

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 May 2024

DOCKET NUMBER: AR20230011039

APPLICANT REQUESTS: correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty) to show an honorable character of service, vice uncharacterized.

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

- DD Form 149 (Application for Correction of Military Record)
- Three Department of Veterans Affairs (VA) letters
- Two copies of DD Form 214

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10 (Armed Forces), United States Code (USC), section 1552 (b) (Correction of Military Records: Claims Incident Thereto). 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 recently received a copy of her DD Form 214 and saw that it did not show an honorable character of service; she insists her service was honorable, and she requires this correction so her State identification will accurately reflect her status. In support of her request, the applicant supplies VA letters which affirm her character of service is honorable.

3. A review of the applicant's service records reveals the following:

a. On 30 November 1988, after obtaining her parents' permission, the applicant enlisted into the U.S. Army Reserve (USAR) for 8 years. She was 17 years old and still in high school; she subsequently graduated in June 1989. On 9 November 1989, the applicant married and, on 3 May 1990, gave birth to her daughter.

b. On or about 12 August 1991, the applicant entered initial active duty for training and reported to Fort Jackson, SC to complete basic combat training (BCT); she was

placed in the Fitness Training Company (FTC ) within the 120th Adjutant General Battalion (Reception) to prepare for BCT.

(1) DA Form 4856 (General Counseling Form), covering the applicant's first week in FTC (12 to 16 August 1991), shows she failed the FTC's exit assessments three times, performing no push-ups and less than 16 sit-ups.

(a) The applicant told her drill sergeant that she was experiencing pain when bending her elbows and that the pain prevented her from returning the push-up start position. Except for "Physical Fitness," the drill sergeant gave the applicant the assessment's highest rating for overall performance in the applicant's personal area, uniform, attitude, and duty performance (a "1" out of "4" possible, with "1" being the highest score).

(b) The drill sergeant advised the applicant that if she did not meet the FTC's minimum requirements, she would be considered for an "ELS" (entry-level separation).

(2) For the period 19 to 23 August 1991, the applicant's DA Form 4856 second week review showed results comparable to her first week. The drill sergeant wrote, "This week, your performance has rated poor...This is your 2nd week of training. If you fail to meet minimum standards...you will be recommended for ELS. I feel that you've been motivated and working hard to meet the standards. I will see that you are given additional training time to help you meet your goal."

c. On 26 August 1991, the applicant went to her supporting emergency room complaining of shoulder pain; a physical therapist noted the applicant had disclosed having a 1-week history of shoulder pain, with the onset resulting from lifting weights.

d. On a DA Form 4856, the applicant's drill sergeant recorded the applicant's third week assessment (11 to 13 September 1991), which showed an improvement in sit-ups, but still no push-ups. The drill sergeant noted the applicant had been given additional time to improve in the assessment areas; he advised the applicant that if she did not meet standards, he would refer her to the chain of command for ELS counseling.

e. On 20 September 1991, the applicant's drill sergeant completed a DA Form 4856, wherein he recommended the applicant for an ELS; he wrote, "This Soldier has been assigned to FTC for 2 additional weeks, totaling 5 weeks of training. No sufficient improvement has been made...falls to the ground. Recommend expedite this ELS."

f. On 23 September 1991, the USAR and National Guard Liaison Noncommissioned Officer (NCO) counseled the applicant regarding the command's proposed ELS. The liaison NCO affirmed he had checked the applicant's training records and saw the applicant had completed "0" push-ups during the entire period. He stated he had

explained to the applicant what an ELS entailed, and he recommended the applicant's separation under chapter 11 (Entry-Level Status Performance and Conduct), Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel).

g. On 25 September 1991, the applicant's FTC commander advised her, via memorandum, that she was initiating separation action against the applicant, under the provisions of chapter 11, AR 635-200. The commander stated her specific reason was that, since the applicant's arrival in the unit, she had displayed a total lack of motivation and showed no desire to expend the effort needed to become a Soldier.

h. On 25 September 1991, the applicant acknowledged the commander's notification, and the applicant indicated she was waiving her right to counsel and did not wish to make any statements in her own behalf. In addition, the applicant declined to undergo a separation physical examination.

i. On 26 September 1991, the separation authority approved the commander's separation recommendation and directed the applicant's discharge with an uncharacterized character of service. On 2 October 1991, the Army separated the applicant accordingly. Her DD Form 214 shows she completed 1 month and 19 days of net active duty service. The report additionally stated the following:

