

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]  
[REDACTED]

BOARD DATE: 12 December 2023

DOCKET NUMBER: AR20230005192

APPLICANT REQUESTS: in effect, to change her narrative reason for separation from "Pregnancy" to "Hardship."

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), ending on 7 March 1984
- Applicant's statement, 11 February 2023

FACTS:

1. The applicant did not file within the 3-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:

a. She requests her separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 8 (Separation of Enlisted Women - Pregnancy) be amended to "Hardship" as it is in current discharges. A hardship separation would allow her to qualify for a Department of Veterans Affairs (VA) loan.

b. She was instructed by a customer service person to request this form and request the change to be made as pregnancy is currently considered a hardship. She served during Iran Contra in Germany. She had been doing research for a long time on benefits. She has only been receiving health benefits for a few years as most have only looked at time served and not her first duty station.

c. She has been researching VA benefits when she was first released from active duty, and every VA administrator has explained to her that she was not entitled to any

benefits due to time served. A few years ago, she met someone at the American Legion who told her to check with the VA administration again because her first duty station was in Europe during the Iran Contra Conflict. In doing so, she discovered that she, in fact, was eligible for VA Health benefits. For this same reason, she has been trying to qualify for a VA home loan. Her latest attempt has led her to someone who told her to request the application for correction and ask for her "narrative reason for separation" to be changed to a hardship. That would allow her to qualify for a VA home loan.

d. She is disappointed that in all these years there has been quite a bit of wrong information and she could have qualified for benefits long before now. As she turns 62 this year, she would like to be able to purchase a home using the VA home loan program.

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

a. She enlisted in the Regular Army for 2 years on 23 August 1982.

b. On 12 January 1983, DA Form 2496-1 (Disposition Form) shows she affirmed that she had been counseled by her commander on the attached counseling checklist and understood her entitlements and responsibilities. The form also shows:

(1) She understood that if she elected discharge, she would be entitled to medical care at Government expense at a military medical treatment facility up to six months post-partum for the birth of her child and that she may remain on active duty until 30 days prior to the expected date of delivery or latest date her physician would authorize her to travel, whichever is earlier.

(2) She understood that should she remain on active duty she would be expected to fulfill the terms of her enlistment contract. If she elected to remain on active duty, she understood that she must remain available for unrestricted service on a worldwide basis when directed and that she would be afforded no special consideration in duty assignments or duty stations based on her status as a parent.

(3) The applicant elected discharge for reason of pregnancy under the provisions of Chapter 8, AR 635-200.

c. On 13 January 1984, the applicant underwent a pre-separation Chapter 8 physical and was cleared for separation action.

d. On 18 January 1984 –

(1) DA Form 3349 (Physical Profile Board Proceedings) shows she was issued a temporary physical profile (T-3) for intrauterine pregnancy with an estimated delivery date of 17 July 1984.

(2) A medical statement for redeployment to the Continental United States shows she was examined and found to be pregnant and medically cleared for travel.

e. On 2 February 1984, DA Form 4187 (Personnel Action) shows the applicant formally requested to be discharged under the provisions of Chapter 8 on or about 29 February 1984.

f. On 7 February 1984, the separation authority approved the applicant's voluntary request to be discharged under the provisions of Chapter 8, AR 635-200. The applicant's desired date of discharge was 29 February 1984.

g. On 7 March 1984, she was honorably released from active duty and transferred to the U.S. Army Reserve (USAR) Control Group (Annual Training). DD Form 214 shows she completed 1 year, 6 months, and 15 days net active service. It also shows in:

- item 25 (Separation Authority) – Chapter 8, AR 635-200
- item 26 (Separation Code) – MDF (Pregnancy)
- item 27 (Reenlistment Code) – RE-2 (Fully qualified for enlistment)
- item 28 (Narrative Reason for Separation) – Pregnancy

h. Orders Number D-08-062202 published by the USAR Personnel Center honorably discharged the applicant from the Ready Reserve, effective 22 August 1988.

