

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 September 2024

DOCKET NUMBER: AR20230014670

APPLICANT REQUESTS: an appearance before the Board via video/telephone, and correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty) to show:

- her uncharacterized service as honorable
- item 1 (Name) her last name as Jxxxxxx

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

- DD Form 149 (Application for Correction of Military Record), 20 November 2023
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 18 June 2001
- divorce decree, 11 June 2003
- marriage certificate, 6 September 2008

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, in effect, some of her paperwork states entry level performance and conduct and other paperwork states failure to adapt, none of which she believes is correct. She was informed she would be medically discharged and after 6 months after her date of discharge and her characterization would be changed to honorable.

a. Her legs were messed up and they discharged her for medical reasons and not because she failed to adapt or that she was disruptive or a problem. Her medical condition caused her discharge.

b. Currently, she is unable to locate her medical records despite asking for a copy of them at her discharge and requesting them from the Department of Veterans Affairs

(VA). Her medical records have been lost, and would show she was discharged due to her leg issues.

3. The applicant enlisted in the Regular Army on 23 April 2001, for a 6-year period. Her last name is shown as Stxxxxx on her DD Form 4 (Enlistment/Reenlistment Document) and the highest rank she attained was private first class/E-3.

4. On 11 May 2001, the applicant received developmental counseling for failing to adapt to the military lifestyle. Additionally stating separation had been initiated under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), for Chapter 11 (Entry Level Performance and Conduct).

5. On 24 May 2001, she received general counseling for the standards she would have to achieve to complete basic combat training. She annotated "Yes" under the question "Do you have any personal problems that I need to know about or that may affect your performance here in Basic Combat Training?" Writing, her "daughter has serious breathing/lung problems, and her grandfather is very sick".

6. On 7 June 2001, she received developmental counseling for not adapting to the Army lifestyle and was recommended for separation under Chapter 11.

7. The applicant's immediate commander notified her on 7 June 2001 of his intent to initiate action to discharge her under the provisions of AR 635-200, Chapter 11, entry level status separation. As the specific reason, the commander noted the applicant's failure to adapt to the military environment.

8. On the same date, the applicant acknowledged receipt of the proposed separation notification, and acknowledged understanding, if approved, she would be receiving an entry level separation with uncharacterized service. She was advised of the reasons for separation and of the rights available to her. She did not desire to consult with military or civilian counsel, and she elected to submit a statement in her own behalf, although her official military personnel file is void of a statement.

9. The applicant's immediate commander formally recommended her separation under the provisions of AR 635-200, Chapter 11, on 7 June 2001.

10. The separation authority approved the discharge recommendation on 7 June 2001, and directed issuance of an entry level separation (uncharacterized).

11. The applicant was discharged on 18 June 2001, under the provisions of AR 635-200, Chapter 11, by reason of entry level performance and conduct, in the grade of E-3. Her DD Form 214 shows her last name as Stxxxxx and confirms her service was uncharacterized, with separation code JGA and reentry code 3. She was credited with

1 month and 26 days of net active service. She was not awarded a military occupational specialty.

12. Soldiers are considered to be in an entry-level status when they are within their first 180 days of active-duty service. 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.

13. For historical purposes, the Army has an interest in maintaining the integrity of its records. The data and information contained in those records should reflect the conditions and circumstances that existed at the time the records were created. In the absence of a showing of material error or injustice, this Board is reluctant to recommend these records be changed.

14. The applicant does not provide evidence that her last name was legally changed during her period of active-duty service. Although she submitted her divorce decree changing her legal name from Stxxxxx to Smxxx, with an ordered date of 11 June 2003. She additionally submitted her marriage certificate showing her spouse's last name is Jaxxxxx, with a date of marriage of 6 September 2008.

15. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

16. 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 18 June 2001 uncharacterized discharge and, in essence, a referral to the Disability Evaluation System. She states:

“My legs were messed up and so they discharged me for medical reasons not because I failed to adapt or was a disruption problem. My medical condition caused the discharge, not my attitude or failing to adapt.”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. Her DD 214 shows she entered the regular Army on 23 April 2001 and was discharged on 18 June 2001 under provisions provided in chapter 11 of AR 635-200, Personnel Separations – Enlisted Personnel (1 November 2000), for falling below entry level performance and conduct standards.

d. On 11 May 2001, the applicant was counseled by her company commander that he was forwarding her separation packet to the battalion commander:

“Soldier [Applicant], you are being counseled for Failing to Adapt to the Military Lifestyle. I concur with the recommendation from CMHS [Community Mental Health Services] that your symptoms to succeed in the Army with not go away with time. You are becoming a training distraction to your platoon. I am forwarding your packet to LTC E. for approval of Chapter #11.

e. The battalion commander approved her separation with and uncharacterized discharge on 7 June 2001.

f. The referenced evaluation by CMHS was not submitted with the application. No medical documentation was submitted with the application and there are no encounters in in the EMR. JLV shows she is not registered with the VA.

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

h. 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.

i. It is the opinion of the Agency Medical Advisor that neither an upgrade of her discharge nor a referral of her case to the DES is warranted.

**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. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising official finding that neither an upgrade of her discharge nor a referral of her case to the DES is warranted. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career.
2. The Board determined the evidence presented does not demonstrate the existence of a probable error or injustice. The applicant used the contested name during her entire period of service. The Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned. Evidence shows the applicant's name change was post service. The Army has an interest in maintaining the integrity of its records for historical purposes. The information in those records must reflect the conditions and circumstances that existed at the time the records were created. In the absence of evidence that shows a material error or injustice, there is a reluctance to recommend that those records be changed.
3. The applicant is advised that a copy of this decisional document, along with her application and the supporting evidence she provided, will be filed in her official military records. This should serve to clarify any questions or confusion regarding the difference in the name recorded in her military records and to satisfy her desire to have her legal name documented in her military records.
4. 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. The Board noted, the applicant served 1 month, and 26 days of net active service did not complete training and was released from active duty by reason of entry level performance and conduct. As such, her DD Form 214 properly shows the appropriate characterization of service as uncharacterized, there is no basis for granting the applicant's request. Therefore, the Board denied relief.
5. 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 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.

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. Title 10, U.S. Code, Section 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

3. Army Regulation 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 provides that 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.

4. Army Regulation 635-5 (Separation Documents), in effect at the time, prescribed the separation documents that were prepared for individuals upon retirement, discharge, or release from active military service or control of the Army. It established standardized policy for preparing and distributing DD Form 214. The purpose of the separation document is to provide the individual with documentary evidence of his or her military service at the time of release from active duty, retirement, or discharge. It is important that information entered on the form be complete and accurate, reflective of the conditions as they existed at the time of separation.

5. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge was a separation with honor. The honorable characterization was appropriate when the quality of the member's service generally had met the standards of acceptable conduct and performance of duty for Army personnel or was otherwise so meritorious that any other characterization would be clearly inappropriate.

b. A general discharge was a separation from the Army under honorable conditions. The regulation authorized separation authorities to issue a general discharge to Soldiers whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 3-9 (Uncharacterized Separations). Separation authorities were to describe a separation as entry-level, with service uncharacterized, if commanders-initiated separation processing while a Soldier was in entry-level status. The regulation

additionally specified the Secretary of the Army, or designee, could grant a Soldier an honorable character of service, on a case-by-case basis, when clearly warranted by unusual circumstances involving personal conduct and performance of military duties.

(1) Effective 28 January 1982, the Department of Defense (DOD) established "entry-level status" in DOD Directive 1332.14 (Enlisted Administrative Separations).

(2) For active-duty service members, entry-level status began on the member's enlistment and continued until he/she had served 180 days of continuous active duty.

d. 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.

e. The character of service for Soldiers separated under this provision would normally be honorable but would be uncharacterized if the Soldier was in an entry-level status. An uncharacterized discharge is neither favorable nor unfavorable; in the case of Soldiers issued this characterization of service, an insufficient amount of time would have passed to evaluate the Soldier's conduct and performance.

6. 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 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//