

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 February 2024

DOCKET NUMBER: AR20230007574

APPLICANT REQUESTS: correction of her narrative reason for separation, to a more favorable reason, and her separation date be changed to 23 December 1985. 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 (Certificate of Release or Discharge from Active Duty), for the period ending 22 October 1985

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 before she could join the Army, she informed her recruiter of her probation. The recruiter said he would take care of the situation with the probation officer and request a waiver to allow the applicant to join. The waiver was approved, and she joined the Army. She was later approached by a noncommissioned officer who informed her that she had been fraudulently enlisted. This falls under the responsibility of the recruiter and she would like her DD Form 214 corrected.

3. The applicant's official military record is not available for review containing the specific facts and circumstances surrounding her discharge processing; therefore, this case is being considered using the provided DD Form 214.

4. The applicant enlisted in the Regular Army on 12 February 1985. Upon completion of training, she was awarded military occupational specialty 71L (Administrative Specialist).

5. She was promoted to the rank/grade of private first class/E-3 on 17 August 1985.

6. The applicant was honorably discharged on 22 October 1985. Her DD Form 214 shows she was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 7-17b, by reason of fraudulent entry. She was issued separation code JDA with reentry eligibility (RE) code non-applicable (NA). She was credited with 8 months and 11 days of net active service this period.
7. In accordance with regulatory guidance, upon determination that a fraudulent entry existed, the discharge authority would direct discharge and direct issuance of an honorable or general discharge certificate.
8. The applicant provides no evidence that she served after 22 October 1985, the date of her discharge.
9. The Board should consider the applicant's statement in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

1. The Board reviewed the applicant's requests to change her narrative reason for separation to a more favorable reason, to change her separation date to 23 December 1985, and for a personal appearance before. The Board also reviewed her supporting documents, her statements, the evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests and for liberal consideration of discharge upgrade requests.
2. The applicant's request for a personal appearance hearing was carefully considered. However, in this case, the Board determined relief was not warranted. The evidence of record and independent evidence provided by the applicant and his counsel 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. The Board reviewed the evidence of record and considered the applicant's statement regarding her narrative reason for separation reflecting fraudulent entry/enlistment her request to change her separation date, and determined relief was not warranted.
 - a. Since the applicant's full records were not available for the Board to review, the Board felt it was reasonable to presume administrative regularity, meaning, the Board trusts that in absence of evidence to the contrary, the Army properly separated the applicant according to the regulatory guidance in effect at the time.

b. The applicant did not provide any evidence to show her separation date was in error, meaning, she was separation on a different day than what is reflected on her DD Form 214.

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, 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 15-185 (ABCMR) sets forth procedures for processing requests for the correction of military records. 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. 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.
3. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that: Chapter 7 established policy and prescribed procedures for separating enlisted members for minority, erroneous enlistment, reenlistment or extension of enlistment, defective enlistment agreement, or fraudulent entry. Paragraph 7-17 provided that fraudulent entry is the procurement of an enlistment, re-enlistment, or period of service through any deliberate material misrepresentation, omission, or concealment of information which, if known and considered by the Army at the time of enlistment or re-enlistment, might have resulted in rejection. This includes all disqualifying information requiring a waiver. Upon determination that a fraudulent entry existed, the discharge authority would direct discharge and direct issuance of an honorable or general discharge certificate.
4. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service Discharge Review Boards and Service 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//