

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 June 2024

DOCKET NUMBER: AR20230012329

APPLICANT REQUESTS: correction of her uncharacterized discharge and to appear before the Board via video/telephone.

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)
- DA Form 4856 (Developmental Counseling Form) (one page)

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 that due to the limitations of pregnancy and having less than one year on active duty she received uncharacterized service. She was given the option to separate from the military to raise her unborn child, and she accepted the offer. At the time, being a single, pregnant female in the U.S. military was frowned upon. She was 19 years old and afraid. Under the Equality Act of 2010, it is unlawful to treat anyone unfavorably because they are pregnant. An unfavorable discharge is a discharge characterized as less than honorable.
3. The applicant enlisted in the Regular Army in the rank/grade of private/E1 on 6 November 2001 for a period of 4 years.
4. The applicant was placed on a temporary physical limitations profile due to pregnancy on 12 February 2002. Her EDC [Expected Date of Confinement or Estimated Date of Delivery] was 12 September 2002.
5. The applicant's commander was notified of her pregnancy and that she was determined to be approximately 9+ weeks pregnant with an estimated delivery date of

██████████. An addendum and information packet for pregnant Soldiers were provided.

6. The applicant received counseling from her drill sergeant on 15 February 2002 regarding his recommendation for her separation in accordance with Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 11 for Entry Level Separation (ELS) for pregnancy.

7. The applicant received counseling from her commander on 20 February 2002 regarding her recommendation for the applicant's separation in accordance with AR 635-200, Chapter 11 for ELS for pregnancy. She was advised that due to her pregnancy profile, she would not be allowed to take the end of course Army Physical Fitness Test which is required for qualification in her designated military occupational specialty (MOS). The applicant was further advised that since she had less than 180 days on active duty, she could receive an ELS with uncharacterized service.

8. The applicant's commander notified her on 3 April 2002 that she was initiating actions to separate the applicant under the provisions of AR 635-200, Chapter 11, for her inability to adapt. The reason for the proposed separation action was the applicant's inability to successfully complete the course requirements for the 92A (Automated Logistical Specialist) MOS. The commander was recommending that the applicant receive an ELS which was uncharacterized. The applicant acknowledged receipt on the same date.

9. A memorandum, subject: Refusal to Consult with Trial Defense, shows before completing the form the applicant was afforded the opportunity to consult with appointed counsel, or military counsel of her choice. She declined the opportunity.

10. A memorandum addressed to the applicant's commander, subject: Chapter 11 [the applicant] stamped 23 April 2002, shows the applicant had been diagnosed as pregnant with an EDC of ██████████. She had been issued a pregnancy profile and if she had no more than 180 days of creditable continuous active duty or initial active-duty training, separation by Chapter 11 should be considered.

11. The applicant's immediate commander formally recommended the applicant be separated from the U.S. Army prior to expiration of her term of service. The commander noted it was evident that further rehabilitative efforts would be unsuccessful, and further recommended the applicant be released from control and custody of the U.S. Army and not retained in the Individual Ready Reserve (IRR).

12. The separation authority approved the recommended separation on 23 April 2002 and directed the applicant not to be transferred to the IRR. She would have a

Separation Program Designator (SPD) of JGA (Entry Level Status Performance and Conduct).

13. The applicant was discharged on 2 May 2002. Her DD Form 214 shows she was discharged under the provisions of AR 635-200, Chapter 11 for entry level performance and conduct. She completed 5 months and 27 days of net active service. Her service was uncharacterized. She did not complete training and was not awarded a military occupational specialty.

14. The applicant provides a DD Form 214 and DA Form 4856 previously discussed above.

15. 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. 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.

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

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted.

2. The Board found the evidence clearly shows the applicant was in an entry-level status when her separation processing was initiated and therefore her service was uncharacterized in accordance with the governing regulation. The Board found no evidence of mitigating factors that would have been a basis for assigning her a character of service. Based on a preponderance of the evidence, the Board determined her uncharacterized service is not in error or unjust.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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.

12/9/2024

X

CHAIRPERSON

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 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. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. A separation would be described as entry level with uncharacterized service if the Soldier had less than 180 days of continuous active duty service at the time separation action was initiated.

b. 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. A general discharge is a separation from the Army under honorable conditions. When authorized, it was issued to a Soldier whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. Paragraph 3-9, in effect at the time of the applicant's separation, provided 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. The Under Secretary of Defense for Personnel and Readiness issued guidance to Service Discharge Review Boards and 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//