

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 June 2025

DOCKET NUMBER: AR20240004944

APPLICANT REQUESTS: in effect, correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty) by removing the items reflecting "Fraudulent Entry" and to have all her benefits to be restored.

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Form 21-10210 (Lay/Witness Statement)
- DD Form 214

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:

- She is seeking to restore her VA benefits; during out-processing, the human resources personnel told her she could request the removal of "Fraudulent Entry" after 5 years
- When she enlisted, the recruiter gave her options for specific jobs, and she chose military occupational specialty (MOS) 31C (Single Channel Radio Operator); this MOS offered a \$2,500 bonus and required her to serve 4 years on active duty
- The recruiter asked the applicant's marital status and whether she had any children; when she told him she was single and had one son, the recruiter said, because she was single, she would need to give up custody of her son; however, if she reenlisted, the Army would allow her to regain custody
- Upon completion of initial entry training (IET), orders sent her Germany for her first duty station; during in-processing, the human resources sergeant asked about her marital status and children, and she told him she was single and had a son; he indicated they should set up an allotment for her son

- The applicant told him that was not necessary because she had just completed IET and, once she reenlisted, she would regain custody of her son; he asserted that this only applied for IET, and once permanently assigned, she would be allowed custody of her son
- The human resources sergeant went on to say that he would set up an allotment and that it would go to the applicant's mother (who was caring for her son)
- Her mother continued to receive the allotment until she brought the applicant's son to Germany; (the applicant notes she has since made restitution)
- A few months later, she was in a captain's office at higher headquarters, and they were talking about officer candidate school
- During the discussion, the subject of family came up, and the applicant said this was her first duty station, that she was a single parent, and her son was with her in Germany
- The captain told the applicant she was not allowed to have her son there, and, after asking her assistant for the applicant's file, she dismissed the applicant
- About a week later, the first sergeant called the applicant to his office and told her she was in trouble for receiving an allotment for her son; he also said the commander intended to eliminate the applicant from the Army
- Months later, the applicant went before the post commander to review her fraudulent entry charges; the commander asked if she wanted to remain on active duty, and the applicant responded that she did
- The post commander instructed her to provide character references, after which he would make his decision
- The applicant subsequently provided letters of support, but the post commander said they were insufficient and that he would be proceeding with the applicant's elimination from the Army; the post commander ultimately gave her an honorable discharge
- Following her separation, the applicant secured employment with the U.S. Post Office and went on her life; she forgot all about her adverse separation until she saw a documentary about Lieutenant (LT) Henry O. Flipper, who after his death, received a pardon for his dishonorable discharge
- She thought, if LT Flipper could get an upgrade, she should be able to have fraudulent entry removed from her DD Form 214
- (In 1877, LT Flipper was the first African American to graduate from West Point; he later became the first non-white officer to lead "Buffalo Soldiers" in the 10th Cavalry; after serving with distinction in campaigns against the Apache, a court-martial dishonorably dismissed him; in 1976, the ABCMR upgraded his character of service and, in 1999, the President of the United States issued a pardon)
- The applicant argues, if the human resources sergeant had not misled her, she would have completed her Army career

3. The applicant's service record shows the following:

- On 7 October 1983, the applicant enlisted into the U.S. Army Reserve Delayed Entry Program (USAR DEP)
- On 7 October 1983, and as part of her enlistment, the applicant signed a DA Form 3286-31-R (U.S. Army Enlistment Policy for Applicants Without Spouse who have Surrendered Custody of Dependents); the form shows the applicant acknowledged the following:
  - She was the natural parent of her son, and she certified she had placed her son in the custody of another adult by court order or as provided by state law
  - She further certified the custody agreement was intended to remain in full force and effect during the term of her current enlistment
  - In the event she regained custody of her son, either by court decree, per state law, or in lieu of the legal guardian, she could be processed for involuntary separation due to fraudulent enlistment
- On 23 February 1984, the applicant enlisted into the Regular Army for 4 years; following IET and the award of MOS 31C, orders assigned her to a Division Support Command (DISCOM) in Germany, and she arrived at her new unit, on 4 September 1984
- On 19 October 1984, the applicant submitted a DA Form 4187 (Personnel Action) requesting to change her tour from an "all others" to "with dependents"; she indicated she intended to move her dependent to Germany
- On 23 October 1984, the supporting Regional Personnel Center (RPC) approved the applicant's request
- On or about 9 September 1985, the applicant signed a DA Form 4187, wherein she asked to return her son to the continental United States; the stated reason was, "Soldier is having financial problems"; the supporting RPC approved the applicant's request
- On 30 January 1986, the supporting RPC sent a memorandum to DISCOM:
  - The RPC stated the applicant should be processed for separation, per paragraph 7-17b (8) (Incident of Fraudulent Entry – Misrepresentation of Intent with Regard to Legal Custody of Children), Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel)
  - The RPC had discovered documents in the applicant's service record that showed, in October 1983, she had signed a statement of understanding as to custody of her dependent
  - In October 1984, she requested a change in her "all others" overseas tour to "with dependents"; upon approval, she moved her dependent son to Germany
  - In September 1985, she requested to send her son home early, and the RPC approved the request

