

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 December 2023

DOCKET NUMBER: AR20230003488

APPLICANT REQUESTS: her under other than honorable conditions (UOTHC) discharge be upgraded to honorable, and:

- Separation Code changed from DFS to MBK
- removal of the words “Chapter 5”
- the narrative reason for separation be changed to either “completion of required active service” or “Secretarial plenary authority”

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

- DD Form 149 (Application for Correction of Military Record) (online)
- Exhibit P-Self-Authored Statement
- Legal Retainer
- Legal Petition
- Email
- Exhibit A-Service Documents
- Exhibit B-character Letters (twenty three)
- Exhibit C-Certificate
- Exhibit D-Certificate
- Exhibit E-Photo
- Exhibit F-DD Form 214 (Certificate of Release or Discharge from Active Duty) (2)
- Exhibit G-Officer Record Brief
- Exhibit H-Officer Evaluation Report (OER)
- Exhibit I-Orders 34-114, Promotion
- Exhibit J-Deployment Dates of Officers
- Exhibit K-Investigating Officer's Report
- Exhibit L-Defense Counsel Letter
- Exhibit M-Sworn Statements (13) and Investigation, Court Martial
- Exhibit N-Charge Sheet
- Exhibit O-Resignation Documents
- Exhibit Q-Master's Degree and Transcripts
- Exhibit R-Applicant Resume
- Exhibit S-Transcripts

- Exhibit T-Certificates (6)
- Exhibit U-Character Letters (8)
- Exhibit V-Character Letter/Email
- Exhibit W-Character Letters (2)
- Exhibit X-Certificates
- Exhibit Y-Photos
- Exhibit Z-Son's Birth Certificate
- Exhibit AA-Applicant Marriage Certificate
- Exhibit BB-Photos
- Exhibit CC-Advice on Disposition for Courts Martial Charges Memorandum
- Exhibit DD-Assignment to Duty
- Exhibit EE-Guidance to Military Discharge Review Boards and Boards for Correction of
- Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations
- Exhibit FF- Criminal history record was completed.
- Exhibit GG-Equifax Credit Score
- Exhibit HH-Director of Guidance Score Report

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 a self-authored letter, dated 16 August 2021:

a. Her UOTHC (conduct unbecoming of an officer/trial by court martial) was improper and too harsh because the investigating officer (IO) erroneously described her behavior inaccurately based upon insufficient evidence. There was no proof of sexual intercourse or an improper relationship that affected the command or discredited the service. During her deployment to Dhahran, Saudi Arabia from January 1992 to August 1993, she served as the Platoon Leader. Sergeant (SGT)/E-5 [REDACTED], who was assigned to a different command, was responsible for transporting her on special missions. Occasionally, during off duty hours he would visit her room so they could discuss the upcoming mission the following day. This was done behind closed doors, and she ensured that her two roommates (specialist (SPC)/E-4) were made aware of his presence each time he visited.

b. Initially, when she arrived upon deployment, she addressed her concerns to her leadership regarding them assigning her to a suite with two E-4s, but her leadership expressed that they wanted to maintain unit integrity even though there was space

available in the same barracks with another female lieutenant from a different command. Throughout this ordeal, she received no counseling or direct order from her commanding officer regarding her interactions with SGT [REDACTED]. Her commander only informed her to report to the new battalion commander who administered the discharge. SGT [REDACTED] was given the option for immunity if he disclosed that she was involved in a sexual relationship with him. SGT [REDACTED] denied the allegations and did not accept immunity. He was reduced in rank to E-4 but was able to remain in the military with his benefits.

c. She has learned from these mistakes and has flourished with a bright future as the District Supervisor of Guidance for a public school (22 years) since the discharge. Undergoing routine behavior and health counseling led her to seek actions to overturn this discharge. Despite her UOTHC discharge, she has earned two master's degrees. She has dedicated her life to serving disadvantaged children and families. She has received community awards and recognition.

