

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 December 2023

DOCKET NUMBER: AR20230006825

APPLICANT REQUESTS:

- an upgrade of her general, under honorable conditions discharge to honorable
- a personal 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)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 26 April 2000

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, 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 sprained her ankle during an Army Physical Fitness Test (APFT) in advanced individual training (AIT) and her ankle never fully recovered. She went to the hospital in Fort Jackson after the injury and she was given an ice pack and Motrin. She complained to her drill sergeant on several occasions about her ankle being in pain, but each time she was told that she had already been seen by medical once for the same issue. When she was unable to complete the run during the APFT, they asked her if she wanted to be discharged and she told them yes. Instead of being discharged from the military for a medical reason, she was discharged for unsatisfactory performance for not passing the APFT.
3. A review of the applicant's service record shows:
  - a. She enlisted in the Regular Army on 7 September 1999 beginning at grade/pay grade private first class/E-3.

b. On 3 April 2000, the applicant's immediate commander notified her of his intent to initiate separation action against her under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 13, paragraph 13-2, by reason of unsatisfactory performance, and he advised the applicant of her rights. The commander listed the following reason for the proposed action: failure to pass the APFT. He stated that the applicant failed to pass the APFT on more than two consecutive occasions and did not respond to counseling or remedial training.

c. On 3 April 2000, the applicant's immediate commander-initiated separation under the provisions of AR 635-200, chapter 13, paragraph 13-2.

d. A memorandum dated 7 April 2000 from the Office of the Staff Judge Advocate, U.S. Army Training Center, Fort Jackson, SC, shows the separation packet met the requirements set forth in AR 635-200 and there was no legal objection.

e. On 13 April 2000, the separation authority approved the discharge and directed the applicant be issued an under honorable conditions (general) discharge and not be transferred to the Individual Ready Reserve.

f. The applicant was discharged on 26 April 2000. Her DD Form 214 shows she was discharged under the provisions of AR 635-200, chapter 13, for unsatisfactory performance, in the rank/grade of private first class (PFC/E-3), and her service was characterized as under honorable conditions. She completed 7 months and 20 days of net active service during the covered period. She was not awarded a military occupational specialty and she was not awarded any medals or decorations.

4. The applicant's record does not contain the complete separation packet with the applicant's election of rights, or the record of counseling listed as an enclosure in the notification of separation.

5. The applicant's available records are void of any evidence of nonjudicial punishment or disciplinary actions taken against her while assigned to Company D, 369th Adjutant General Battalion.

6. The pertinent Army regulation in effect at the time provided discharges under the provision of AR 635-200, chapter 13, who are separated because of unsatisfactory performance will be characterized as honorable or under honorable conditions as warranted by their military record.

7. By regulation (AR 15-185), 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.

8. There is no evidence indicating she applied to the Army Discharge Review Board for an upgrade of her discharge within that board's 15-year statute of limitations.

9. In reaching its determination, the Board can consider the applicant's petition and her service record in accordance with the published equity, injustice, or clemency determination guidance.

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 found that relief was warranted. The Board carefully considered the applicant's contentions, the military record, and regulatory guidance. The Board noted that the applicant had successfully completed basic training and found it likely that she received an injury during advanced training. Her DD214 shows she complete seven months and 20 days and documentation does not reveal any misconduct. After due consideration of the request, the Board agreed there was sufficient evidence of an error or injustice to warrant a recommendation for relief.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

█	█	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant a DD214 showing:

- item 24 (Characterization of Service): Honorable
- item 25 (Separation Authority): Army Regulation 635-200
- item 26 (Separation Code): JFF
- item 27 (Reentry Code): No change
- item 28 (Narrative Reason for Separation): Secretarial Authority



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, U.S. Code, 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 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge is a separation with honor. 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.

a. A general discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 13 provided that commanders would separate a member for unsatisfactory performance when it is clearly established that:

(1) In the commander's judgment, the member will not develop sufficiently to participate satisfactorily in further training and/or become a satisfactory Soldier.

(2) The seriousness of the circumstances is such that the member's retention would have an adverse impact on military discipline, good order, and morale.

(3) It is likely that the member will be a disruptive influence in present or future duty assignments.

(4) It is likely that the circumstances forming the basis for initiation of separation proceedings will continue or recur.

(5) The ability of the Soldier to perform duties effectively in the future, including potential for advancement or leadership, is unlikely.

(6) Initiation of separation proceedings is required for soldiers without medical limitations who have two consecutive failures of the Army Physical Fitness Test per Army Regulation 350-41.

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. 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.

4. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of

Military/Naval Records regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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//