- Based on the foregoing, the applicant had violated her contract by establishing residency with her son
- On 6 February 1986, the applicant's company commander sent a memorandum to the supporting finance center:
  - The commander advised the finance center that the applicant's enlistment might be defective
  - As a result, the Basic Allowance for Quarters (now called Basic Allowance for Housing), separate rations, and "Rent Plus" the applicant had received over the past year might have been paid erroneously
- On 21 March 1986, the applicant's company commander advised her, via memorandum, that she was initiating separation action against the applicant, under the provisions of paragraph 7-17b, AR 635-200; the command believed the applicant had misrepresented her intent with regard to her son's legal custody
- On 24 March 1986, after consulting with counsel, the applicant acknowledged counsel had advised her of the basis for the pending separation action as well as her rights
- The applicant waived her rights to appear personally with counsel before an administrative separation board but indicated she was submitting statements in her own behalf
- In April 1986, the applicant submitted 10 letters of support from family members, fellow enlisted Soldiers, and members of her leadership; all indicated the applicant had not intended to defraud the government, had been misled by the unit's human resources section, and, as a single parent, had missed her son
- On 25 April 1986, the applicant's company commander forwarded her separation recommendation:
  - The commander cited the information provided in the RPC's 30 January 1986 memorandum, but added her recommendation to retain the applicant, stating, "I do not believe she intentionally set out to commit fraud...Her request for command sponsorship should never have been approved"
  - "I recommend the Approving Authority request an audit of [applicant's] finance records...if an audit results in a determination that [applicant] was erroneously paid allowances, then I recommend [applicant] pay the money back"
  - "Based on recommendations from her chain of supervision, I believe that, with a little leadership, [applicant] can successfully continue in the Army as a fully functioning Soldier"
- On 7 May 1986, the separation authority directed the applicant's honorable discharge; on 27 May 1986, the Army separated the applicant; accordingly, her

DD Form 214 shows she completed 2 years, 3 months, and 5 days of her 4-year enlistment contract

- Her DD Form 214 additionally reflects the following:
  - Item 25 (Separation Authority) – AR 635-200, paragraph 7-17b (1) (Incident of Fraudulent Entry – Concealment of Prior Service) (sic)
  - Item 26 (Separation Code) – "JDA"
  - Item 27 (Reenlistment (RE) Code) – RE-3
  - Item 28 (Narrative Reason for Separation) – Fraudulent Entry

### 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. One potential outcome was to grant relief based on the recommendation of the applicant's immediate commander, who advocated for retention, stating, "I do not believe she intentionally set out to commit fraud...Her request for command sponsorship should never have been approved." Upon further review of the applicant's petition and available military records, the Board acknowledged the numerous letters of support submitted on her behalf. These letters emphasized that she was misinformed regarding regulatory guidance as a single parent and her ability to regain custody of her son during her first enlistment.

2. However, the Board found insufficient evidence to support the applicant's request for correction of her DD Form 214 by removing the "Fraudulent Entry" designation or restoring her benefits. While the Board recognized that the applicant may not have acted with fraudulent intent, it concluded that she did not adhere to the regulatory guidance required of all Soldiers, which ultimately led to her separation. Based on Army regulations, the Board determined that relief was not warranted and denied the request.