3. Counsel states:

a. It has now been almost 30 years since this then-young officer's promising career was derailed because of allegations stemming from an investigation that arose out of petty gossip and lies. Many of these falsehoods that formed the basis of the most serious of allegations against the applicant were exposed during an Article 32 hearing. This resulted in the IO recommending her case be disposed of through nonjudicial punishment. Despite these falsehoods coming to light and despite the IO's recommendation, the Staff Judge Advocate (SJA) recommended, and the commander approved, her case to move forward to a General Court-Martial (GCM) with the charges and specifications, inexplicably and unethically, unchanged. Facing multiple federal felony-level allegations, the applicant had essentially no choice but to submit her Resignation for the Good of the Service (RFGOS) instead of bringing her case to Court-Martial and risk decades in prison and multiple federal convictions.

b. She was only a first lieutenant (1LT) at the time of the alleged misconduct. She had performed exceptionally well through the entire ordeal all the way up until her eventual separation date. Previous leaders who worked with her and really knew her work ethic and character knew she was a leader who could bounce back from this incident, learn from any mistakes she may have made, and become a better officer and leader. When one compares her quality of service, potential, and likelihood of successful rehabilitation-compared to the remaining evidence supporting any actual misconduct committed anyone could argue that the applicant's punishment could have more appropriately been handled through a locally filed letter of reprimand below the general officer level.

c. The applicant served honorably during the vast majority of the time she was allowed to wear the uniform, and she has since battled carrying the weight of the UOTHC discharge blemish on her military record for far too long.

4. The applicant was appointed as a Reserve commissioned officer of the Army on 24 July 1989. She entered active duty on 14 March 1990. Her area of concentration was 91B (Tank/Automotive Material Management).

5. Her OER for the period covered 26 July 1990 through 25 July 1991 shows the applicant consistently improved the efficiency and productivity of her shop. The maintenance backlog had been carefully managed under her leadership, resulting in enhanced operational readiness of the battalion's units. The applicant was assigned as an executive officer on 8 August 1990.

6. The applicant served in Southwest Asia from 2 November 1992 to 4 April 1993.

7. Court Martial Convening Order (CMCO) Number 6, dated 17 November 1992, issued by Headquarters, Third U.S. Army Forces Central Command, Fort McPherson, GA shows a GCM was convened.

8. The Criminal Investigation Command (CID) Preliminary Inquiry (with sworn statements), dated 23 February 1993, shows the applicant's unit commander requested CID conduct a preliminary inquiry into possible fraternization between members of his command. The investigation disclosed that the applicant fraternized with SGT [REDACTED] and rendered false sworn statements. The Special Agent in Charge concluded there was sufficient evidence to establish probable cause the applicant fraternized with SGT [REDACTED], rendered a false statement, exhibited conduct unbecoming an officer, and committed adultery with [REDACTED], a married man.

9. Court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice (UCMJ) on 5 March 1993. Her DD Form 458 (Charge Sheet) shows she was charged with:

- wrongfully soliciting SPC [REDACTED] to make false statements under oath if she were questioned by CID agents on or about 16 February 1993
- wrongfully soliciting Private First Class/E-3 [REDACTED] to make false statements under oath to wit; "that SPC [REDACTED] had not seen SGT [REDACTED] on 6 February 1993, and not to reveal to CID agents that SGT [REDACTED] had been there", or words to that effect on or about 16 February 1993
- the applicant, in a sworn statement, wrongfully subscribed under oath a false statement in substance that SGT [REDACTED] did not stay in her room over night; she did not see him during the weekend of 6-7 February 1993; she did not have a

relationship with SGT [REDACTED], which statement she did not then believe to be true on or about 17 February 1993

- the applicant knowingly fraternized with SGT [REDACTED], an enlisted person, on terms of military equality between on or about 25 November 1993 and on or about 17 February 1993
- the applicant engaged in conduct unbecoming of an officer by openly notoriously engaging in an adulterous relationship with SGT [REDACTED], a married enlisted man, which became common knowledge with her unit, adversely affecting good order and discipline, compromising the respect of enlisted persons for the professionalism, integrity, and obligations of an officer, as well as compromising her character between on or about 25 December 1992 and on or about 17 February 1993

10. The applicant's defense counsel requested a delay regarding the applicant's Article 32 hearing on 27 March 1993.

11. The IO recommended the charges against the applicant be addressed by General Officer Article 15 proceedings. He further recommended the charge of adultery be dismissed because of the lack of direct proof that sexual intercourse occurred. He recommended that the fraternization specification be changed to omit a direct reference to adultery. The fraternization charge could stand without the inclusion of adultery.

