

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 February 2024

DOCKET NUMBER: AR20230007921

APPLICANT REQUESTS: her under honorable conditions (general) discharge be upgraded.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Letter
- Service Certificates
- Discharge Certificates (three)
- Medical Letter

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 October 1983 her son MKT\_\_\_, was abused and passed away. She was discharged due to misconduct-drug abuse. She has never done drugs prior to this party and never touched them after the service. At the time she felt she was not in the right state of mind. The next day she had a drug test and tested positive. She believes her discharge should be changed since she was a model Soldier who received awards for her good conduct, and recommendations from her commanding officers while she was serving abroad. When she went to Fort Bragg, NC, from Germany her commanding officers did not have housing set up for her family. She was forced to put her son with an unknown relative on her husband's (side of the family) while the housing was sorted out. During that time her son was abused which led to his death. After his death she was not given counseling and (was) expected to work as normal. When she got her offense, she was told she was being discharged. When she asked about counseling, she was told that if she did that it would go back to the courts. She was told by command to sign that she did not want counseling. This was her first offense and she had never received a write up before this offense.

3. The applicant enlisted in the Regular Army on 24 July 1979 for four years. Her military occupational specialty was 63B (Power Generator and Wheel Vehicle Mechanic).
4. She served in Germany from 17 December 1979 through 13 September 1983. She reenlisted on 25 August 1983 and again on 3 June 1986.
5. She received certificates of training between January 1980 and March 1983.
6. The applicant accepted nonjudicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ) on 3 February 1987 for cocaine use. Her punishment consisted of reduction to E-4, forfeiture of \$490.00 per month for two months, \$240.00 for two months suspended and extra duty.
7. A Report of Mental Status Evaluation, dated 25 February 1987, shows the applicant had the mental capacity to understand and participate in the proceedings, she was mentally responsible, and met retention requirements.
8. The applicant's immediate commander notified her on 26 February 1987, that he was initiating action to separate her under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 14, for misconduct-abuse of illegal drugs. The recommendation was based upon the applicant providing a urine sample during a random urinalysis to which revealed positive traces of cocaine on 29 October 1986. Her commander recommended she receive a general discharge.
9. The applicant consulted with legal counsel on 26 February 1987 and was advised of the basis for her separation under the provisions of AR 635-200, Chapter 14 and the procedures and rights that were available to her. She waived representation, consideration of her case by an administrative separation board and she waived personal appearance before an administrative separation board.
  - a. She acknowledged that she may expect to encounter substantial prejudice in civilian life if discharged under honorable conditions (general).
  - b. She elected not to submit statements in her own behalf.
10. The applicant's immediate commander formally recommended the applicant be processed for separation on 26 February 1987, under the provisions of AR 635-200, Chapter 14-12c, for misconduct-commission of a serious offense-abuse of illegal drugs.
11. The applicant's chain of command recommended approval of the discharge and elimination of the applicant from service due to patterns of misconduct. Additionally, the Staff Judge Adjutant, found the discharge proceedings were legally sufficient.

12. On 23 March 1987, the separation authority approved the recommended discharge and directed that the applicant be issued a General Discharge Certificate.

13. The applicant was discharged on 3 April 1987. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was discharged under the provisions of AR 635-200, paragraph 14-12c, Section III, for misconduct-drug abuse. She was assigned Separation Code JKK with Reenlistment Code 3. Her service was characterized as under honorable conditions (general). She completed 7 years, 8 months, and 10 days of net active service.

a. She was awarded or authorized Army Service Ribbon, Overseas Service Ribbon, and the Army Good Conduct Medal second award.

b. The Remarks block listed her immediate reenlistment but did not indicate whether she completed her first term of service and did not list her continuous honorable service.

14. Soldiers are subject to separation under the provisions AR 635-200, Chapter 14, for misconduct-commission of a serious offense-use of illegal drugs. A discharge under other than honorable conditions (UOTHC) is normally appropriate; however, the separation authority may direct a general discharge if such is merited by the overall record.

17. The applicant provides:

a. Service certificates of training, award, and achievement, and three discharge certificates.

b. A letter from the applicant's Licensed Clinical Social Worker states she has been in her care biweekly since 3 November 2021, and is still actively seeing her for therapy.

15. 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.

16. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting her under honorable conditions (general) discharge be upgraded. She contends she experienced a mental health condition which mitigates her misconduct.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) The applicant enlisted in the Regular Army on 24 July 1979; 2) The applicant accepted nonjudicial punishment (NJP) on 3 February 1987 for cocaine use; 3) On 3 April 1987,

the applicant was discharged, Chapter 14-12c, Section III, for misconduct-drug abuse. Her service was characterized as under honorable conditions (general).

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and available military service records. The VA's Joint Legacy Viewer (JLV) was examined along with additional medical documentation provided by the applicant.

d. The applicant noted a mental health condition as a contributing and mitigating factor in the circumstances that resulted in her separation. Specifically, she reported experiencing a significant loss while on active service, and she was not afforded the opportunity to address her emotional response. There was insufficient evidence the applicant reported or was diagnosed with a mental health condition while on active service. A Report of Mental Status Evaluation, dated 25 February 1987, shows the applicant had the mental capacity to understand and participate in the proceedings, she was mentally responsible, and met retention requirements. A review of JLV provided insufficient evidence the applicant has been diagnosed with a service-connected mental health condition, and she does not receive service-connected disability for a mental health condition. The applicant also provided medical documentation from an LCSW from a Vet Center in Great Falls, MT. The applicant has been in behavioral health care since November 2021, and she is seen bi-weekly. However, the provider did not discuss the onset of the applicant's behavioral health condition or her specific diagnosis.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence to support the applicant had condition or experience that mitigated his misconduct.

#### Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends she was experiencing a mental health condition contributed to her misconduct. She provided a letter that she has been in counseling since November 2021 at a Vet Center.

(2) Did the condition exist or experience occur during military service? Yes, the applicant reports experiencing a mental health condition while on active service.

(3) Does the condition experience actually excuse or mitigate the discharge? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition while on active service. The applicant did engage in substance abuse, which can be a sequela to some mental health conditions, but this is not sufficient to establish a history of a condition during active service. However, the applicant contends she was experiencing mental health conditions or an experience that mitigated his

misconduct, and per Liberal Consideration her contention is sufficient for the board's consideration.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was partially warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests.

a. The evidence shows the applicant was discharged due to misconduct – commission of a serious offense following her use of illegal drugs. She received a general discharge. The Board found no error or injustice in her separation processing. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical official. The Board concurred with the medical reviewer's finding insufficient evidence to support the applicant had condition or experience that mitigated her misconduct. Also, the applicant provided insufficient evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

b. The Board did note however that the applicant's service from first date of enlistment to the date before her last reenlistment was honorable. For enlisted Soldiers with more than one enlistment period during the time covered by this DD Form 214, in addition to listing immediate reenlistment(s), an entry is required for continuous honorable service from first day of service for which DD Form 214 was not issued until date before commencement of current enlistment.

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:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial 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 DD Form 214 to show in the Remarks Block:

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
- CONTINUOUS HONORABLE ACTIVE SERVICE FROM 790724 UNTIL 860602

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to upgrading the characterization of his discharge.



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, 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. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
3. AR 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 14 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions was normally considered appropriate. However, the separation authority could direct a general discharge if merited by the Soldier's overall record.
4. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder, traumatic brain injury; sexual assault; or sexual harassment. Boards are

to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences.

5. The Under Secretary of Defense for Personnel and Readiness issued guidance to Service DRBs and BCM/NRs 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//