

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 December 2023

DOCKET NUMBER: AR20230004850

APPLICANT REQUESTS: upgrade of her under honorable conditions (general), discharge.

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

- DD Form 293 (Application for the Review of Discharge)
- DD Form 214 (Report of Separation from Active Duty)

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 after enlisting into the military she found religion. A religion that she continues to practice to this day. Based on her then new religious beliefs she refused to wear pants which meant she would not wear the Army fatigues. As she worked as a personnel record specialist, she offered to wear her dress uniform which included the dress skirt/dress as a compromise. Her chain of command refused this, issued her an Article 15, and chaptered her out of the service. Based on recent religious concessions being granted by the Army and other military branches, she is requesting that her character of service be reconsidered accordingly.
3. The applicant enlisted in the Regular Army on 30 May 1978 for four years. Her military occupational specialty was 75D (Personnel Records Specialist).
4. The applicant accepted non-judicial punishment, under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) on 21 May 1979 for willfully disobeying a lawful order to return to work in the fatigue uniform on or about 4 May 1979. Her punishment consisted of reduction to private/E-1, and extra duty.
5. The applicant's immediate commander notified the applicant on 20 June 1979 that he was initiating actions to separate her from service under the provisions of Army

Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), paragraph 5-31 (Expeditious Discharge Program (EDP)), with an under honorable conditions (general) discharge. The reasons for the proposed action were her inability to perform required duties and inability to adapt to the military environment.

6. The applicant acknowledged receipt of the separation notification on 22 June 1979 and voluntarily consented to the discharge. She understood that she may expect to encounter substantial prejudice in civilian life if an under honorable conditions, general discharge was issued to her. She was advised of the rights available to her and the effect of waiving her rights. She elected not to submit a statement in her own behalf.

7. A Report of Mental Status Evaluation, dated 10 July 1979, shows the applicant was mentally responsible, able to distinguish right from wrong, able to adhere to the right, had the mental capacity to understand and participate in board proceedings and met retention standards.

8. The applicant's commander formally recommended the applicant's separation from service under the provisions of AR 635-200, Chapter 5, prior to her expiration term of service.

9. The separation authority approved the recommended discharge on 16 July 1979 and directed the issuance of a General Discharge Certificate.

10. The Reason for Separation memorandum, dated 25 July 1979, shows failure to maintain acceptable standards for retention.

11. The applicant was discharged on 25 July 1979. Her DD Form 214 shows she was discharged under the provisions of AR 635-200, Paragraph 5-31 (EDP), with Separation Program Designator JGH and Reenlistment Code 3. Her service was characterized as under honorable conditions (general). She completed 1 year, 1 month, and 26 days of net active service.

12. Paragraph 5-21-discharge of enlisted personnel who had completed at least six months but less than 36 months of active duty and who had demonstrated that they could not or would not meet acceptable standards required of enlisted personnel in the Army.

13. 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:

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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, record of service, the frequency and nature of his misconduct and the reason for separation. The applicant was discharged from active duty under the Expedious Discharge Program, due to her inability to perform required duties and inability to adapt to the military environment, with an under honorable conditions (general) discharge. The applicant provided insufficient evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination, that outweigh his misconduct. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was 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.

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[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. Army Regulation (AR) 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

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. Paragraph 5-31 of the regulation in effect at the time provided for the discharge of enlisted personnel who had completed at least six months but less than 36 months of active duty and who had demonstrated that they could not or would not meet acceptable standards required of enlisted personnel in the Army because of the existence of one or more of the following conditions: poor attitude, lack of motivation, lack of self-discipline, inability to adapt socially or emotionally, or failure to demonstrate promotion potential. No individual would be discharged under this program unless the individual voluntarily consented to the proposed discharge. Individuals discharged under this provision of the regulation were issued either a general or honorable discharge.

3. 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//