4. The Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

#### BOARD DISCUSSION:

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 evidence shows the applicant served on active duty from 23 August 1982 to 7 March 1984. The applicant elected discharge due to pregnancy under the provisions of chapter 8, AR 635-200. She was counseled, understood her rights, underwent a pre-separation physical, and was issued a profile. On 2 February 1984, she submitted a DA Form 4187 wherein she formally requested to be discharged for pregnancy. A hardship exists in cases, not involving death or disability of a member of the Soldier's (or spouse's) immediate Family, that causes the Soldier's (or spouse's) immediate Family to rely upon

the Soldier for principal care or support, and such care or support cannot be provided while on active duty in the Army. The Board did not find evidence in the record or provided by the applicant that shows her discharge was in error or unjust or that it should be changed to a hardship.

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.

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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 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 (AR) 635-200 (Personnel Separations - Enlisted Personnel), in effect at the time, sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of enlisted members for a variety of reasons.

a. Chapter 8 (Separation of Enlisted Women - Pregnancy) establishes policy and procedures and provides authority for voluntary separation of enlisted women because of pregnancy.

b. If an enlisted woman is pregnant, she will be counseled by the unit commander using the Pregnancy Counseling Checklist. The unit commander will explain that the purpose of the counseling is to provide information concerning options, entitlements, and responsibilities and that she may –

(1) Upon request, be separated per this chapter. She may request a specific separation date. However, the separation authority and her military physician will determine the separation date. The date must not be later than 30 days before expected date of delivery, or the latest date her military physician will authorize her to travel to her Home of Record or Entry on Duty destination, whichever is earlier. The separation authority will approve the request according to this chapter.

(2) Remain on active duty.

3. AR 635-200 (Active Duty Enlisted Administrative Separations), currently in effect, prescribes policies and standards 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 8 (Separation for Pregnancy) establishes policy and procedures and provides authority for voluntary separation of Soldiers because of pregnancy. Section II (Pregnancy Counseling), paragraph 8-9 states, if an enlisted woman is pregnant, she will be counseled by the unit commander using the record of counseling to inform Soldier of the options, entitlements, and responsibilities in connection with a pregnancy. The unit commander will explain that the purpose of the counseling is to provide information concerning options, entitlements, and responsibilities and that the Soldier may —

(1) Upon request, be separated per this chapter. She may request a specific separation date; however, the separation authority, after consultation with her military physician, will determine the separation date. The date will be the earlier of: 30 days before the expected date of delivery; the latest date her military physician will authorize her to travel to her home of record or entry on duty destination; or the latest date that the Soldier is able to fly if stationed outside the continental United States. The

separation authority will approve the request in accordance with this chapter. If a Soldier requests separation within 30 days of the expected date of delivery, the Soldier's command will expeditiously process the separation request. Soldiers stationed outside the continental United States (excluding Alaska and Hawaii), who request separation within 30 days before the expected date of delivery may only be separated if medically authorized to travel to her home of record or entry on duty destination or the Soldier's home of record is there.

(2) Remain on active duty.

b. Chapter 6 (Separation Because of Dependency or Hardship) states that separation under this chapter is for the convenience of the Government. Paragraph 6-3 states, Soldiers may be discharged or released from active duty (REFRAD) because of genuine dependency or hardship (see paragraph 6-10). Discharge or REFRAD under this chapter should only be approved when the dependency or hardship can only be materially alleviated or eliminated by the discharge or REFRAD of the Soldier. Unless otherwise provided in this chapter, the burden is on the Soldier to prove the dependency or hardship and that discharge or REFRAD is in the best interest of the Soldier and the Army.

c. Paragraph 6-3b (Hardship) states, hardship exists in cases, not involving death or disability of a member of the Soldier's (or spouse's) immediate Family, that causes the Soldier's (or spouse's) immediate Family to rely upon the Soldier for principal care or support (see paragraph 6-5) for definition of Soldier's "immediate Family") and such care or support cannot be provided while on active duty in the Army.

4. AR 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It states that SPD code MDF is the appropriate code to assign to Soldiers voluntarily released or transferred from active duty under the provisions of AR 635-200, chapter 8, by reason of "Pregnancy."

//NOTHING FOLLOWS//