

IN THE CASE OF: ██████████

BOARD DATE: 27 March 2024

DOCKET NUMBER: AR20230008490

APPLICANT REQUESTS: correction of her uncharacterized service to show an honorable discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- United States Court of Appeals for Veterans Claims
- Department of Veterans Affairs (DVA) Letter (two)

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 has a court order.
3. The applicant enlisted in the United States Army Reserve (USAR) on 18 November 1985 for 8 years. She did not complete initial entry training and was not awarded a military occupational specialty.
4. Orders 231-009, dated 20 November 1985, issued by the Military Entrance Processing Station, Pittsburgh, PA, ordered the applicant to initial active duty for training.
5. She entered active duty on 3 December 1985. She was released from active duty on 13 February 1986. Her DD Form 214 (Certificate of Release from Active Duty) shows she was discharged under the provisions of Army Regulation (AR) (Personnel Separations-Enlisted Personnel), Paragraph 13-2, by reason of physical standards with Separation Code JFT [unqualified for active duty – other] and Reentry Code 3. Her service was uncharacterized. She completed 2 months and 11 days of net active service.

6. The applicant's available record is void of a separation packet containing the specific facts and circumstances surrounding her discharge processing.

7. Order 28-787, dated 11 February 1986, issued Headquarters, U.S. Army Training Center, Fort Jackson, SC, discharged her from the USAR, effective 13 February 1986, with uncharacterized service.

8. DD Form 220 (Active-Duty Report), shows her effective date of entry on active-duty as 3 December 1985 and date tour of duty terminated as 13 December 1986.

9. Soldiers are considered to be in an entry level status (ELS) when they are within their first 180 days of active-duty service. The evidence of record shows the applicant was in an ELS at the time of separation processing. 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.

10. The applicant provides:

a. A U.S. Court of Appeals for Veterans Claims, dated 24 November 2020, shows the applicant filed an application for attorney fees order and the application was granted in the amount sought.

b. DVA letters, dated 19 September 2022 and 10 October 2022, show the applicant served from 3 December 1985 to 13 February 1986 with a character of service as under honorable conditions (general) and service-connected disability combined as 50%.

11. On 21 May 2004, the applicant was notified the Army Review Boards Agency (ARBA) is not the custodian for military records; therefore, her request did not fall within this agency's jurisdiction.

12. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published guidance.

13. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records

Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of her 13 February 1986 uncharacterized discharge and, in essence, a referral to the Disability Evaluation System (DES). She does not give a reason for the request.

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. Her DD 214 for the period of service under consideration shows the former USAR Soldier entered the active duty for training on 3 December 1985 and was discharged on 13 February 1986 under the provisions provided in paragraph 13-2 of AR 635-200, Personnel Management – Enlisted Personnel (20 July 1984): Separation for Unsatisfactory Performance.

d. No medical documentation was submitted with the application. Because of the period of service under consideration, there are no encounters in the EMR or documents in iPERMS. There are no diagnoses in JLV and only two encounters: One was a homeless call center referral note in 2015; and the other a compensation and pension examination opinion in 2019 in which the provider opined it was less likely than not that her bilateral foot condition was service connected. She has no VA service-connected disabilities.

e. Neither her separation packet or documentation addressing the cause(s) for her involuntary administrative separation were submitted with the application or uploaded into iPERMS.

f. It is the opinion of the ARBA medical advisor that neither a discharge upgrade nor a referral to the DES is warranted.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation and published Department of Defense guidance for liberal determinations requests for upgrade of his characterization of service. The governing regulation provides that a separation will be described as an entry-level separation, with service uncharacterized, if the separation action is initiated while a Soldier is in entry-level status. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising official finding neither a discharge upgrade nor a referral to the DES is warranted.

2. The Board noted the applicant completed 2 months and 11 days of her 8-year service obligation and did not complete training and was discharge from active duty. An uncharacterized discharge is not meant to be a negative reflection of a Soldier’s military service. It merely means the Soldier has not been in the Army long enough for his or her character of service to be rated as honorable or otherwise. As a result, there is no basis for granting the applicant's request for upgrade of her uncharacterized character of service or referral of her case to the DES. Therefore, the Board denied relief.

3. Referral to the IDES occurs when a Soldier has one or more conditions which appear to fail medical retention standards as documented on a duty liming permanent physical profile. The DES compensates an individual only for service incurred medical condition(s) which have been determined to disqualify him or her from further military service. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

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.

4/8/2024

X [REDACTED]

CHAIRPERSON
[REDACTED]

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. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
3. AR 635-200 sets forth the basic authority for the separation of enlisted personnel.
 - 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 Soldiers whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 13 establishes policy and provides procedures and guidance for eliminating enlisted personnel found to be unfit or unsuitable for further military service. Action will be taken to separate an individual for unfitness when it is clearly established that rehabilitation is impracticable, or he is not amenable to rehabilitation measures (as indicated by the medical and/or personal history record).

d. A separation would be described as an entry-level separation with service uncharacterized if processing is initiated while a Soldier is in an entry-level status.

4. 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 Service Discharge Review Boards (DRB) and Service 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. Boards are to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences.

5. The Under Secretary of Defense for Personnel and Readiness issued guidance to Service DRBs and BCM/NRs 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//