

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 February 2024

DOCKET NUMBER: AR20230007505

APPLICANT REQUESTS:

- Upgrade of her general discharge under honorable conditions to an honorable character of service
- Permission to appear personally before the Board, via video/telephone

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

- DD Form 149 (Application for Correction of Military Record)
- Divorce Decree
- Marriage Certificate

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10 (Armed Forces), United States Code (USC), section 1552 (b) (Correction of Military Records: Claims Incident Thereto). 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, her circumstances did not warrant a general discharge under honorable conditions, and that specific character of service has kept her ability from obtaining government employment. She maintains her leadership discriminated against her, and they intentionally made her look bad. She seeks this upgrade to improve her opportunities of becoming a government employee; she is hoping to better her life. To verify the name on her application, the applicant provides a copy of her divorce decree and marriage certificate.

3. A review of the applicant's service record reveals the following:

a. On 29 October 1998, after completing over 8 years of U.S. Army Reserve service, the applicant enlisted into the Regular Army for 3 years; at her entrance on active duty, she held the rank/grade of private first class (PFC)/E-3. Upon completion of initial entry training and the award of military occupational specialty 71L (Administrative Specialist), orders assigned her to Germany, and she arrived at her new duty station, on or about 5 December 1999.

b. Between March and August 1999, the applicant wrote 14 dishonored checks, totaling \$2,582.25. On 12 October 1999, she failed to report to her place of duty at the time prescribed. On 6 December 1999, the applicant accepted nonjudicial punishment, under the provisions of Article 15, Uniform Code of Military Justice, for having written 14 dishonored checks and failing to report to her place of duty, on 12 October 1999; the imposing official, her battalion-level commander, directed a suspended reduction from PFC to Private (PV2)/E-2, a suspended forfeiture of \$484 per month for 2 months, and 45-days' extra duty.

c. On or about 26 January 2000, the applicant's company commander advised her, via memorandum, that he was initiating separation action against her, under chapter 14 (Separation for Misconduct), paragraph 14-12b (A Pattern of Misconduct), Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel).

(1) The commander stated he based this action on the applicant's inability to maintain her personal finances, and that she had continuously presented bad checks throughout the community.

(2) The commander indicated he was recommending the applicant for a general discharge, but the final decision rested with the separation authority. On 26 January 2000, the applicant acknowledged receipt of his commander's separation notification.

d. On 1 February 2000, after consulting with counsel, the applicant acknowledged counsel had advised her of the basis for the pending separation, as well as her rights and the effect of waiving those rights. The applicant requested counsel and elected not to submit statements in her own behalf. In addition, the applicant requested a conditional waiver, wherein she voluntarily waived consideration of her case by an administrative separation board contingent on the separation authority characterizing her service as no less favorable than under honorable conditions.

e. On 17 February 2000, the separation authority approved the commander's separation recommendation and directed the applicant's general discharge under honorable conditions; on 24 February 2000, orders discharged her accordingly. The applicant's DD Form 214 shows she completed 1 year, 3 months, and 26 days of her 3-year enlistment contract. Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) lists the award of the Army Service Ribbon.

f. On 4 September 2007, the applicant petitioned the Army Discharge Review Board (ADRB), requesting an upgrade to honorable.

(1) The applicant argued that, although she had written bad checks, she had paid all of her debts without anyone forcing her to do so. She added that she sought this upgrade so she could use her GI Bill benefits for school and to secure a government job.

(2) On 12 September 2008, the ADRB voted to deny relief after determining there were no mitigating factors that would warrant an upgraded character of service.