12. In the Recommendation for Disposition of the Applicant's Case memorandum, dated 2 April 1993, her immediate commander recommended trial by GCM. He noted the applicant's character of military service prior to the offenses charged had been excellent. Her records indicated no Article 15s and no previous court-martial.

13. In the Recommendation for Disposition of the Applicant's Case memorandum, her commanding officer stated before the case was preferred to GCM he requested UCMJ jurisdiction to dispose of the case via Field Grade Article 15 proceedings at his level. His reasoning was based on the fact that the officer had been relieved for cause and that a relief for cause OER was being generated. He knew that the relief for cause OER coupled with an Article 15 in her military records would effectively eliminate her from consideration for promotion to Captain. Her actions of false swearing and soliciting two enlisted Soldiers to lie, which were substantiated at the Article 32b investigation, are incompatible with conduct expected of officers and recommended any legal action which would result in her speedy separation from military serve.

14. The Request for Assistance in the applicant's case memorandum, dated 8 April 1993, shows the Commanding General did not object to the redeployment of the applicant and the associated witnesses to Fort Bliss, TX. With the Major General's (MG) continued concurrence, he was considering the possibility of proceeding with trial by court martial.

15. The Advice on Disposition for Courts Martial Charges memorandum, dated 9 April 1993, Headquarters, Third U.S. Army Fort McPherson, shows the SJA rendered advice on the charges against the applicant and the recommendations were as follows, the:

- Commander, 1/43rd Air Defense Artillery (ADA) Battalion recommended trial by GCM
- Commander, U. S. Army Central Command recommended any legal action which results in a speedy separation of the applicant from military service
- Defense Counsel recommended a General Officer Letter of Reprimand and/or a General Officer Article 15
- SJA recommended the charges and specifications be referred to trial by GCM and that the case be referred to the court-martial panel detailed to CMCO Number 6

16. In response to the Request for Assistance memorandum, dated 12 April 1993, [REDACTED] [REDACTED] agreed with the plan to retain jurisdiction of the case and to try the court martial at Fort Bliss, TX.

17. CMCO Number 2, dated 19 April 1993, Headquarters, Third U.S. Army Forces Central Command, Fort McPherson, shows the members of the GCM convened by CNCO Number 6, dated 17 November 1992.

18. Subsequent to receiving legal counsel, the applicant voluntarily submitted her resignation from the Army on 16 June 1993, for the good of the service in lieu of trial by court-martial under the provisions of Army Regulation (AR) 635-120 (Officer Resignation and Discharges), Chapter 5. This memorandum shows:

- she had not been subjected to coercion with respect to this resignation
- she had been advised of and fully understood the implications of this action
- she had been fully advised and counseled in this matter
- she had been afforded an opportunity to present matters in explanation, mitigation, or defense of her case; she elected to remain silent
- she acknowledged she understood that if her resignation were accepted her service could be considered as UOTHC

19. The separation authority recommended the approval of the applicant's request for resignation on 18 June 1993 and that an UOTHC discharge be issued.

20. The Decision Memorandum regarding the applicant's resignation for the good of the service in lieu of court-martial, dated 23 June 1993, shows:

- Commanders of Headquarters and Headquarters Battery, 1st Battalion, and 11th Brigade, 1/43rd ADA, 11th ADA Brigade Fort Bliss recommended approval of the request for resignation, with UOTHC service
- SJA recommended an endorsement to Headquarters, Department of the Army affirming his recommendation that the resignation be approved, and that the applicant's service be characterized as UOTHC

21. The applicant's chain of command unanimously recommended approval of the applicant's resignation for the good of the service.

22. On 30 June 1993, the Ad Hoc Review Board recommended the resignation be accepted with an UOTHC characterization of service.

23. The Deputy Assistant Secretary of the Army (Review Boards) (DASA-RB) accepted the applicant's resignation on 30 July 1993, for the good of the service. The DASA-RB directed the applicant's discharge with a UOTHC characterization of service.

