suicidal and homicidal ideation on 25 February 2013 for approximately 2-3 days. Per her NARSUM completed on 18 March 2013, her mental health conditions met retention standards and did not significantly interfere with the applicant's duties, to which the applicant concurred on 22 March 2013. The medical evaluation board proceedings dated 19 March 2013, determined several physical conditions were incurred while in service and were subsequently compensable. Notably, the applicant's mental health conditions were also included and assessed during these proceedings and were found to meet military retention standards. A memorandum dated 21 March 2013 from ASAP showed that she was compliant with the program and

completed 90+ days of outpatient treatment. The applicant maintained a permanent medical profile (dated 26 March 2013) for physical conditions. However, her permanent profile did not include any mental health diagnoses. The applicant was formally discharged from ASAP on 19 August 2013. She engaged in her final psychiatric appointment as a part of her unit out-processing on 09 May 2013 with the final diagnosis of borderline personality disorder.

d. A review of JLV revealed that the applicant connected with the VA on 11 September 2013 primarily for physical difficulties. She began her connection with VA mental health on 25 September 2013 and was initially diagnosed with adjustment disorder. She continued her connection with VA mental health intermittently since that time, and her diagnoses evolved to cannabis abuse and personality disorder NOS to unspecified depressive disorder and PTSD. The applicant was diagnosed with PTSD due to her experiences while on active duty during her VA compensation and pension (C&P) evaluation on 16 February 2013. The applicant is currently 100% VA service-connected for various physical difficulties and includes a 70% VA service-connection for PTSD.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence to support the applicant had a mental health condition or experience that impacted the nature of her discharge. There is insufficient evidence that the applicant underwent greater than 6 months of consistent mental health treatment, nor was there sufficient evidence that the applicant was hospitalized 2 or more times prior to being evaluated for a medical board and prior to her misconduct. In addition, the applicant was not placed on a permanent psychiatric profile while on active service. The applicant's mental and physical health conditions were evaluated through the MEB process and determined that her mental health conditions met retention standards. Therefore, there is insufficient evidence that the applicant's case warrants a referral to IDES from a behavioral health perspective, at this time.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts she experienced mental health conditions including PTSD while on active service, which mitigates her misconduct. The applicant was diagnosed with anxiety disorder NOS following her two deployments and prior to her reported misconduct. In addition, she was diagnosed and treated by the VA for service-connected PTSD related to her active service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends she experienced mental health conditions including PTSD at the time of her active service that mitigate her misconduct. The applicant was diagnosed with anxiety disorder NOS following her two deployments and prior to her reported

misconduct. In addition, she was diagnosed and treated by the VA for service-connected PTSD related to her active service.

(3) Does the condition or experience actually excuse or mitigate the misconduct? Yes, there is sufficient evidence the applicant was experiencing mental health conditions including PTSD while on active service. The applicant engaged in avoidant behavior such as drug use that resulted in her discharge from active service. This behavior is a natural sequelae to the applicant's diagnosed mental health conditions including PTSD. Therefore, per Liberal Consideration, the applicant's misconduct is mitigatable. However, there is insufficient evidence that the applicant underwent greater than 6 months of consistent mental health treatment, nor was there sufficient evidence that the applicant was hospitalized for 2 or more times prior to being evaluated for a medical board and engaging in misconduct. In addition, the applicant was not placed on a permanent psychiatric profile while on active service. The applicant's mental and physical health conditions were previously evaluated through the MEB process and determined that her mental health conditions met retention standards. Therefore, there is insufficient evidence that the applicant's case warrants a referral to IDES from a behavioral health perspective, at this time.

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 partial relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation, the Board made the following findings and recommendations related to the requested relief:

- Medically retirement: DENY, based upon the available documentation and the findings of the medical review that there was insufficient evidence the applicant's cases warrants referral to DES for further evaluation.
- Upgrade characterization of service: GRANT. Based upon the available documentation, the misconduct leading to the applicant's separation and the mitigating evidence found within the medical review, the Board recommended upgrading the characterization of service to Honorable.
- Changelast name: GRANT. Based upon the provided court order showing the applicant changed her name going through a divorce, the Board recommended changing the last name reflected on the applicant's DD Form 214.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:XXX	:XXX	:XXX	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant a DD Form 214 showing:

- Change the last name reflected in Block 1 to show [REDACTED], vice [REDACTED]
- Characterization of Service: Honorable
- Separation Authority: No change
- Separation Code: No change
- Reentry Code: No change
- Narrative Reason for Separation: No change

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to upgrading the applicant's characterization of service.