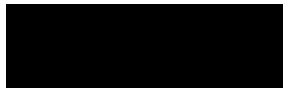
BOARD VOTE:

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. Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, prescribed policies and procedures for enlisted administrative separations.
  - a. Section II (Secretarial Authority), chapter 5 (Separation for the Convenience of the Government) stated the separation of Soldiers was the prerogative of the Secretary of the Army. Except as otherwise delegated, such separations only occurred by the

Secretary's authority and were to be based on a determination that the separation was in the best interests of the Army.

b. Chapter 7 (Defective Enlistments and Inductions) provided the authority, criteria, and procedures for separating enlisted personnel due to enlistment issues, including fraudulent entry. Section V (Fraudulent Entry), paragraph 7-17 (Incident of Fraudulent Entry) provided detailed guidance on fraudulent entry:

(1) Fraudulent entry was defined as the procurement of an enlistment, reenlistment, or period of active service through any deliberate material misrepresentation, omission, or concealment of information which, if known and considered by the Army at the time of enlistment or reenlistment, might have resulted in rejection. Commanders were required to perform two tests for each case of suspected fraudulent enlistment or reenlistment. The tests were intended to establish whether the enlistment or reenlistment was fraudulent.

(a) First Test. Commanders were to determine whether previously concealed information was in fact disqualifying. The information was to be evaluated using the criteria for enlistment or reenlistment in AR 601-210 (Regular Army and Army Reserve Enlistment Program) or AR 601-280 (Army Reenlistment Program).

- Any waivable or nonwaivable disqualification concealed, omitted, or misrepresented constituted fraudulent entry.
- If the newly revealed information did not amount to a disqualification from enlistment or reenlistment under the appropriate regulation, then there was no fraudulent enlistment or reenlistment

(b) Second Test. Commanders were required to verify the existence and true nature of the apparently disqualifying information. Verification of the actual offense might reveal that the enlistee was not disqualified and, therefore, was not a fraudulent enlistee. The example given in the regulation was where an Soldier had alleged he or she was convicted of burglary and placed on probation; in cases where the Soldier was initially charged with burglary but the offense was reduced to a minor, non-traffic offense, then the Soldier would not have been disqualified for enlistment.

(2) Any incident meeting the foregoing tests was potentially a cause for separation. Examples of fraudulent entry included the misrepresentation of intent with regard to legal custody of children.

(a) Service members who were applicants without a spouse at the time of enlistment and who executed the certificate required by AR 601-210 were to be processed for separation for fraudulent entry if custody of the children was regained by

court decree, as provided by State law, or as a result of the children resuming residency with the servicemember instead of the legal custodian.

(b) Because the servicemember certified at enlistment that the custody arrangement was intended to remain in full force and effect during the term of enlistment, the burden was on the servicemember to demonstrate that regaining custody was not contrary to statements made at the time of enlistment.

3. AR 635-5 (Separation Documents), in effect at the time, prescribed policies and procedures for DD Form 214 preparation.

a. The regulation stated the narrative reason for separation was tied to the Soldier's regulatory separation authority; the regulation directed DD Form 214 preparers to AR 635-5-1 (Separation Program Designators (SPD)) for the SPD code and the appropriate entries in item 28 (Narrative Reason for Separation).

b. For item 27 (RE Code), DD Form 214 preparers were to review the regulations governing enlistment/reenlistment.

4. AR 635-5-1, in effect at the time, stated Soldiers separated under paragraph 7-17b (8), AR 635-200 received an SPD of "JDA"; the associated narrative reason for separation was "Fraudulent Entry."

5. AR 601-210 (Regular Army and Army Reserve Enlistment Program), in effect at the time, covered eligibility criteria, policies, and procedures for the Regular Army (RA) and U.S. Army Reserve enlistment program.

a. Table 3-6 (Armed Forces RE Codes, RA RE Codes) included the following list of the RE codes:

- RE-1 – for Soldiers who completed their term of active service and were considered qualified to reenter the U.S. Army
- RE-3 – applied to Soldiers who were not considered fully qualified for reentry or continuous service at time of separation, but the disqualification was waivable

b. Table 4-1 (Waivable Moral and Administrative Disqualifications), Line K (Disqualification) stated Soldiers who were discharged for fraudulent enlistment required a waiver to reenter the Regular Army.

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.

7. AR 15-185 (Army Board for Correction of Military Records (ABCMR)), currently in effect, states the ABCMR decides cases on the evidence of record; it is not an investigative body.

a. The ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary).

b. The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

//NOTHING FOLLOWS//