

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 October 2024

DOCKET NUMBER: AR20240003167

APPLICANT REQUESTS: her uncharacterized service be characterized as honorable and an appearance 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), 3 October 2008
- DD Form 1966/1 (Record of Military Processing – Armed Forces of the United States)
- Basic Combat Training (BCT) Soldier in Training Performance Record
- Memorandum for Commander, 24 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 the U.S. Citizenship and Immigration Service has determined that an uncharacterized discharge also satisfies the statutory requirement of a separation of under honorable conditions, it was her intention to serve and uphold her military obligations. She is requesting an honorable discharge which would provide her with the benefits of service in the U.S. Army.
3. Prior to her enlistment, she underwent a medical examination on 25 July 2008. The relevant DD Form 2807-1 (Report of Medical History) and corresponding DD Form 2808 (Report of Medical Examination) shows she reported being in good health and denied any significant health problems. The examining provider determined she was medically qualified for service.
4. The applicant enlisted in the Regular Army on 13 August 2008, for a period of 4 years and 22 weeks. The highest rank she attained was private /E-2.

5. The applicant was counseled for missing mandatory training. The relevant DA Forms 4187 (Developmental Counseling Form) show she missed the mandatory team development course, fit to win 2, pugil, and bayonet assault course due to being on profile and/or at sick call.
6. On 22 September 2008, the applicant was issued a DA Form 3349 (Physical Profile) due to pregnancy. She was to return to the unit for separation processing in accordance with Army Regulation (AR) 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), paragraph 5-11b (Separation of Personnel who did not meet Procurement Medical Fitness Standards), additionally she was not required to have a physical examination.
7. On 26 September 2008, the applicant's immediate commander notified the applicant of the intent to initiate action to separate her from service, in accordance with AR 635-200, paragraph 5-11, for failure to meet procurement medical fitness standards due to arriving at BCT pregnant and as a result, was unable to complete training. Additionally, the commander recommended an uncharacterized entry-level separation.
8. On that same date, the applicant acknowledged receipt of the notification. She consulted with counsel and was advised of the basis for the contemplated separation and its effects; the rights available to her; and the effect of waiving her rights. She waived consulting counsel and elected to not submit a statement in her behalf. She further understood she may encounter substantial prejudice in civilian life.
9. The immediate commander formally recommended the applicant's separation, and the intermediate commander concurred with the recommendation.
10. The separation authority approved the recommended separation action on 29 September 2008 and directed the issuance of an uncharacterized discharge.
11. The applicant was discharged on 3 October 2008, under the provisions of AR 635-200, paragraph 5-11, by reason of failed medical/physical/procurement standards. Her DD Form 214 confirms her service was uncharacterized, with separation code JFW, and reentry code 3. She was credited with 1 month and 21 days of net active service. She was not awarded a military occupational specialty.
12. The applicant additionally provides her record of military processing form which shows she was approved for enlistment into the Army and her BCT Soldier in Training Performance Record showing that she missed one day of training for a knee injury. An additional memorandum for record was sent to her commander showing she was pregnant, as a result of blood work taken from a medical precaution to having an X-ray complete, the blood work determined she was seven weeks pregnant, due to her

pregnancy she was unable to complete the requirements for BCT training in order to graduate.

13. 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.

14. 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.

#### 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. In accordance with regulatory guidance, separations initiated during entry-level status—when training is incomplete are appropriately characterized as uncharacterized. Upon review of the applicant's petition and available military records, the Board found that the applicant completed 1 month and 21 days of net active service, did not complete initial training, and was released from active duty due to failure to meet medical, physical, and procurement standards as a result of arriving at Basic Combat Training (BCT) pregnant. Therefore, the Board concluded that the applicant's DD Form 214 accurately reflects the correct characterization of service.

2. 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.

3. 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:

<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.



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. 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 begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. 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 (Personnel Separations - Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 3 provides that a separation will be described as entry level with uncharacterized service if the Soldier has less than 180 days of continuous active duty service at the time separation action is 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 is issued to a Soldier whose military record is 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. Paragraph 5-11 provides that Soldiers who are not medically qualified under procurement medical fitness standards when accepted for enlistment or who become medically disqualified under these standards prior to entrance on active duty, active duty for training, or initial entry training will be separated. A medical proceeding, regardless of the date completed, must establish that a medical condition was identified by appropriate medical authority within 6 months of the Soldier's initial entrance on active duty, that the condition would have permanently or temporarily disqualified the Soldier for entry into military service had it been detected at that time, and the medical condition did not disqualify the Soldier from retention in the service. 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.

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.

a. 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//