

IN THE CASE OF: ██████████

BOARD DATE: 7 December 2023

DOCKET NUMBER: AR20230005224

APPLICANT REQUESTS: an upgrade of her under other than honorable conditions (UOTHC) characterization of service to honorable.

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

DD Form 149 (Application for Correction of Military Record)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 received documentation several years ago that stated her discharge had been upgraded. She no longer has the documentation. An upgrade of her discharge would help her become better established in the civilian world.
3. The applicant enlisted in the Regular Army on 5 April 2001 for a 3-year period. The highest rank she attained was private/E-2.
4. The applicant was formally counseled on three occasions from 15 November 2001 to 26 November 2001. Areas of emphasis covered in her counseling included failure to report on multiple occasions and failure to obey a lawful order.
5. A Report to Suspend Favorable Personnel Actions (Flag) was initiated by the applicant's commander on 26 November 2001 by reason of adverse action.
6. On 29 November 2001, the applicant's chain of command was notified that the applicant provided a urine sample on 13 November 2001, which tested positive for tetrahydrocannabinol (THC).
7. The applicant was formally counseled on 12 December and 20 December 2001 for two occasions of failure to report to her appointed place of duty.

8. A DD Form 458 (Charge Sheet) shows court-martial charges were preferred against the applicant on 17 January 2002 for the following violations of the Uniform Code of Military Justice:

- one specification of the wrongful use of marijuana, between on or about 13 October 2001 and on or about 13 November 2001
- one specification of the wrongful possession of marijuana, on or about 28 November 2001
- six specifications of failure to go at the time prescribed to her appointed place of duty, between on or about 14 November 2001 and on or about 20 December 2001
- one specification of disobeying a lawful order from a noncommissioned officer, on or about 20 November 2001

9. The applicant consulted with legal counsel on 13 February 2002.

a. She was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice, the possible effects of a UOTHC discharge, and the procedures and rights that were available to her.

b. After receiving legal counsel, she voluntarily requested discharge, in lieu of trial by court-martial, under the provision of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 10. In her request for discharge, she acknowledged her understanding that by requesting discharge, she was admitting guilt to the charges against her, or of lesser included offenses that also authorized the imposition of a bad conduct or dishonorable discharge. She acknowledged making this request free of coercion. She further acknowledged understanding if her discharge request was approved, she could be deprived of many or all Army benefits, ineligible for many or all benefits administered by the Department of Veterans Affairs (VA) and deprived of her rights and benefits as a Veteran under both Federal and State laws.

c. She was advised that she may submit any statements she desired in her own behalf. She elected not to submit a statement.

10. On 19 February 2002, the applicant's immediate and intermediate commanders recommended approval of her request for discharge in lieu of trial by court-martial and further recommended a service characterization of UOTHC.

11. The separation authority approved the applicant's request for discharge on 20 February 2002. He directed the applicant be reduced to the lowest enlisted grade and the issuance of an UOTHC characterization of service.

12. The applicant was discharged on 28 February 2002, under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms her service was characterized as UOTHC. She was credited with 10 months and 26 days of net active service.

13. Administrative separations under the provisions of Army Regulation 635-200, Chapter 10 are voluntary requests for discharge for the good of the service, in lieu of trial by court-martial. A UOTHC characterization of service is normally considered appropriate.

14. The Board should consider the applicant's overall 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 the applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust.

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.

2/12/2024

X [REDACTED]

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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, USC, 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 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

b. Paragraph 3-7a provides that 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. Paragraph 3-7b provides that 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.

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.

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, 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//