- Item 25 (Separation Authority) – AR 635-200, Paragraph 11-3a (Entry-Level Status Performance and Conduct – Separation Policy)
- Item 26 (Separation Code (SPD) – "JGA"
- Item 27 (Reentry (RE) Code) – RE-3
- Item 28 (Narrative Reason for Separation) – Entry-Level Status

4. The VA and the Army (under the Department of Defense) operate under separate provisions of Federal law (respectively Title 38 (Veterans' Benefits) and Title 10). As such, each makes independent determinations, based on the requirements set forth within their respective parts of the law and their own internal regulations. Based on the by-law separation between the two organizations, decisions made by the VA are not binding on the Army.

#### BOARD DISCUSSION:

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 evidence shows the applicant was separated under the provisions of chapter 11 of AR 635-200, due to entry level status and performance. She was credited with 1 month and 19 days of active service. She did not complete initial entry training and was not awarded an MOS. Her service was uncharacterized. The Board found no error or

injustice in her separation processing. 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 determined that a change to her uncharacterized discharge 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, 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. AR 635-200, in effect at the time, prescribed policies and procedures for enlisted administrative separations.

a. Paragraph 3-7a (Honorable Discharge) stated an honorable discharge was separation with honor. Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty or was otherwise so meritorious that any other characterization would clearly be inappropriate. Where there were infractions of discipline, commanders were to consider the extent thereof, as well as the seriousness of the offense. Separation authorities could furnish an honorable discharge when subsequent honest and faithful service over a greater period outweighed disqualifying entries in the Soldier's military record. It was the pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.

b. Paragraph 3-7b (General Discharge). 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.

c. Paragraph 3-9 (Uncharacterized Separations). Effective 1 October 1982, a revision of AR 635-200 mandated the issuance of uncharacterized characters of service to Soldiers separated while in an entry-level status; for Regular Army Soldiers, entry-level status began upon their entrance on active duty and ended after 180 days of continuous active duty. The regulation stated the Secretary of the Army could issue an honorable character of service, on a case-by-case basis, when clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty.

d. Section II (Secretarial Authority) stated the separation of enlisted personnel was the prerogative of the Secretary of the Army and was to be executed only by his/her authority. The discharge or release of any enlisted member of the Army for the convenience of the Government will be at the Secretary's discretion and with the type of discharge as determined by him/her.

e. Chapter 11 (Entry Level Status Performance and Conduct). This provision permitted commanders initiate separation action against entry level Soldiers who demonstrated they were not qualified for retention based on not adapting socially or emotionally to military life, not meeting minimum standards prescribed for successful completion of training, and/or not responding to counseling (as recorded on DA Forms 4856 (General Counseling Form)).

(1) Paragraph 11-4 (Counseling and Rehabilitation Requirements) stated it was essential to fulfill the regulation's counseling and rehabilitation requirements because military service was a calling different from any civilian occupation; commanders should not separate a Soldier, using entry level performance and conduct as the sole basis, unless efforts at rehabilitation had been made.

(2) The regulation also stipulated commander's use of the notification procedure when advising the Soldier of the contemplated separation action. The notification procedure involved the following:

- Giving the Soldier a written notice of the proposed separation that specified the type of separation and the reason for the commander's action
- Advising the Soldier of his or her rights, under the regulation's separation process, which included: consulting with military counsel, submitting statements in his/her own behalf, receiving copies of documents sent to the separation authority, and waiving, in writing, the aforementioned rights
- The Soldier was to indicate on an "Election of Rights" document whether that Soldier had consulted with counsel and was or was not submitting matters on his/her own behalf

3. AR 635-5 (Separation Documents), in effect at the time, prescribed policies and procedures for the completion of the DD Form 214. The regulation linked the narrative reason for separation to the regulatory separation authority and directed DD Form 214 preparers to AR 635-5-1 for this entry and the separation code (SPD).

4. AR 635-5-1 (SPD), in effect at the time, showed the narrative reason for separation assigned to Soldiers separated per chapter 11, AR 635-200 was, "Entry-Level Status Performance and Conduct." and the SPD was "JGA."

5. The SPD/RE Code Cross Reference Table, in effect at the time, provided instructions for determining the RE code for Active Army Soldiers and Reserve Component Soldiers. The table shows the SPD code and its corresponding RE code. The SPD code of "JGA" has a corresponding RE code of "3."

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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//