

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 July 2023

DOCKET NUMBER: AR20220009242

APPLICANT REQUESTS: Correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty) to show the narrative reason for her release from active duty (REFRAD) was "Hardship" instead of "Pregnancy."

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Letter from the National Personnel Records Center (NPRC)

FACTS:

1. The applicant did not file within the three-year time frame provided in Title 10, U.S. Code (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, in effect, she became pregnant while she was stationed in Germany and was not eligible to move off base because Soldiers had to hold the rank/grade of specialist/E-4 and she was only a private first class (PFC)/E-3. At the time, her father was also dying from cancer, so she requested to be separated due to hardship and her request was granted. She did not realize pregnancy would be shown as the main reason for her separation and believes the pregnancy stigma makes her Veteran status less than honorable.
3. The applicant enlisted in the Regular Army in the rank/grade of PFC/E-3 on 13 January 1988. Upon completion of initial entry training, she was assigned to a unit in Germany.

4. A DA Form 2496 (Disposition form) shows the applicant was counseled by her immediate commander regarding her pregnancy status. She was advised that it was her decision to either remain in the Army with the expectation of fulfilling the terms of her enlistment contract or be administratively separated due to pregnancy no later than 30 days prior to her expected date of delivery, or at the latest date her physician would authorize her to travel, whichever was earlier. She elected separation by reason of pregnancy, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 8.
5. A DA Form 4187 (Personnel Action), dated 7 March 1989, shows the applicant voluntarily requested to be separated under the provisions of Army Regulation 635-200, Chapter 8, effective 17 March 1989.
6. On 7 March 1989, the separation authority approved the applicant's request. He directed that she be REFRAD and transferred to the Individual Ready Reserve for completion of her statutory obligation.
7. Orders and her DD Form 214 show she was REFRAD on 29 March 1989 and transferred to U.S. Army Reserve (USAR) Control Group. Her service was characterized as honorable. She was separated from active duty under the provisions of Army Regulation 635-200, Chapter 8, by reason of pregnancy. She was credited with completing 1 year, 2 months, and 17 days of net active service.
8. Orders D-10-867762, issued by the USAR Personnel Command, Saint Louis, MO on 20 October 1998, show the applicant was honorably discharged from the USAR effective 20 October 1998.
9. The applicant's record is void of and she has not provided any evidence showing she requested to be separated from the Army due to any reason other than pregnancy.

#### BOARD DISCUSSION:

The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for consideration of requests for changes to separations. The Board considered the applicant's statement and the reason for her separation. The Board found no evidence indicating the applicant requested REFRAD for any other reason than pregnancy. Based on a preponderance of the evidence, the Board determined the reason for the applicant's separation is not in error or unjust.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.

 Revoked certificate

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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, USC, Section 1552(b), provides that applications for correction of military records must be filed within three 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 three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. 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. Paragraph 2-9 states the ABCMR begins its consideration of each case with the presumption of administrative regularity.

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 separation codes to be entered on the DD Form 214. It states that the separation code "KDF" is the appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, Chapter 8, by reason of pregnancy.

4. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. Chapter 8 establishes policy and procedures and provides authority for voluntary separation of enlisted women because of pregnancy. This chapter applies to all Active Army enlisted women, Army National Guard, and USAR enlisted women ordered to active duty. Enlisted women who are medically diagnosed as being pregnant may, after her unit commander has counseled her concerning her options, entitlements, and responsibilities, request separation under this chapter.

5. The Under Secretary of Defense for Personnel and Readiness issued guidance to Service Discharge Review Boards and Service Boards for Correction of Military/Naval Records (BCM/NR) on 25 July 2018 [Wilkie Memorandum], 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 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 grounds.

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, 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.

//NOTHING FOLLOWS//