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, U.S. Code (USC), 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 Army Board for Correction of Military Records (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. Section 1556 of Title 10, USC, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the ARBA be provided with a copy of any correspondence and 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, and reviews to ABCMR applicants prior to adjudication.

3. Title 10, USC, Section 1203 provides for the physical disability separation of a member who has less than 20 years of service and a disability rating at less than 30 percent (%).

4. Title 38, USC, Sections 1110 and 1131, permit the Department of Veterans Affairs (VA) to award compensation for disabilities which were incurred in or aggravated by active military service. However, an award of a VA rating does not establish an error or injustice on the part of the Army.

a. 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.

b. The VA does not have authority or responsibility for determining physical fitness for military service. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge, to compensate the individual for loss of civilian employability. As a result, the VA, operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform his duties. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

5. Army Regulation 40-501 (Standards of Medical Fitness) governs medical fitness standards for enlistment, induction, appointment (including officer procurement programs), retention, and separation (including retirement). Once a determination of

physical unfitness is made, the physical evaluation board (PEB) rates all disabilities using the Veterans Affairs Schedule for Rating Disabilities (VASRD).

a. Chapter 2 provides physical standards for enlistment, appointment, and induction with the purpose to ensure members medically qualified are medically capable of completing required to training, adapt to a military environment without geographical limitations, perform duties without aggravation of existing physical defects or medical conditions.

b. The standards in Chapter 2 are applicable to individuals who enlist in the Regular Army - for medical conditions or physical defects pre-dating original enlistment, standards are applicable for enlistee's first 6 months of active duty. It states that enlisted Soldiers identified within the first 6 months of active duty with a condition that existed prior to service that does not meet the physical standards may be separated following an evaluation by an Entrance Physical Standards Board, under the provisions of Army Regulation 635-200, Chapter 5.

6. Army Regulation 635-5 (Separation Documents), in effect at the time, prescribed the separation documents that were prepared for individuals upon retirement, discharge, or release from active military service or control of the Army. It established standardized policy for preparing and distributing DD Form 214. The purpose of the separation document is to provide the individual with documentary evidence of his or her military service at the time of release from active duty, retirement, or discharge. It is important that information entered on the form be complete and accurate, reflective of the conditions as they existed at the time of separation.

7. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) establishes the Army Disability Evaluation System (DES) 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. It states, in part, only the unfitting conditions or defects and those that contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability. The mere presence of impairment does not, in and of itself, justify a finding of unfitness because of physical disability.

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

a. Paragraph 1-33 (Disposition through medical channels) provides:

(1) Except in separation actions under chapter 10 and as provided in para 1-33b, disposition through medical channels takes precedence over administrative separation processing.

(2) When the medical treatment facility (MTF) commander or attending medical officer determines that a Soldier being processed for administrative separation under chapters 7, 14, or 15, does not meet the medical fitness standards for retention (see Army Regulation 40–501, chapter 3, he/she will refer the Soldier to a MEB in accordance with Army Regulation 40-400. The administrative separation proceedings will continue, but final action by the separation authority will not be taken, pending the results of MEB.

(a) If the MEB findings indicate that referral of the case to a PEB is warranted for disability processing under the provisions of Army Regulation 635–40, the MTF commander will furnish copies of the approved MEB proceedings to the Soldier's General Court-Martial Convening Authority (GCMCA) and unit commander. The GCMCA may direct, in writing, that the Soldier be processed through the physical disability system when action under the UCMJ has not been initiated, and one of the following has been determined:

- The Soldier's medical condition is the direct or substantial contributing cause of the conduct that led to the recommendation for administrative elimination
- Other circumstances of the individual case warrant disability processing instead of further processing for administrative separation.

(b) The authority of the GCMCA to determine whether a case is to be processed through medical disability channels or under administrative separation provisions will not be delegated.

a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member'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.

b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable

or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) 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. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. 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.

10. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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.

//NOTHING FOLLOWS//