

IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
No. 10-822C

(Filed: June 9, 2011)

(NOT TO BE PUBLISHED)

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SANDRA G. HALE, )  
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 Plaintiff, )  
 )  
 v. )  
 )  
 UNITED STATES, )  
 )  
 Defendant. )

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Sandra G. Hale, *pro se*, Spring, Texas.

Vincent D. Phillips, Trial Attorney, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, D.C., for defendant. With him on the brief were Tony West, Assistant Attorney General, Jeanne E. Davidson, Director, and Kirk T. Manhardt, Assistant Director, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, D.C. Of counsel was Captain Rachel A. Landsee, Litigation Attorney, United States Army Litigation Division, Arlington, Virginia.

ORDER

LETTOW, Judge.

Plaintiff, Sandra Hale, a former licensed practical nurse in the United States Army Reserve, seeks relief in this court in the form of back pay and disability benefits as well as corrections to her military record reflecting a promotion to Sergeant (E-5) and an honorable discharge. Ms. Hale previously brought her claims before an Army Review Board and the Army Board for Correction of Military Records (“the Board” or “ABCMR”). The Army Review Board reclassified her discharge, but the ABCMR otherwise denied her claims, precipitating the action filed by Ms. Hale in this court.<sup>1</sup>

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<sup>1</sup>Ms. Hale filed her complaint *pro se* and applied to proceed *in forma pauperis*. That application comported with statutory requirements and was granted on April 1, 2011.

In lieu of an answer or other response to plaintiff's complaint, the government filed a motion for voluntary remand on May 27, 2011.

## BACKGROUND<sup>2</sup>

Ms. Hale was an Army reservist who served on active duty between November 2006 and December 2007 in Afghanistan with the 160th MP Battalion as a combat medic. Compl. at 1. Prior to her one-year deployment in Afghanistan, Ms. Hale was sprayed with pepper spray during pre-deployment training and suffered a severe allergic reaction to the pepper spray that required hospitalization. *Id.* Ms. Hale alleges that she was diagnosed with reactive airway disease by a physician in the emergency room and was instructed not to serve in a capacity in which she would be exposed to pepper spray. *Id.* Ms. Hale claims that the Battalion was notified of her medical condition as an outgrowth of an investigation into the incident conducted by the Army. *Id.*

Ms. Hale contends that she was promoted to Sergeant (E-5) in December 2006 before being deployed to Afghanistan in January 2007, where she was assigned to work at a correctional facility. Compl. at 2. In Afghanistan, however, she appears to have served as a Specialist (E-4). During her time at the correctional facility, Ms. Hale was exposed to pepper spray on a number of occasions. *Id.* Ms. Hale requested to be transferred to work outside the correctional facility but no transfer was made, and she subsequently filed a complaint with the Inspector General on January 30, 2007. *Id.*

In April 2007, Ms. Hale claims that repeated exposure to pepper spray caused her thyroid to become inflamed and enlarged and to cease functioning properly. Compl. at 2. In leaving a flight line clinic, she lost consciousness, fell, and suffered traumatic brain and spinal injuries. *Id.* Ms. Hale contends that her battalion was notified of the incident but ordered her to return to duty. *Id.* After suffering additional pepper-spray exposures, Ms. Hale was eventually reassigned to a military hospital. *Id.* She indicates that her thyroid condition continued to worsen, to the point where she was evacuated to a medical center in Germany. *Id.* Upon her return to duty with the MP Battalion, she was returned to full duty despite a request by a military physician that she be evaluated by a medical separation board. *Id.* After a renewed cycle of evacuation for treatment at a military hospital in Germany and subsequent return to her unit in Afghanistan, she filed a fresh complaint against her command. Compl. at 3. At that juncture, her battalion ordered a separation board, which convened and recommended that she be discharged under other than honorable conditions. *Id.* In December 2007, Ms. Hale completed her tour in Afghanistan and returned to the United States. *Id.* She was discharged from active duty in accord with the separation board's recommendation but pursued administrative relief. On December 13, 2008, an Army Review Board revised her discharge to general. *Id.* Her petitions to the ABCMR were denied. *Id.*

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<sup>2</sup>This court does not have before it the administrative record of proceedings before an Army Review Board and the ABCMR. Ms. Hale, however, submitted as attachments to her complaint copies of certain records from her military file and several chronologies of events. Those materials, taken together with recitations in the government's motion, form the basis for the factual background that follows.

