

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 1 December 2023

DOCKET NUMBER: AR20230006904

APPLICANT REQUESTS: reconsideration of her earlier requests for:

- An upgrade her general under honorable conditions discharge to honorable
- a change to the narrative reason for her separation to Secretarial Authority
- a change to the separation code to correspond to Secretarial Authority
- a change to the Reentry Code to RE-1

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

- DD Form 149 (Application for Correction of Military Record)
- Counsel's Brief with Exhibits
 - Counsel's arguments
 - Applicant's service records (90 pages)
 - DD Form 214
 - Letter of support
 - Civilian Accolades
 - Batchelor of Arts Certificate

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous considerations of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20130003673 on 15 October 2013 and reconsidered in Docket Number AR20200001207 on 30 September 2020.

2. The applicant repeats her statements and arguments as set for in the prior denials of her request that she was not guilty of shoplifting. She also contends that she is suffering from catastrophizing (the repeated mental simulation of unlikely catastrophic scenarios).

3. Counsel states the applicant entitled to an upgrade to Honorable based on criteria established by Federal law and the Wilkie Memo. Her discharge was unjust as it was based on a misunderstanding. Furthermore, the applicant's post-service record justifies an upgrade under.

a. Title 10 U.S.C. 1552(a)(1), the applicant's discharge was unjust. Her Nonjudicial Punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) was due to a misunderstanding of what actually happened at the Post Exchange (PX). The applicant maintains that she did not steal items from the PX.

b. Title 10 U.S.C. 1552(a)(1), the applicant's discharge was unjust as her attempt to clear her name was impeded throughout the NJP process. This led to the applicant trying to take the matter into her own hands which was motivated by a sense of justice and panic, but only got her into further trouble.

c. The Wilkie Memo, the applicant deserves an upgrade based on her strong post service record, which shows her true character.

d. Counsel sets forth in a five page brief a recounting of the applicant's service, the actions that led to her discharge and her post service life, with the submission of 11 Exhibits marked A through E-4.

e. Included in the arguments is that the applicant is/was suffering from catastrophizing (the repeated mental simulation of unlikely catastrophic scenarios). A WebMD article states catastrophizing as not officially categorized as a mental illness; however, it may be a symptom of several mental health conditions such as anxiety and depression.

4. The applicant provided through counsel, copies of 90 pages of her service records, a copy of the 2013 ABCMR denial, a third party letter of support, several letters outlining her post service community work, a 2012 college diploma, and a 2020 Certified Nurse Aide Certificate. The applicant also provided copies of a WebMD article 'Catastrophizing: The Worst Thing Ever,' and a Mind and Body Research article, 'What is Catastrophizing and How Does It Affect You?'

5. The applicant enlisted in the U. S. Army Reserve on 4 May 1999 for 8 years. She was ordered to initial active duty for training on 1 June 1999 and completed basic training on 12 August 1999 with transfer to complete Advanced Individual Training (AIT) at the United States Army Academy of Health Sciences, Fort Sam Houston, Texas effective 13 August 1999.

6. Between 14 August 1999 and 14 December 1999, the applicant was formally counseled on 5 occasions for various infractions including but not limited being absent without leave, her restrictions following an NJP, breaking restriction, disrespect toward a noncommissioned officer (NCO and a commissioned officer, and a possible suicide attempt.

