

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 January 2024

DOCKET NUMBER: AR20230005732

APPLICANT REQUESTS: an upgrade her characterization of service from under honorable conditions (general) to honorable.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD: DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States).

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, at the time of her discharge she was very young and may have had an issue with marijuana. She was and still is proud to have been a squared away Army Soldier, and she enjoyed her time in the service. Today she is a mature, married woman with three children and a wonderful husband, successfully living in the suburbs of Philadelphia.
3. A review of the applicant's service record shows:
  - a. A DD Form 4 (Enlistment/Reenlistment Document) shows she enlisted in the Regular Army on 2 May 2006.
  - b. DD Form 2624 (Specimen Custody Document – Drug Testing), shows a specimen was collected from the applicant on 4 January 2007.
  - c. On 22 February 2007, she received a separation counseling from her company commander. The DA Form 4856 (Developmental Counseling Form) shows she was given notice that under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), chapter 14, paragraph 14-12c (commission of a serious offense), he was initiating action to

separate her based on her failure to adapt to military standards. The company commander stated the reason for the proposed separation was the applicant's wrongful use of marijuana.

d. On 22 February 2007, the applicant's immediate commander notified her of his intent to initiate separation action against her under the provisions of AR 635-200, chapter 14, paragraph 14-12c, by reason of commission of a serious offense. The commander listed the following reason for the proposed action: wrongful usage of marijuana. The commander informed the applicant that he was recommending she receive a general, under honorable conditions discharge and explained her rights.

e. On 22 February 2007, the applicant acknowledged receipt of her commander's separation notification. The applicant acknowledged she was advised by her consulting counsel of the basis for the contemplated action to separate her for commission of a serious offense under AR 635-200, chapter 14, and its effects; of the rights available to her. She understood the following:

1) She understood that if she had less than 6 years of total active and Reserve military service at the time of separation and was being considered for separation for commission of a serious offense, she was not entitled to have her case heard by an administrative separation board unless she was being considered for a discharge under other than honorable conditions.

2) She elected not to submit statements in her own behalf.

3) She understood that she may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions was issued to her.

4) She further understood that, if she received a discharge certificate/character of service which was less than honorable, she may make application to the Army Discharge Review Board (ARBA) or the ABCMR for upgrading; however, an act of consideration by either board did not imply that her discharge would be upgraded.

5) She understood that she would be ineligible to apply for enlistment in the United States Army for a period of two years after discharge.

f. A chronological record of medical care, dated 7 March 2007, shows she was seen for an Army discharge screening. The document states the applicant used marijuana during Christmas exodus and she tested positive for THC (marijuana) on a urinalysis that was performed in January 2007. She received an Article 15 and declined the Army Substance Abuse Program. The Staff Physician/Psychiatrist noted her mental status exam was normal.

g. On an unspecified date, the applicant's immediate commander formally initiated separation under the provisions of AR 635-200, chapter 14, paragraph 14-12c, and recommended the applicant receive a general, under honorable conditions discharge. The immediate commander noted under the factual reasons for action recommended: wrongful use of cocaine. He also noted that the applicant received nonjudicial punishment under field grade Article 15, and the punishment included forfeiture of \$650.00 per month for two months, 45 days of extra duty, and 45 days restriction.

h. On an unspecified date, the intermediate commander endorsed the immediate commander's recommendation and recommended that she not be transferred to the Individual Ready Reserve (IRR).

i. On 16 March 2007, the separation authority approved the recommended discharge for abuse of illegal drugs (marijuana and cocaine), waived further efforts to rehabilitate the Soldier, and directed the applicant be issued an under honorable conditions (general) discharge.

j. The applicant was discharged on 20 March 2007. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was discharged under the provisions of AR 635-200, paragraph 14-12c(2), by reason of misconduct – drug abuse. Her service was characterized as under honorable conditions (general). She completed 10 months and 19 days of net active service during the covered period. This form also shows in:

- Item 11 (Primary Specialty): None
- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): None
- Item 18 (Remarks): Member has not completed first full term of service

4. Regulatory guidance states when an individual is discharged under the provisions of Chapter 14, AR 635-200 for misconduct, an under other than honorable conditions characterization of service is normally appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

5. 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:

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, other than her own statement, 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.

3/20/2024

X   
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 CHAIRPERSON  


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 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations) set forth the basic authority for the separation of enlisted personnel.

a. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally considered appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

b. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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. A general discharge is a separation from the Army under honorable conditions. When authorized, it is used for 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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.

4. 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.

a. 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.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//