

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 March 2024

DOCKET NUMBER: AR20230007159

APPLICANT REQUESTS:

- correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 26 February 2021 to show her active duty entry date as 13 July 2020
- a disability severance pension
- a personal appearance hearing before the Board via video/telephone

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552), with a self-authored statement, 4 April 2023
- Attestation of Quarantine Completion, 13 July 2020
- Verified Computerized Adaptive Testing-Armed Services Vocational Aptitude Battery Test Score Report, 13 July 2020

FACTS:

1. The applicant states that after 9 weeks at Fort Jackson, SC, she was supposed to transfer to Fort Eustis, VA, for advanced individual training. She was sent on Christmas leave and she was supposed to transfer to Fort Eustis the day she returned. Instead, she was forced to be honorably discharged and was absent without leave on post.

a. She describes her interactions with other trainees, drill sergeants, and Soldiers. She contends she was repeatedly sexually harassed and attacked by black women and Latinos, including the 49 women living in the same barracks, because of a rumor they heard or just their immaturity. She also states three men attacked her at different times on base, twice in the barracks when she was sleeping and once at the graduation rehearsal. There was also an incident where she saw a male drill sergeant or senior enlisted Soldier masturbate in front of her and an entire training event just before she was held over at Fort Jackson.

b. She did not repeat boot camp, she just served her 6 months and left. Her enlisted time in service was from July 2020 to February 2021. She stayed at home in an unpaid status for 4 months.

c. Now as veteran combat enlisted Soldier, she would like her benefits package, disability pension, and severance pay because she had a contract. She enlisted and risked her life as a combat engineer and agent to Homeland Security.

2. The applicant provided copies of her Verified Computerized Adaptive Testing-Armed Services Vocational Aptitude Battery Test Score Report results and a coronavirus disease quarantine attestation form, both completed on 13 July 2020.

3. She enlisted in the U.S. Army Reserve under the Delayed Entry Program on 21 September 2020 for a period of 8 years beginning in pay grade E-4 with an obligation to enlist in the Regular Army for a period of 6 years not later than 3 November 2020.

4. She was discharged from the Delayed Entry Program and enlisted in the Regular Army on 3 November 2020. She entered basic training at Fort Jackson on 9 November 2020.

5. On 19 January 2021, her company commander notified her of his intent to initiate action to separate her from the service for misconduct – commission of a serious offense – under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12c. The commander cited his specific reasons for separation action as her numerous occasions of possessing an extreme view of fellow trainees of a different race or culture. Furthermore, she threatened other trainees when corrected on deficiencies and behavior not in line with Army expectations and exhibited flagrant disrespect toward drill sergeants. Soldiers must abide by shared values of respect and her actions showed she did not demonstrate this value toward other trainees. He recommended characterization of her service as uncharacterized.

6. On 19 January 2021, she consulted with counsel via telephone. She was advised of the basis for the proposed separation action, her available rights, and the effects of waiving those rights. She acknowledged receipt of the separation notice and elected to submit a statement in her own behalf. She also noted she had not filed an unrestricted report of sexual assault within 24 months of initiation of the separation action and did not believe this separation action was a direct or indirect result of the sexual assault itself or of the filing of the unrestricted report. Her records do not contain a statement in her behalf for review.

7. On 3 February 2021, her company commander formally recommended her separation for misconduct under the provisions of Army Regulation 635-200, paragraph

14-12c. The commander again noted the aforementioned reasons for his request and noted she displayed an inclination for disrespect toward senior noncommissioned officers and fellow trainees; she disregarded Army Equal Opportunity policies on multiple occasions and made racially motivated statements and other derogatory statements (see Company D, 2nd Battalion, 39th Infantry Regiment, 165th Infantry Brigade, memorandum (Commander's Report – Proposed Separation under Army Regulation 635-200, Chapter 14-12c, Commission of a Serious Offense, (Applicant)), 3 February 2021, for detailed account).

8. On 8 February 2021 consistent with the chain of command's recommendation, the separation authority approved the separation action and directed characterization of her service as uncharacterized. After reviewing the rehabilitative transfer requirement in accordance with Army Regulation 635-200, he determined the requirement did not apply to this action.

9. On 26 February 2021, she was discharged accordingly. Her DD Form 214 shows she was discharged under the provisions Army Regulation 635-200, paragraph 14-12c, by reason of misconduct – commission of a serious offense. She completed 3 months and 24 days of net active service (a total of 114 days). Her service under the Delayed Entry Program is shown as 21 September 2020 through 2 November 2020. She did not complete initial entry training and she was not awarded a military occupational specialty. Her service was uncharacterized.

10. Her records contain no evidence supporting her claims of sexual harassment or sexual assault.

11. Her records contain no evidence of a medical disability warranting her separation from active duty.

12. On 29 August 2023, the U.S. Army Criminal Investigation Command searched their criminal file indexes, which revealed no criminal investigative and/or military police reports pertaining to the applicant.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found relief is not warranted. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. The Board found the record clearly shows the applicant enlisted on 21 September 2020. While she may have undergone some pre-enlistment processing prior to that

date, the record confirms she was not under a contract to serve until 21 September 2020. The Board determined there is no basis for changing her entry date.

3. The Board found no evidence that would support a conclusion the applicant incurred a disabling condition during her brief period of active duty service that would have been a basis for her discharge due to disability. Based on a preponderance of the evidence, the Board determined the applicant’s discharge for misconduct with uncharacterized service was 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.

7/15/2024

X 

CHAIRPERSON



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. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the

Army acting through the Army Board for Correction of Military Records (ABCMR). The ABCMR considers individual applications that are properly brought before it. The ABCMR will decide cases on the evidence of record; it is not an investigative body. 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. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. 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.

2. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), 19 December 2016 and in effect at the time, set 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. Chapter 3 provided guidance and criteria as to the appropriate type of discharge and characterization of service.

(1) Paragraph 3-7a stated an honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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. Only the honorable characterization may be awarded a Soldier upon completion of his/her period of enlistment or period for which called or ordered to active duty or active duty for training, or where required under specific reasons for separation, unless an entry-level status separation (uncharacterized) is warranted.

(3) Paragraph 3-9a stated a separation will be described as entry-level, with service uncharacterized, if processing is initiated while a Soldier is in an entry-level status, except when:

(a) characterization under other than honorable conditions is authorized under the reason for separation and is warranted by the circumstances of the case;

(b) the Secretary of the Army, on a case-by-case basis, determines that a honorable characterization of service is clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty; or

(c) the Soldier has less than 181 days of continuous active military service, has completed initial entry training, has been awarded a military occupational specialty, and has reported for duty at a follow-on unit of assignment.

b. Chapter 14 established policy and prescribed procedures for separating personnel for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions was normally considered appropriate for a Soldier discharged under this chapter. If characterization of service under other than honorable conditions is not warranted for a Soldier in entry-level status, service will be described as uncharacterized.

c. The glossary defined entry-level status for Regular Army Soldiers as the first 180 days of continuous active duty or the first 180 days of continuous active duty following a break of more than 92 days of active military service.

3. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Service Boards for Correction of Military/Naval Records (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//