

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 March 2024

DOCKET NUMBER: AR20230005507

APPLICANT REQUESTS: correction of her uncharacterized discharge to honorable. Additionally, she requests an appearance before the Board via video/telephone.

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 (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 she was told her discharge would be eligible for an upgrade to honorable six months after separation; it has been about 22 years. This is not a new discovery. She has attempted to have this corrected and has been given conflicting information with filing for service-connected disability.
3. The applicant enlisted in the Regular Army on 4 February 1998, for three years. She did not complete training and was not awarded a military occupational specialty (MOS).
4. A Report of Investigation Line of Duty and Misconduct Status, shows the applicant tried to cut her wrist with a razor on 10 April 1998, she was found to be fit for duty. The suicide attempt was not in the line of duty due to own misconduct. "This was a second report, the overall issue appears to be her desire for discharge from military service."
5. A Report of Mental Status Evaluation, dated 10 April 1998, shows the applicant had the mental capacity to understand and participate in proceedings, and met retention standards. The first suicide attempt was on 23 March wherein she overdosed on prescription medication. Findings: Adjustment disorder. No evidence of psychiatric disease or defect that warrants disposition via medical channels and discharge was recommended for unsuitability.

6. The available record is void of a separation packet containing the specific facts and circumstances surrounding the applicant's discharge processing.
7. The applicant was discharged on 28 April 1998. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was discharged under the provisions of Army Regulation 635-200 (Personnel Separations-Enlisted Personnel), Chapter 11, for entry level status performance and conduct with Separation Code JGA and Reentry Code 3. Her service was uncharacterized. She completed 2 months and 25 days of net active service this period.
8. Soldiers are considered to be in an Entry Level Status when they are within their first 180 days of active-duty service. The evidence of record shows the applicant was in an Entry Level Status at the time of her separation processing.
9. The applicant petitioned the Army Discharge Review Board (ADRB) for upgrade of her discharge. On 31 May 2011, the ADRB determined the applicant was properly and equitable discharged and denied her request for upgrade of the character and/or reason of her discharge.
10. In reaching its determination, the Board can consider the applicant's petition and service record in accordance with the published equity, injustice, or clemency determination guidance.

#### BOARD DISCUSSION:

1. The applicant's contentions, the military record, and regulatory guidance were carefully considered. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted.
2. The applicant's request for a personal appearance hearing was carefully considered. However, in this case, the evidence of record and independent evidence provided by the applicant was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.
3. Soldiers are considered to be in an Entry Level Status when they are within their first 180 days of active-duty service. The evidence of record shows the applicant was in an Entry Level Status at the time of her separation processing. Her characterization of service is not an error nor an injustice. Her characterization of service is appropriate based on the circumstances surrounding her separation because she did not serve long enough to receive another characterization of service.

BOARD VOTE:

Mbr 1    Mbr 2    Mbr 3

:	:	:	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. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. Army Regulation 635-200, 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 Soldiers for a variety of reasons.

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 11 provides for the separation of personnel because of unsatisfactory performance or conduct (or both) while in an entry-level status. When separation of a Soldier in an entry-level status is warranted by unsatisfactory performance or minor disciplinary infractions (or both) as evidenced by inability, lack of reasonable effort, or failure to adapt to the military environment, he or she will normally be separated per this

chapter. Service will be uncharacterized for entry-level separation under the provisions of this chapter.

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