

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 April 2024

DOCKET NUMBER: AR20230010610

APPLICANT REQUESTS: correction of her entry level status discharge to honorable. Additionally, she requests an appearance via video/telephone before the Board.

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 (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 after advanced individual training (AIT) she stayed in the service long enough to be considered an honorable discharge. She overcame her sickness (bronchitis) but waited to be transferred to continue her military service, but then was discharged without giving her, her rights. She was told after she recovered from bronchitis that she would report to her first duty station. She does not have any supporting documents. It has been so long.
3. The applicant enlisted in the Regular Army on 25 October 1984 for four years. Her military occupational specialty was 75D (Personnel Records Specialist).
4. A Consultation Sheet, dated 15 March 1985, shows an impression of probable allergic based reactive airways disease. The recommendation indicates this condition Existed Prior To Service (EPTS) - Medical Discharge-bronchial asthma.
5. The available record is void of a separation packet containing the specific facts and circumstances surrounding the applicant's separation processing.
6. The applicant was discharged on 11 June 1985. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was discharged under the provisions of Army Regulation (AR) 635-40 (Physical Evaluation for Retention,

Retirement, or Separation), Chapter 5, by reason of physical disability prior to entry on active duty-Medical Board, with Separation Code KFN and Reenlistment Code 3. Her service was characterized as Entry Level Status (uncharacterized). She completed 7 months and 17 days of net active service.

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

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

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 and clemency 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 and available military records, the Board found insufficient evidence that supports correction of her entry level status discharge to honorable.

2. Furthermore, the applicant did not receive a military occupational specialty (MOS) she was discharged with an uncharacterized discharge with a narrative reason of physical disability prior to entry on active duty-Medical Board. As such, her DD Form 214 properly shows her service as uncharacterized. An uncharacterized discharge is not derogatory; it is recorded when a Soldier has not completed more than 180 days of creditable continuous active duty prior to initiation of separation. It merely means the Soldier has not served on active duty 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. Therefore, relief is denied.

within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. AR 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.

3. AR 635-40 prescribes the Army Disability Evaluation System and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. It implements the requirements of Title 10, USC, Chapter 61.

a. Chapter 5, of the regulation in effect at the time of the applicant's period of service, provided for the separation of enlisted personnel for non-service aggravated conditions that existed prior to service when a Soldier requested a waiver of a physical evaluation board evaluation. An enlisted person must meet the following conditions:

- Soldier was eligible for referral into the disability evaluation system.
- Soldier does not meet the medical retention standards as determined by a medical evaluation board
- the disqualifying defect or condition existed prior to entry on active duty.
- hospitalization or institutional care is not required
- after being advised of the right to a full and fair hearing, the Soldier waives physical evaluation board action.
- Soldier was advised a physical evaluation board is required for receipt of Army disability benefits, but waiver of the physical evaluation board will not prevent applying for VA benefits

b. A physical evaluation board liaison officer was required to inform the Soldier of the rights and conditions noted above. If the Soldier declined the opportunity to apply for a discharge, the liaison officer was required to notify the Soldier's commander. If the

Soldier requested a discharge, the liaison officer assisted the Soldier in preparing their request for discharge.

c. Commanders with special court-martial convening authority could approve or disapprove a Soldier's discharge under this chapter. Discharges under this provision would be expeditious discharges and each Soldier would receive a DD Form 214 documenting their service. When a Soldier was in an entry level status, meaning they were still in training and had not completed military occupational specialty training, their service would be described as uncharacterized in accordance with AR 635-200, Chapter 3.

4. AR 635-200, in effect at the time, set forth the basic authority for the administrative separation of enlisted personnel. Title 10, U.S. Code, section 1168 provided that a discharge certificate or certificate of release from active duty will be given to each Soldier of the Army upon discharge or release from active duty. Soldiers who are discharged from an entry level status were issued a DD Form 214.

a. A Soldier in an entry level status will receive a character of service of uncharacterized. An entry level status is defined as no more than 180 days of active-duty service for a Soldier enlisting in the Regular Army or if an inactive duty training status (for member of the U.S. Army Reserve), no more than 90 days of active-duty service.

b. When separated within the first 180 days, service is usually not characterized unless the circumstances of the separation warrant an under other-than-honorable conditions discharge. A general discharge is not authorized.

5. AR 40-501 (Standards of Medical Fitness) governs medical fitness standards for enlistment, induction, appointment, retention, and separation (including retirement.) Chapter 3 provides the various medical conditions and physical defects which may render a Soldier unfit for further military service and which fall below the standards required for the individual in paragraph 3-2, below. These medical conditions and physical defects, individually or in combination:

- significantly limit or interfere with the Soldier's performance of duties
- may compromise or aggravate the Soldier's health or well-being if the Soldier remains in the military-this may involve dependence on certain medications, appliances, severe dietary restrictions, frequent special treatments, or a requirement for frequent clinical monitoring
- may compromise the health or well-being of other Soldiers
- may prejudice the best interests of the government if the individuals were to remain in the military service

6. 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//