

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 April 2024

DOCKET NUMBER: AR20230009877

APPLICANT REQUESTS: her uncharacterized discharge be changed to honorable, and a hearing before the Board via video or telephone.

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

DD Form 149 (Application for Correction of Military Record)

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 during training, her right arch collapsed, and she was undergoing treatment to continue service. Her leadership at the time approached her and told her she could continue to waste resources or accept an honorable discharge and get out. She accepted the honorable discharge after being made to feel like she was a burden on the unit and taxpayers. Unbeknownst to her, the discharge she received was uncharacterized. She felt her discharge characterization resulted from her leadership's negative opinion of her and the treatments she was receiving to continue service.
3. The applicant enlisted in the Regular Army on 27 September 1988, for 4 years. She did not complete advanced individual training and was not awarded a military occupational specialty.
4. A DA Form 4856 (General Counseling Form), shows the applicant was counseled on 24 February 1989 for overall behavior, specifically her negative responses to "stupid rules and regulations" and her desire not to be in the Army anymore.
5. On 28 February 1989, the applicant underwent a complete mental status evaluation at her commander's request as part of her consideration for discharge. Her mental status evaluation noted she was unmotivated to become a productive Soldier; she was

mentally responsible and had the mental capacity to understand and participate in the proceedings. There was no evidence of an emotional or mental disorder, and a psychiatric prediction of the rehabilitative potential of the applicant by interview alone was difficult to make. The applicant was cleared for any administrative action deemed appropriate by command.

6. The applicant was notified on 17 March 1989 of her commander's intent to initiate separation actions against her under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 11, for entry level status performance and conduct. The commander recommended the applicant receive an entry level separation and stated the reason for the proposed action was the applicant's lack of maturity and motivation to become a productive member of the Armed Forces.

7. On 22 March 1989, the applicant acknowledged receipt of the proposed separation notification and was advised by consulting counsel of the reasons for separation and of the rights available to her. She understood if approved she would receive an entry level separation with uncharacterized service. She elected to submit a statement in her own behalf.

8. The undated statement submitted on her own behalf was a buddy statement from private first class (PFC) C.J.W. stating the applicant has decided to remain in the U.S. Army upon a self-evaluation of her situation. The applicant has changed her attitude toward her appearance, duties, and responsibilities as a Soldier to a positive attitude and has demonstrated she is a good Soldier. PFC C.J.W. recommended the applicant remain in the Army.

9. On 30 March 1989, the applicant's immediate commander formally recommended the applicants separation from service.

10. On 31 March 1986, the separation authority approved the recommended discharge, waived the rehabilitative transfer requirements, and directed the applicant's transfer to the Individual Ready Reserve with separation program designator code "LGA."

11. The applicant was released from active duty on 7 April 1989, under the provisions of Army Regulation 635-200, paragraph 11-3a, by reason of entry level status. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms her service was uncharacterized (entry level status), with separation code "LGA" and reenlistment code "RE-3." She was credited with 6 months and 11 days of net active service during the period covered.

12. On his DD Form 149, the applicant notes information regarding her flatfeet condition can be found on page 13, 55, and 63 of his STRs (service treatment records). However, she did not provide her STRs with her application.

13. Regulatory guidance in effect at the time provided Soldiers are considered to be in an entry-level status when they are within their first 180 days of active-duty service.

14. The Board should consider the applicant's argument and evidence, along with the overall record, in accordance with the published equity, injustice, or clemency determination guidance.

15. 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 uncharacterized 7 April 1989 discharge. On her DD Form 149, the applicant had indicated Reprisal / Whistleblower issues are related to her request. She states:

“During basic training, my right arch collapsed. I was undergoing treatment to continue service. My leadership at the time approached me and told me I could continue to waste resources, or I could accept an honorable discharge and get out. I accepted the honorable discharge after being made to feel like I was a burden on the unit and taxpayers.

