

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 February 2024

DOCKET NUMBER: AR20230006565

APPLICANT REQUESTS:

- an upgrade of her under other than honorable conditions (UOTHC) characterization of service to honorable
- a personal appearance hearing before the Board via video or telephone

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

- DD Form 149 (Application for Correction of Military Record)
- Employee of the Month Certificate, 5 June 1991
- Training Certificate, 30 April 1999

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 that she received numerous awards during her military service. After her discharge from the Army, she has been continuously employed and has received Employee of the Month several times.
3. The applicant enlisted in the Regular Army on 24 November 1981, for 3 years. She reenlisted on 22 March 1985, 6 June 1988, and 28 August 1989. The highest rank/grade she held was staff sergeant/E-6.
4. On 5 December 1990, court-martial charges were preferred against the applicant for violation of the Uniform Code of Military Justice (UCMJ). The DD Form 458 (Charge Sheet) shows she was charged with:
 - on or about 21 August 1990, conspire and wrongfully solicit the unit urinalysis observer to obstruct justice
 - between 5 September 1990 and 5 October 1990, wrongfully use cocaine

- on or about 21 August 1990, wrongfully endeavor to impede a unit urinalysis inspection

5. The applicant consulted with legal counsel on 8 January 1991 and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a UOTHC discharge; and the procedures and rights that were available to her.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provision of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service – in lieu of trial by court-martial. In her request for discharge, she acknowledged her understanding that by requesting discharge, she was admitting guilt to the charge against her, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. She further acknowledged she understood that if her discharge request was approved, she could be deprived of many or all Army benefits, she could be ineligible for many or all benefits administered by the Veterans Administration, and she could be deprived of her rights and benefits as a veteran under both Federal and State laws.

b. She elected to submit a statement on her own behalf, stating she realized the nature of her crime was serious and regrets her poor judgment. If the separation authority looked at her military record, he would find that she had nothing but favorable recommendations before the incident. During her nine years in the military, she received two Army Commendation Medals, two Army Achievement Medals, several certificates of achievements, and letters of appreciation, and she won the Soldier of the Month award. She was promoted to E-5 and E-6, faster than the average Soldier, and was selected to Army schools ahead of her peers in her military occupational specialty and company. She also went to schools designed for E-7s and above. She received excellent noncommissioned officer evaluation reports and never received non-judicial punishment under Article 15. She asked the separation authority to issue her an under honorable conditions (general) characterization of service.

6. On 9 January 1991, the immediate commander recommended approval of the applicant's request for discharge and the issuance of a discharge UOTHC.

7. On 10 January 1991, the applicant completed a medical examination and underwent a complete mental status evaluation as part of her consideration for discharge due to her misconduct. Her mental status evaluation noted, she met the retention requirements, was mentally responsible and had the mental capacity to understand and participate in the proceedings.

8. On 11 January 1991, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial, and ordered the issuance of an UOTHC discharge and the applicant's reduction to private/E-1.

9. The applicant was discharged accordingly on 22 January 1991, under the provisions of AR 635-200, Chapter 10, for the good of the service - in lieu of trial by court-martial, with an UOTHC characterization of service in the grade of E-1. She received a separation code of "JFS" and a reentry code "3C." Her DD Form 214 (Certificate of Release or Discharge from Active Duty) contains the following entries:

a. She completed 9 years, 1 month, and 29 days of net active service with 4 years, 4 months, and 4 days of foreign service during the period covered.

b. Block 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized) shows the:

- Army Achievement Medal (2nd Award)
- Army Good Conduct Medal (2nd Award)
- Army Service Ribbon
- Overseas Service Ribbon (2nd Award)
- Expert Marksmanship Qualification Badge with Rifle Bar (M-16)
- Noncommissioned Officer Professional Development Ribbon (2nd Award)
- Army Commendation Medal (2nd Award)

c. Block 18 (Remarks) shows continuous honorable active service from 811124 – 890827.

10. On 23 August 1995, the Army Discharge Review Board (ADRB) reviewed the applicant's request for an upgrade of her discharge. The ADRB found her discharge to be both proper and equitable under the circumstances and voted to deny her request.

11. Regulatory guidance in effect at the time provided discharges under the provision of AR 635-200, Chapter 10, where voluntary requests from the Soldier to be discharged in lieu of a trial by court-martial.

12. The Board should consider the applicant's argument and evidence, along with the overall record, in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. 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 insufficient evidence of post-service achievements and no 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. The Board concurred with the correction described in Administrative Note(s) below.

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:

Other than the corrections addressed in Administrative Note(s) below, the Board determined 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 otherwise insufficient as a basis for correction of the records of the individual concerned.

6/3/2024

X

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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's record shows her DD Form 214 for the period ending 22 January 1991 is missing a required entry. As a result, amend the DD Form 214 by adding to item 18 "SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE."

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. AR 15-185 (ABCMR) states 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.
3. Army Regulation 635-200, in effect at the time, set forth the primary authority for separating enlisted personnel.
 - a. Chapter 10 states in part, a member who has committed an offense or offenses, the punishment for any of which, under the Uniform Code of Military Justice (UCMJ) and the Manual for Court-Martial, include bad conduct or dishonorable discharge, may

submit a request for discharge in lieu of trial by court-martial. In addition, the request for discharge may be submitted at any stage in the processing of the charges until the court-martial convening authority's final action on the case. Commanders will also ensure that a member will not be coerced into submitting a request for discharge in lieu of trial by court-martial. The member will be given a reasonable time (not less than 72 hours) to consult with a consulting counsel and to consider the wisdom of submitting such a request for discharge.

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 their ability, and there is no derogatory information in their military record, they 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.

d. An under other than honorable discharge is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct and in lieu of trial by court-martial.

4. 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//