

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 July 2024

DOCKET NUMBER: AR20230013391

APPLICANT REQUESTS: an upgrade of her under honorable conditions (general) character of service to honorable, and an appearance 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), with self-authored statement
- Facsimile Transmittal Cover Sheet, Mexican Consulate – Del Rio, dated 13 December 2002
- letter, U.S. Department of Justice (DOJ) Immigration and Naturalization Service (INS), undated
- memorandum, Subject: Hxxxxxxx..., dated 12 August 2002
- letter, Blanchfield Army Community Hospital (ACH), dated 4 December 2002
- Certificate of Live Birth, dated 12 December 2002
- Visa, H.A.B.O, dated 1 July 2003
- memorandum, Subject: Request for Elimination..., undated
- Pre-separation statement, undated
- DD Form 214 (Certificate of Release of Discharge from Active Duty), for the period ending 31 January 2003
- Army Discharge Review Board (ADRB), Case Report and Directive, Case Number AR20070009454, dated 27 June 2008

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, in effect, her husband was a Mexican citizen. His Visa was revoked by Immigration. At that time, she was six months pregnant. He received permission to stay in the United States for 45 days upon the birth of their son. After he was sent back to Mexico, she had no one to care for their son. Their families were all in

Mexico. Her commander recommended an honorable discharge for parenthood. She did not realize until 2008 that her DD Form 214 stated under honorable conditions (general). She tried to use her G.I. Bill and was denied. She requested an upgrade, but it was denied in 2008. She had to quit school because it was not financially feasible. She found the form letter wherein her commander recommended her for an honorable discharge.

3. The applicant enlisted in the Regular Army on 29 June 2000, for a 4-year period. Upon completion of initial entry training, she was awarded military occupational specialty 91B (Medical Specialist). The highest rank she attained was specialist/E-4.

4. A DA Form 4187 (Personnel Action) shows the applicant requested her last name be changed from Mxxxx to Bxxxx to reflect her married name on her official records. The request was approved.

5. The applicant's immediate commander recommended the applicant for involuntary separation under the provisions of Army Regulation (AR) 635-200, paragraph 5-8, by reason of parenthood. The commander further recommended she receive an honorable character of service.

6. The approval authority's memorandum is not available for review.

7. The applicant's record is void of the complete facts and circumstances surrounding her discharge processing. Her DD Form 214 shows she was released from active duty and transferred to the U.S. Army Reserve Control Group, on 31 January 2003, in the rank/grade of specialist/E-4, under the provisions of AR 635-200, paragraph 5-8, by reason of parenthood. Her service was characterized as under honorable conditions (general), with separation code LDG and reentry code RE-3. She was credited with 2 years, 7 months, and 2 days of net active service. She was awarded or authorized the following:

- Army Achievement Medal
- National Defense Service Medal
- Army Service Ribbon

8. The Army Discharge Review Board considered the applicant's request for an upgrade of her character of service on 27 June 2008. After careful review, the Board determined the reason for discharge and characterization of service were both proper and equitable. The Board denied her request for relief.

9. The applicant provides:

a. A facsimile cover sheet, multiple letters, and a copy of her husband's VISA that shows the correspondence the applicant provides in support of her contention that her husband was a Mexican citizen, and arrangements were made for him to come to the U.S. for 45 days for their son's birth.

b. A Certificate of Live Birth, shows the applicant gave birth to a child on 12 December 2002.

c. A copy of the Request for Elimination, a signed pre-separation counseling statement regarding Veterans Educational Benefits, and the Case Report and Directive for Case Number AR20070009454, dated 27 June 2008, are summarized, in pertinent part, in the Record of Proceedings above.

10. Regulatory guidance states Soldiers will be considered for involuntary separation when parental obligations interfere with the fulfillment of military responsibilities.

11. The Board should consider the applicant's argument and/or evidence 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 that relief was 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 her characterization of service. Upon review of the applicant's petition and available military records, the Board determined there is sufficient evidence to support upgrading the applicant's character of service to honorable. The Board found the applicant was a good Soldier and was promoted to specialist. The Board noted, the applicant's commander recommended the applicant be separated with an honorable discharge due to parenthood. The Board agreed there was no punitive actions against the applicant to warrant and general under honorable conditions separations. As such, the Board granted relief to upgrade the applicant's discharge to honorable.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

█	█	█	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected by amending the applicant's DD Form 214 for the period ending 31 January 2003 to show her characterization of service as honorable.

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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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.

The regulation states:

a. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The ABCMR is not an investigative body and decides cases based on the evidence presented in the military records provided and the independent evidence submitted with the application.

b. The ABCMR has the discretion to hold a hearing; applicants do not have a right to appear personally before the Board. The Director or the ABCMR may grant formal hearings whenever justice requires.

3. AR 635-200, in effect at the time, set 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 a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 5-1 provides that unless the reason for separation requires a specific characterization, a Soldier being separated for the convenience of the government will be awarded a character of service of honorable, under honorable conditions, or an uncharacterized description of service if in an entry-level status.

d. Paragraph 5-8 provides for the involuntary separation due to parenthood. Soldiers were considered for involuntary separation when parental obligations interred with the fulfillment of military responsibilities. Specific reasons for separation due to parenthood included inability to perform prescribed duties satisfactorily, repeated absenteeism, late for work, inability to participate in field training exercises or perform special duties such as charge of quarters and staff duty noncommissioned officer, and unavailability for worldwide assignment or deployment according to the needs of the Army.

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.

//NOTHING FOLLOWS//