24. The applicant was discharged on 30 August 1993. Her DD Form 214 shows she was discharged under the provisions of AR 635-120, Chapter 5, for conduct triable by court-martial. She was assigned Separation Code DFS (conduct triable by court martial). Her service was characterized as UOTHC. She completed 3 years, 4 months, and 17 days of net active service. She was awarded or authorized the: Army Service Ribbon, National Defense Service Medal, Southwest Asia Service Medal with one bronze service star and the Parachutist Badge.

25. Army Regulation 635-120, in effect at the time, prescribed procedures whereby an officer on active duty may tender his or her resignation or be discharged. Chapter 5 provided for resignation for the good of the service when court-martial charges were preferred against the officer with a view toward trial by GCM.

26. The applicant provides:

- a. Exhibits A, F-O, CC, DD, FF, GG, HH-Service Documents discussed above.
- b. Exhibit B - character letters that attest to the applicant's capacity to facilitate events for the youth both in the church and outside of the church. She is a natural leader who is knowledgeable, honest, cooperative, and has a trustworthy personality, as well as a ready willingness to help friends as needed. She is a consummate professional and sets a positive example in the areas of leadership and service. She is dedicated to her community and has a high-level of motivation to bring programs and other initiatives to completion. She is a loyal, talented, self-driven and highly motivated leader, educator, woman, wife, daughter, mother, and is strong morality. She is often called on for support

and to provide advice for her family and peers. She is an out of the box thinker, which aids in her astute problem-solving ability.

- c. Exhibit C and D - sports certificates dated 1989 and 8 April 2011.
- d. Exhibit T - various certificates of achievement and education.
- e. Exhibit U - character letters that attest to the applicant's volunteerism.
- f. Exhibit V - character letter/email from Big Brother Big Sisters shows the applicant has participated in the program since May 2021.
- g. Exhibit W – character letters regarding her volunteerism in a Celebrity Read at a school.
- h. Exhibit X - various certificates of recognition from organizations.
- i. Exhibit EE - Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NR) Regarding Equity, Injustice, or Clemency Determinations discussed below.
- j. Exhibit FF - criminal history record was completed.

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

BOARD DISCUSSION:

The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, her record of service, the frequency and nature of her misconduct, the reason for her separation and whether to apply clemency. The Board found insufficient evidence of in-service mitigating factors and found the evidence of post-service achievements and the letters of reference she provided insufficient to support clemency considering the nature of her misconduct. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation, the reason for her separation, and the association SPD code were 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.

2/15/2024

X [REDACTED]

CHAIRPERSON
[REDACTED]

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. AR 635-120, (Personnel Separations-Officer Resignations and Discharges) in effect at the time, prescribed procedures whereby an officer on active duty may tender his or her resignation or be discharged and whereby officers on active duty or retired officers may be dropped from the rolls of the Army. Chapter 5 provided for resignation for the good of the service when court-martial charges were preferred against the officer with a view toward trial by general court-martial. A resignation for the good of the service,

when approved at Headquarters, Department of the Army, was normally accepted as being UOTHC in which case the officer will be furnished a UOTHC Discharge Certificate.

3. AR 600-8-24 (Officer Transfers and Discharges), currently in effect, prescribes the officer transfers from active duty to the Reserve component and discharge functions for all officers on active duty for 30 days or more.

a. Paragraph 1-22(a) states an officer will normally receive an honorable characterization of service when the quality of the officer's service has met the standards of acceptable conduct and performance of duty, or the final revocation of a security clearance for reasons that do not involve acts of misconduct, for an officer.

b. Paragraph 1-22(b) states an officer will normally receive an under honorable conditions characterization of service when the officer's military record is satisfactory but not sufficiently meritorious.

4. AR 635-5 (Separation Documents), states, the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

a. Block 24 (Character of Service) characterization or description of service is determined by directives authorizing separation.

b. Block 25 (Separation Authority) enter the regulatory or other authority cited in the directives authorizing the separation.

c. Block 26 (Separation Code) Obtain correct entry from AR 635-5-1, which provides the corresponding separation program designator code for the regulatory authority and reason for separation.

d. Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in Army Regulation 635-5-1.

5. AR 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. It states that the separation code DFS is assigned when separated under the provisions of Chapter 5, of AR 635-120, conduct triable by court-martial.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards Discharge Review Boards 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.

//NOTHING FOLLOWS//