Effective December 1, 2008, Ms. Hale was awarded a ten percent disability rating by the Department of Veterans Affairs, which apparently excluded consideration of her physical conditions that arose as a result of her service in Afghanistan because of the nature of her discharge. Compl. at 3 and unnumbered attachment. She separately received a 100 percent disability rating by the Social Security Administration. Compl. at 3 and unnumbered attachment.

On November 29, 2010, Ms. Hale filed an action in this court seeking changes in her military record, claiming that a promotion to sergeant should have been confirmed and that she should be awarded back pay and reclassification of her discharge to honorable. Compl. at 3. Ms. Hale also seeks full medical disability benefits. *Id.*

## ANALYSIS

### A. *Jurisdiction*

The court has subject matter jurisdiction over Ms. Hale’s claims for back pay and medical disability payments. *See Verbeck v. United States*, 89 Fed. Cl. 47, 59-61 (2009) (upholding jurisdiction under the Tucker Act, 28 U.S.C. § 1491(a), and the Military Pay Act, 37 U.S.C. § 204, over claims for military pay and allowances, and under the Tucker Act and 10 U.S.C. § 1203 over claims for military disability separation pay).

The Tucker Act authorizes the court to “remand appropriate matters to any administrative or executive body or official with such direction as it may deem proper and just.” 28 U.S.C. § 1491(a)(2); *see also* Rule 52.2(a) of the Rules of the Court of Federal Claims (“RCFC”). Where a claim had been before a military board and the evidentiary record is inadequate or the military board’s decision failed to account for certain evidence when rendering its decision, the proper course of action is to remand to the agency for additional investigation or explanation, not to conduct a *de novo* proceeding. *See Albino v. United States*, 93 Fed. Cl. 405, 409 (2010) (“To the extent that evidence may not have been—or, in fact, was not—considered below by the ABCMR, the ‘proper course . . . is to remand to the agency for additional investigation or explanation.’”) (quoting *Florida Power & Light Co. v. Lorion*, 470 U.S. 729, 744 (1985)); *see also Riser v. United States*, 93 Fed. Cl. 212, 218 & n.5 (2010) (ruling to the same effect).

### B. *Motion to Remand*

In the motion before the court, the government represents that Ms. Hale has, in this court, indirectly raised procedural issues that were not previously considered by the ABCMR and which may affect the outcome of her claims. Def.’s Mot. for Remand at 2-3. As a consequence, the government requests that the court remand this case to the ABCMR to enable that entity to develop an expanded record, make new findings, and render a fresh adjudication of Ms. Hale’s claims. *Id.*

## CONCLUSION

The government’s motion for voluntary remand is GRANTED. Pursuant to RCFC 52.2(a), this case is remanded to the Army Board of Corrections for Military Records, for a period of six months. *See* RCFC 52.2(b)(1)(B). The Board shall determine (1) whether

Ms. Hale's Specialist (E-4) rank was proper, (2) whether Ms. Hale was appropriately processed in the military disability system while simultaneously undergoing administrative separation procedures, and (3) whether Ms. Hale was properly discharged in light of her service.<sup>3</sup> This case is stayed pending the results of the remand. *See* RCFC 52.2(b)(1)(C). The court requests that the government file status reports every 90 days regarding the progress of the remand. *See* 52.2(b)(1)(D).

It is so ORDERED.

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Charles F. Lettow  
Judge

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<sup>3</sup>Some of the difficulties the Board may have had in addressing Ms. Hale's various claims might have arisen from the disjointed and diffuse nature of Ms. Hale's numerous petitions presented to the Board. On remand, Ms. Hale is encouraged to develop, with the assistance of counsel if possible, a unified and comprehensive submission to the Board of the factual bases for her claims.