

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 January 2024

DOCKET NUMBER: AR20230006759

APPLICANT REQUESTS: correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 10 November 1992, to show her uncharacterized discharge as under honorable conditions (general). Additionally, she requests a personal appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 for the period ending 10 November 1992
- DD Form 215 (Correction to DD Form 214) for the period ending 10 November 1992
- National Guard Bureau (NGB) Form 22 (NGB – Report of Separation and Record of Service) for the period ending 10 November 1992
- NGB Form 23A (Army National Guard (ARNG) Current Annual Statement, dated 20 December 1992)

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 suffered from post-partum depression when she enlisted. She went through training three months after giving birth. She applied for Veterans rental assistance which was denied due to her uncharacterized service.
3. In the processing of this case, an Army Review Boards Agency (ARBA) staff member requested the applicant's official military personnel file (OMPF) from the National Archives and Records Administration (NARA) in St. Louis, Missouri. Her record could not be located. Despite the lack of an OMPF, the applicant provided a fully constituted DD Form 214 for the Board to conduct a fair and impartial review of her petition.

4. The applicant enlisted in the ARNG on 26 June 1991. She was ordered to active duty for the purpose of completing initial active duty for training on 7 July 1992.
5. The applicant was released from active duty and discharged from the Reserve of the Army on 10 November 1992 under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), paragraph 11-3a, by reason of entry level status, with separation code JGA and reentry code RE-3. Her DD Form 214 confirms her service was uncharacterized. She was credited with 4 months and 4 days of net active service this period. She was not awarded a military occupational specialty.
6. Subsequently, she was discharged from the ARNG or Wisconsin. Her NGB Form 22 shows she was credited with 1 year, 4 months, and 15 days of net service. Her service was uncharacterized.
7. The applicant provides a copy of her NGB Form 23A dated 20 December 1992 which shows she was credited with 4 months and 15 days of creditable service towards retirement.
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 credited with 4 months and 4 days of net active service. An uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It simply means the Soldier was not in the Army long enough for his or her character of service to be rated as honorable or otherwise.
9. On 28 August 2023, the ARBA, Case Management Division, sent the applicant a letter requesting a copy of medical documentation in support of her stated mental health condition. As of this date, no additional documentation has been received.
10. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.
11. MEDICAL REVIEW:
 - a. The applicant is applying to the ABCMR requesting a correction of her DD Form 214 to show her uncharacterized discharge as under honorable conditions (general). She contends she experienced mental health conditions that mitigated her discharge.
 - b. 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 ARNG on 26 June 1991. She was ordered to active duty for the purpose of completing initial active duty for training on 7 July 1992; 2) The applicant was released from active duty and discharged from the Reserve of the Army on 10 November 1992 under the provisions of Army Regulation 635-200 (Personnel

Separations - Enlisted Personnel), paragraph 11-3a, by reason of entry level status, with separation code JGA and reentry code RE-3. Her DD Form 214 confirms her service was uncharacterized.

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and available military service records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional civilian medical documentation was provided

d. The applicant contends she was experiencing post-partum depression during her active service, which mitigates her discharge. There is insufficient evidence the applicant reported or was diagnosed with a mental health while on active service, and her military service records are void of the specific events which resulted in her discharge. A review of JLV was void of any behavioral health documentation, and the applicant receives no service-connected disability for a behavioral health condition.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence to support the applicant was experiencing a mental health condition during her active service. In addition, there is insufficient information available surrounding the events of her discharge to render an opine in regard to potential mitigation as the results of a mental health condition.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? N/A. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence to support the applicant was experiencing a mental health condition during her active service. In addition, there is insufficient information available surrounding the events of her discharge to render an opine in regard to potential mitigation as the results of a mental health condition. However, the applicant contends she experienced a mental health condition that mitigated her discharge, and per Liberal Consideration her contention is sufficient for the board's consideration.

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition experience actually excuse or mitigate the discharge? N/A

BOARD DISCUSSION:

1. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record 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.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board determined that relief was not warranted. The Board carefully considered the applicant's contentions, the military record, and regulatory guidance. The Board noted the applicant's statement that she suffered from post-partum depression when she enlisted due having recently given birth. However, her military records are insufficient to determine if she received a diagnosis of a mental health condition while still serving and she did not provide any on her own behalf for consideration of her request by the Board. As she was in entry level status and had not received an MOS, in accordance with regulatory guidance she was discharged with a characterization of service as "uncharacterized." An uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It merely means the Soldier as not been in the Army long enough for her character of service to be rated as honorable or otherwise.

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 Board determined 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.



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. Section 1556 of Title 10, USC, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal 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 (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

3. 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.

a. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR has the discretion to hold a hearing; applicants do not have a right to appear personally before the Board. The Director or the ABCMR may grant formal hearings whenever justice requires.

4. Army Regulation 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge was a separation with honor. The honorable characterization was appropriate when the quality of the member's service generally had met the standards of acceptable conduct and performance of duty for Army personnel or was otherwise so meritorious that any other characterization would be clearly inappropriate.

b. A general discharge was a separation from the Army under honorable conditions. The regulation authorized separation authorities to issue a general discharge to Soldiers whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 3-9 (Uncharacterized Separations). Separation authorities were to describe a separation as entry-level, with service uncharacterized, if commanders-initiated separation processing while a Soldier was in entry-level status. The regulation additionally specified the Secretary of the Army, or designee, could grant a Soldier an honorable character of service, on a case-by-case basis, when clearly warranted by unusual circumstances involving personal conduct and performance of military duties.

(1) Effective 28 January 1982, the Department of Defense (DOD) established "entry-level status" in DOD Directive 1332.14 (Enlisted Administrative Separations).

(2) For active-duty service members, entry-level status began on the member's enlistment and continued until he/she had served 180 days of continuous active duty.

d. 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.

e. The character of service for Soldiers separated under this provision would normally be honorable but would be uncharacterized if the Soldier was in an entry-level status. An uncharacterized discharge is neither favorable nor unfavorable; in the case of Soldiers issued this characterization of service, an insufficient amount of time would have passed to evaluate the Soldier's conduct and performance.

5. 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 post-traumatic stress disorder; 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. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

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

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, BCM/NRs

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//