7. The applicant was the subject of an investigation on the charge of shoplifting of items from the PX commencing on 12 October 1999. The Military Police Investigation (MP Report Number [REDACTED]) shows she was apprehended as the result of observed larceny of government property observed on close circuit TV, departing the PX without rendering proper payment, and subsequently transported to the MP station. The report findings resulted in her AIT training orders being revoked on 29 October 1999, her PX privileges being suspended and receiving NJP on 15 November 1990, for theft from the PX of 12 items valued at \$583.24.
8. On 15 November 1999, the applicant accepted field grade NJP under provisions of Article 15 of the UCMJ for stealing a (manufacturer name) brand blouse, a pair of (manufacturer name) brand pants, and (manufacturer name) brand coat and a pair of (manufacturer name) brand socks, two (manufacturer name) brand jackets, a CD, and a bag of candy. Her punishment consisted of reduction to private/E-1, forfeiture of \$479.00 for 2 months, and restriction and extra duty for 45 days. On 8 November 1999, the applicant appealed the punishment. On 14 December 1999, her Battalion commander denied her appeal.
9. The applicant's immediate commander notified the applicant of his intent to initiate actions to separate her under Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14- 12c for misconduct – commission of a serious offense. The commander noted the specific reason was her NJP for shoplifting.
10. The applicant consulted with legal counsel on 24 January 2000. She was advised of the basis for the contemplated discharge, the possible effects of an under honorable conditions discharge, and the procedures and rights that were available to him. The applicant submitted a personal statement indicating she had carried out her punishment but had to request assignment to a new drill sergeant due to unfair treatment. She believed she could overcome the adversity and become a combat medic if given the chance.
11. The applicant's immediate commander formally recommended his separation from service under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14- 12c for commission of a serious offense.
12. The appropriate authority waived rehabilitation, approved the discharge recommendation, directed the applicant not be transferred to the Individual Ready Reserve, and directed she be issued a General Discharge Certificate.
13. The applicant was discharged on 4 February 2000, in the pay grade of E-1. Her DD Form 214 shows she was discharged under the provisions of Army Regulation 635- 200, paragraph 14-12c, for misconduct with an under honorable conditions (general) character of service, a Separation Code JKQ, and a Reentry Code of 3. She was

credited with 8 months and 4 days of net active service. Her DD Form 214 shows she did not complete AIT and she was not awarded a military occupational specialty.

14. Orders 01-039-027 issued by 77th Regional Support Command discharged the applicant from the USAR with an uncharacterized separation on 8 February 2001.

15. In determining whether to grant relief the Boards for Correction of Military/Navy Records (BCM/NR) 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, supporting documents, evidence found within the military record, the Board found relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, applicable regulatory guidance and published DoD guidance for liberal consideration and clemency in determining discharge upgrade requests. Although, the applicant states she has a behavioral health condition, the Board found insufficient evidence that it is an officially recognized behavioral health condition; and, therefore, cannot be considered as a mitigating factor for her misconduct. After due consideration of the request, the Board determined the character of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

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 insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20200001207 on 30 September 2020.

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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. 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 if the decision has not previously been reconsidered. The applicant must provide new evidence or argument that was not considered at the time of the ABCMR's prior consideration. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

2. 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 Soldiers whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 (Separation for Misconduct) establishes policy and prescribes procedures for separating personnel for misconduct because of minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, and absence without leave.

d. Paragraph 14-12c (Commission of a Serious Offense) applied to Soldiers who committed a serious military or civilian offense, when required by the specific circumstances warrant separation and a punitive discharge was, or could be authorized for that same or relatively similar offense under the UCMJ.

3. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Chapter 3 prescribes basic eligibility for prior-service applicants for enlistment and includes a list of Armed Forces reentry eligibility (RE) codes.

- RE-1 applies to persons completing an initial term of active service who are considered qualified to reenter the U.S. Army if all other criteria are met
- RE-3 applies persons who are not considered fully qualified for reentry or continuous service at the time of separation, but disqualification is waivable

- RE-4 applies to persons separated from their last period of service with a nonwaivable disqualification

4. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designators), in effect at the time, listed the specific authorities, regulatory, statutory, or other directive, and reasons for separation from active duty, active duty for training, or full time training duty.

a. The separation program designator "JKQ" corresponded to "Misconduct (Serious Offense)," and the authority, Army Regulation 635-200, paragraph 14-12c.

b. The separation program designator "JFF" corresponded to "Secretarial Authority," and the authority, Army Regulation 635-200, paragraph 5-3.

5. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, 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 grounds.

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//