4. A review of the applicant's service record contains sufficient evidence to support administrative corrections that are not annotated on her DD Form 214 for the period ending 16 September 1988. The applicant was awarded a MOS at the completion of IET and was transferred back to the USAR. Army Regulation 635-200 provides that when a RC Soldier successfully completes IADT, the character of service is Honorable unless directed otherwise by the separation authority. These omissions will be added to her DD Form 214 as administrative corrections and will not be considered by the Board,

5. AR 15-185 (ABCMR), currently in effect, states:

a. The ABCMR decides cases on the evidence of record; it is not an investigative body. Additionally, the ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary). The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

b. An applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

6. The ABCMR does not grant requests for upgraded characters of service solely to make someone eligible for benefits or to improve employment opportunities; however, in reaching its determination, the Board can consider the applicant's petition, her evidence and assertions, and her service record in accordance with the published equity, injustice, or clemency guidance.

7. Clemency guidance to the Boards for Correction of Military/Navy Records (BCM/NR) does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority to ensure each case will be assessed on its own merits. In determining whether to grant relief BCM/NRs 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. This includes consideration of changes in policy, whereby a service member under the same circumstances today would reasonably be expected to receive a more favorable outcome.

8. Published guidance to the BCM/NRs clearly indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of her characterization of service. Upon review of the applicant's petition, available military records and the medical review, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of writing worthless checks. The Board noted, the applicant provided insufficient evidence of post-service achievements or character letters of support attesting to her honorable conduct that might have mitigated the discharge characterization.

2. The Board found, the applicant was discharged for misconduct and was provided an under honorable conditions (General) characterization of service. The Board agreed that the applicant's discharge characterization is warranted as she did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an Honorable discharge. Therefore, the Board denied relief.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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:

Except for the correction addressed in Administrative Note(s) below, the Board found 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.



 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 NOTES:

A review of the applicant's records shows she is authorized administrative corrections not annotated on her DD Form 214 for the period ending 16 September 1988. As a result, re-issue the applicant a DD Form 214 showing her characterization of service as honorable.

REFERENCES:

1. Title 10, USC, 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 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) stated an honorable discharge was separation with honor; separation authorities issued an honorable discharge certificate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty or was otherwise so meritorious that any other characterization would clearly be inappropriate. Where there were infractions of discipline, commanders were to consider the extent thereof, as well as the seriousness of the offense. The Soldier could receive an honorable discharge when subsequent honest and faithful service over a greater period outweighed disqualifying entries in the Soldier's military record. It was the pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.

b. Chapter 14 (Separation for Misconduct). The regulation stated an under other than honorable conditions character of service was normally appropriate for chapter 14 discharges, but the separation authority could direct a general discharge under honorable conditions, if warranted by the Soldier's overall service record. Paragraph 14-12b stated Soldiers were subject to separation under this provision when they showed a pattern of misconduct involving acts of discreditable involvement with civil or military authorities, and/or displayed conduct that was prejudicial to good order and discipline.

3. AR 601-210 (Regular Army and Army Reserve Enlistment Program), in effect at the time, defined RE codes:

- RE-1 – qualified for reentry into the Army
- RE-3 – not fully qualified for reentry at the time of separation, but the disqualification is waivable

4. AR 635-5 (Separation Documents), in effect at the time, stated the entries for items 25 (Separation Authority), 26 (Separation (SPD) Code), and 27 (Reentry Code) were linked, and the regulation referred DD Form 214 preparers to AR 635-5-1 (SPD) for the SPD code associated with the regulatory separation authority.

a. AR 635-5-1 indicated that Soldiers released from active duty under chapter 14, paragraph 14-12b, AR 635-200 were issued the SPD of "JKA."

b. For RE code entries, AR 635-5 directed DD Form 214 preparers to use the SPD/RE Codes Cross-Reference Table to identify the appropriate RE code for the SPD identified in AR 635-5-1. Separating Soldiers with an SPD of "JKA" received an RE Code of "3."

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs 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, BCM/NRs 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.

6. AR 15-185 (ABCMR), currently in effect, states:

a. The ABCMR decides cases on the evidence of record; it is not an investigative body.

(1) The ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary).

(2) The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

b. An applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

//NOTHING FOLLOWS//