Unbeknown to me, the discharge I received was an uncharacterized discharge. I feel that this was a result of my leadership's negative opinion of me and my treatments.”

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's signed DD 214 shows she entered the regular Army on 27 September 1988 and was discharged on 7 April 1989 under provisions provided in chapter 11-3a of AR 635-200, Personnel Separations – Enlisted Personnel (22 January 1988), for falling below entry level performance and conduct standards.

d. From a 24 February 1989 counseling statement: “PVT [Applicant], since you arrival to this unit you have expressed some negative responses of stupid rules, regulations, etc. ... furthermore you desire of not wanting to be in the U.S. Army anymore.”

e. The applicant underwent a command directed mental status evaluation on 28 February 1989. The provider documented passive aggressive behavior but an otherwise normal examination. He stated the applicant had the mental capacity to understand and participate in proceedings, was mentally responsible, and met the medical retention standards of AR 40-501, Standards of Medical Fitness. He went on to write:

“RECOMMENDATION: This soldier was evaluated at the commander's request. There is no evidence of an emotional or mental disorder of psychiatric significance or of sufficient severity to warrant disposition through medical channels. This individual is unmotivated to become a productive soldier.

Psychiatric prediction of the rehabilitative potential of this soldier by interview alone is difficult to make. The Commander is thus advised to make a decision on the basis of this individual's productivity as a soldier to date.

This soldier is cleared for any administrative action deemed appropriate by the Commander.”

f. On 17 March 1989, the applicant's company commander informed her he was initiating chapter 11 separation action for unsatisfactory performance, noting the reason for his action:

“The reasons for my proposed action are: Your lack the maturity and motivation to become a productive member of the Armed Forces.”

g. The battalion commander approved his separation on 31 March 1989.

h. No medical documentation was submitted with the application and there are no encounters in the EMR.

i. Paragraph 11-3 of AR 635-200 states Soldiers may be separated for falling below entry level performance and conduct standards when they have voluntarily enlisted and the separation action is initiated after no more than 180 days of continuous active duty. The applicant's separation was initiated on day 172.

j. Paragraph 11-8 of AR 635-200 states “Service will be uncharacterized for separation under the provisions of this chapter.” An uncharacterized discharge is given to individuals who separate prior to completing 180 days of military service, or when the discharge action was initiated prior to 180 days of service. This type of discharge does not attempt to characterize service as good or bad.

k. There is no evidence the applicant had a medical condition or injury which would have failed the medical retention standards of chapter 3, AR 40-501 prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System.

Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge.

I. It is the opinion of the Agency Medical Advisor that discharge upgrade is unwarranted.

BOARD DISCUSSION:

1. The Board determined 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 not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The applicant was separated for entry level status and her service was uncharacterized. She completed 6 months and 11 days of net active service. An uncharacterized discharge is given to individuals who separate prior to completing 180 days of military service, or when the discharge action was initiated prior to 180 days of service. The Board reviewed and agreed with the medical reviewer's finding that there is no evidence the applicant had a medical condition or injury which would have failed the medical retention standards of chapter 3, AR 40-501 prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge. The Board determined that a discharge upgrade is unwarranted.

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) states 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.

3. Army Regulation 635-200 sets 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 provides that a separation will be described as entry level with uncharacterized service if the Soldier has less than 180 days of continuous active duty service at the time separation action is initiated.

b. Paragraph 3-7a provides that 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.

c. Paragraph 3-7b states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. Paragraph 3-9 provides that a separation would be described as entry level with uncharacterized service if processing was initiated while a Soldier was in an entry-level status, except when:

(1) a discharge under other than honorable conditions was authorized, due to the reason for separation and was warranted by the circumstances of the case; or

(2) the Secretary of the Army, on a case-by-case basis, determined a characterization of service as honorable was clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty. This characterization was authorized when the Soldier was separated by reason of selected changes in service obligation, for convenience of the government, and under Secretarial plenary authority.

e. 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.

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 (BCM/NR) 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 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//