

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 December 2023

DOCKET NUMBER: AR20230005565

APPLICANT REQUESTS:

- an upgrade of her general, under honorable conditions discharge to honorable
- remove the misconduct from her service record

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, 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 she is requesting her general, under honorable conditions discharge be changed to honorable and the misconduct removed from her service record. She had personal issues at home, more specifically, the passing of her grandmother. She was raised by her grandmother and there were legal issues pertaining to her estate. She did not know there were programs available to allow her to "go home and take care of the matter," until after she had taken measures to terminate her service. No one informed her until last week and if she would have known of the other options, she would have done things differently.
3. A review of the applicant's service record shows:
  - a. She enlisted in the Regular Army on 27 August 1997.
  - b. A DA Form 2-1 (Personnel Qualification Record) shows the applicant was serving in Hawaii, as her first duty station following training.
  - c. A DA Form 705 (Army Physical Fitness Test (APFT) Scorecard) shows the applicant failed two consecutive APFTs on 15 July 1998 and 9 December 1998.

d. A DA Form 4187 (Personnel Action) indicated the applicant was denied advancement to private/E-2 at six months due to training.

e. A DA Form 268 (Report to Suspend Favorable Personnel Actions (FLAG)) shows on 15 July 1998 a flag was initiated on the applicant for APFT failure.

f. On 11 February 1999, the applicant accepted nonjudicial punishment for one specification of wrongful use of marijuana between on or about 30 November 1998 and 30 December 1998. Her punishment included reduction to private E-1 and forfeiture of \$479.00 per month for two months.

g. A DD Form 2624 (Specimen Custody Document – Drug Testing) shows a specimen was collected on 31 March 1999 and resulted positive in THC. The applicant's social security number was listed as positive for THC.

h. On 27 April 1999, a flag was initiated which indicated the applicant was facing adverse action.

i. A memorandum for record dated 12 May 1999, shows the applicant was denied the Good Conduct Medal as a result of the separation recommendation due to illegal use of a controlled substance.

j. On 26 May 1999, the applicant's immediate commander notified the applicant of his intent to separate her under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14, for commission of a serious offense. The reasons for his proposed action were due to the applicant testing positive for marijuana on 30 December 1998 and 31 March 1999.

k. After consulting with legal counsel, she acknowledged:

- the rights available to her and the effect of waiving said rights
- she may encounter substantial prejudice in civilian life if a general, under honorable conditions discharge is issued to her
- she may apply to the Army Discharge Review Board or the ABCMR for upgrading
- she will be ineligible to apply for enlistment for a period of 2 years after discharge

l. On 3 May 1999, the immediate commander initiated separation action against the applicant for commission of a serious offense. He recommended that her period of service be characterized as general, under honorable conditions. The intermediate commander recommended approval.

m. On 30 April 1999, the separation authority approved the discharge recommendation for immediate separation under the provisions of Chapter 14, AR 635-200, paragraph 14-12c for commission of a serious offense. She would be issued general, under honorable conditions characterization of service.

n. Orders A126-02, dated 6 May 1999, discharged the applicant with an effective date of 26 May 1999.

o. On 6 May 1999, she was discharged from active duty with a general, under honorable conditions characterization of service. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she completed 1 year and 9 months of active service with no lost time. She was assigned separation code JKQ and the narrative reason for separation listed as "Misconduct." It also shows she was awarded or authorized:

- Army Service Ribbon
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16)
- Sharpshooter Marksmanship Qualification Badge with Hand Grenade Bar

4. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

5. By regulation (AR 600-8-104), the OMPF is defined as permanent documentation within the AMHRR that documents facts related to a Soldier during the course of his or her entire Army career, from time of accession into the Army until final separation, discharge, or retirement. The purpose of the OMPF is to preserve permanent documents pertaining to enlistment, appointment, duty stations, assignments, training, qualifications, performance, awards, medals, disciplinary actions, insurance, emergency data, separation, retirement, casualty, and any other personnel actions. The recipient has the burden of proof to show, by clear and convincing evidence, to support assertion that the document is either untrue or unjust, in whole or in part.

6. By regulation (AR 635-8), 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.

7. By regulation (AR 635-200), action will be taken to separate a Soldier for misconduct, when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

8. In reaching its determination, the Board can consider the applicants petition and his 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 and record of service, the frequency and nature of the applicant's misconduct and the reason for separation.

a. The applicant was discharged for misconduct – commission of a serious offense and received a general, under honorable conditions discharge. The applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. 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.

b. The Board noted that the applicant's separation packet is filed in her official military service record (OMPF). The OMPF consists of permanent documentation within the Army Military Human Resources Record that document facts related to a Soldier during the course of their entire Army service/career, from time of entry into the Army to the time of separation. The Army has an interest in maintaining the integrity of its records for historical purposes. The information in those records must reflect the conditions and circumstances that existed at the time the records were created, unless there is sufficient evidence that shows a material error or injustice. The Board found no error or injustice.

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.

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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 ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in

the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

3. Army Regulation 600-8-104 (Army Military Human Resource Records Management) states that the OMPF is defined as permanent documentation within the AMHRR that documents facts related to a Soldier during the course of his or her entire Army career, from time of accession into the Army until final separation, discharge, or retirement. The purpose of the OMPF is to preserve permanent documents pertaining to enlistment, appointment, duty stations, assignments, training, qualifications, performance, awards, medals, disciplinary actions, insurance, emergency data, separation, retirement, casualty, and any other personnel actions. Once properly filed in the AMHRR the document will not be removed from the record unless directed by selected authorities such as the ABCMR, Army Discharge Review Board, Department of the Army Suitability Evaluation Board, and Army Special Review Board.

4. Army Regulation 635-8 (Separation Processing and Documents), currently in effect, 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.

5. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge is a separation with honor. 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. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 of the regulation states action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed. Paragraph 14-12c further states commission of a serious offense includes abuse of illegal drugs or alcohol.

6. 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/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 based on 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.

//NOTHING FOLLOWS//