

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 January 2024

DOCKET NUMBER: AR20230006800

APPLICANT REQUESTS: Reconsideration of her request for upgrade of her under other than honorable conditions (UOTHC) discharge. Additionally, she requests credit for her three years of continuous honorable service.

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

- DD Form 149 (Application for Correction of Military Record)
- Army Board for Correction of Military Records (ABCMR) Record of Proceedings

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Number AR20120003058 on 16 August 2012.

2. The applicant states she should be eligible for benefits for the three years she served honorably.

3. The applicant enlisted in the Regular Army on 17 May 1977. She reenlisted on 19 November 1979. The highest grade she attained was E-4.

4. A DA Form 2800 (Criminal Investigation Division Report of Investigation), dated 27 June thru 30 June 1981, indicates the applicant stole, by undetermined means, a postal money order belonging to the U.S. Government. Subsequently, she gave the money order to another Soldier without his knowledge of the larceny, after which time it was negotiated in the amount of \$450.00.

5. Court-martial charges were preferred against the applicant on 13 September 1982, for violation of the Uniform Code of Military Justice (UCMJ). Her DD Form 458 (Charge Sheet) shows she was charged with one specification of stealing a postal money order of a value of \$450.00; and one specification of completing a postal money order with the intent to defraud.

6. On 14 October 1982, the applicant consulted with legal counsel 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 bad conduct discharge; and the procedures and rights that were available to her.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provisions of Army Regulation 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 declined to submit a statement in her own behalf.

7. The available record is void of the applicant's immediate commander's recommendation regarding her request for Chapter 10, for the good of the service – in lieu of trial by court-martial discharge.

8. The separation authority approved the applicant's request for discharge in lieu of trial by court-martial on 18 October 1982, and directed her separation with a DD Form 794 (UOTHC Discharge Certificate).

9. The applicant was discharged accordingly on 28 October 1982. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms she was discharged under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service – in lieu of court-martial. She was discharged in the lowest enlisted grade and her service was characterized as UOTHC. She was assigned Separation Code JFS and Reentry Codes 3 and 3C. She completed 5 years, 5 months, and 12 days of net active service this period.

10. Additionally, her DD Form 214 shows that she was awarded or authorized the Marksman Qualification Badge (M-16 Rifle), Good Conduct Medal (2nd Award), Army Service Ribbon, and the Overseas Service Ribbon.

11. The applicant's DD Form 214 does not show her continuous honorable active service period information that is required for members who honorably served their first term of enlistment [see Administrative Notes].

12. The applicant petitioned the ABCMR requesting upgrade of her UOTHC discharge. On 16 August 2012, the Board voted to deny relief and determined that the overall merits of the case were insufficient as a basis for correction of the applicant's records.

13. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, she consulted with counsel and requested discharge under the provisions of Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

14. 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:

1. After reviewing the application and all supporting documentation, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined that a portion of the requested relief was warranted. The Board carefully considered the applicant's contentions, the military record, and regulatory guidance. The Board considered the severity of the misconduct and agreed the applicant exhibited willful intent to deceive through her actions to include a fellow Soldier who was unaware her illegal actions. In considering the severity of her misconduct and in the absence of post-service achievements or letters of reference in support of a clemency determination, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

2. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is completed to more accurately depict the military service of the applicant.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:            :            :            GRANT FULL RELIEF

█           █           █           GRANT PARTIAL RELIEF

:            :            :            GRANT FORMAL HEARING

:            :            :            DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented sufficient to warrant a recommendation for a portion of the requested relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD214 ending 28 October 1982 to show in block 18 (Remarks):

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
- CONTINUOUS HONORABLE SERVICE FROM 770517 UNTIL 791118

2. The Board further determined the evidence presented insufficient to warrant relief for that portion of the applicant's request pertaining to an upgrade of her under other than honorable conditions (UOTHC) character of service.



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 28 October 1982 is missing important entries that affect her eligibility for post-service

benefits. As a result, amend the DD Form 214 by adding the following entries in item 18 (Remarks):

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
- CONTINUOUS HONORABLE SERVICE FROM 770517 UNTIL 791118

#### REFERENCES:

1. Army Regulation 15-185 (ABCMR) sets forth procedures for processing requests for the correction of military records. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR. The applicant must provide new relevant evidence or argument that was not considered at the time of the ABCMR's prior consideration.

2. Army Regulation 635-8 (Separation Processing and Documents) provides: for Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable, enter Continuous Honorable Active Service From" (first day of service for which DD Form 214 was not issued) until (date before commencement of current enlistment). Then, enter the specific periods of reenlistment as prescribed above.

3. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. 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.

b. 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.

c. Chapter 10 provided that a member who had committed an offense or offenses, for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, a UOTHC discharge was normally considered appropriate.

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.

//NOTHING FOLLOWS//