

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 19 December 2023

DOCKET NUMBER: AR20230006002

APPLICANT REQUESTS: an upgrade of her characterization of service from under other than honorable conditions (UOTHC) 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), 20 February 2023
- self-authored statement

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, she was proud to serve her country and still is a proud Veteran. Her superiors and commanders had her respect. She volunteered for the color guard, took courses, all things to help her make sergeant/E-5.

a. An incident between herself and another Soldier, Specialist (SPC) R.Z., they had a late dinner and went to a club, where they had a few beverages. She asked SPC R.Z. to drive, and they ended up hitting a Korean Soldier, she does not remember much; however, she remembers giving him the keys and waking up with cuts and burns to her right side. SPC RZ told her to drive yet she doesn't remember this. She has lived with this and wakes up to nightmares of what happened to the Soldier who was hit and killed.

b. She is sorry for the hurt and damage, and wishes it were her instead of the Korean Soldier. She has lived a good life and has been a good American citizen. She is requesting a discharge upgrade, which she believes would give her a second chance. She apologizes for everything that happened.

3. The applicant enlisted in the Regular Army on 28 November 1979 for 3 years. She extended on 15 April 1982 to complete a volunteer Foreign Service Tour and conducted an immediate reenlistment on 29 September 1982 for a period of 3 years.
4. Her DA Form 2-1 (Personnel Qualification Record) shows the highest rank she obtained was SPC/E-4 with a date of rank of 1 May 1981.
5. A DA Form 3822-R (Report of Mental Status Evaluation) dated 20 March 1984, shows she received a mental health evaluation due to being considered for discharge.
6. Orders 56-51, dated 21 March 1984, shows she was reduced in rank from SPC to private (PVT)/E-1, with an effective date of 16 March 1984.
7. The applicant's separation packet is unavailable for review. However, her records contain a duly constituted DD Form 214, which is sufficient to provide a fair and partial assessment of the case.
8. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was discharged on 23 March 1983, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10 (For the Good of the Service) in the grade of E-1. Her service was characterized as UOTHC. She received a separation code of "JFS" and reentry code "RE-3". She completed 4 years, 3 months, and 26 days of net active service. She was awarded the following decorations, medals, badges, citations, and campaign ribbons: Army Achievement Medal, Good Conduct Medal, Army Service Ribbon, Overseas Service Ribbon, Sharpshooter Badge, and M-16 Rifle Badge.
9. Discharges under the provisions of AR 635-200, Chapter 10, are voluntary requests for discharge for the good of the service, from the Soldier, to avoid a trial by court-martial. An UOTHC character of service is normally considered proper.
11. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency 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 applicant's contentions, the military record, and regulatory guidance were carefully considered. The complete facts and circumstances surrounding her separation are not available for review. However, her DD Form 214, shows she was discharged on 23 March 1983, under the provisions of AR 635-200, Chapter 10 (For the Good of the Service) in the

grade of E-1, with an under other than honorable conditions characterization of service. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. In the absence of the separation packet, the Board presumed administrative regularity in the discharge process and concluded that based on the available evidence, the characterization of service was both proper and equitable.

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.



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, in effect at the time, provided guidance for the administrative separation of enlisted personnel:

a. Chapter 10 of this regulation provided a member who has committed an offense or offenses, the punishment for which, under the UCMJ and the Manual for Courts-Martial, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the Service. The discharge request may be submitted after court-martial charges are preferred against the member, or, until final action on the case by the court-martial convening authority. A member who is under a suspended sentence of a punitive discharge may also submit a request for discharge for the good of the Service. An UOTHC discharge certificate normally is appropriate for a member who is discharged for the good of the Service. However, the separation authority may direct a general discharge certificate if such is merited by the member's overall record during the current enlistment.

b. An honorable discharge is a separation with honor. The issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude. Where a member has served faithfully and performed to the best of his ability, and there is no derogatory information in his military record, he should be furnished an honorable discharge certificate.

c. An under honorable conditions (general), discharge is a separation from the Army under honorable conditions. It is issued to a member 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 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.

//NOTHING FOLLOWS//