

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 March 2024

DOCKET NUMBER: AR20230008633

APPLICANT REQUESTS: an upgrade of her bad conduct discharge (BCD) to an under honorable conditions (general) characterization of service.

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

- DD Form 293 (Application for the Review of Discharge)
- Veterans Affairs letter
- In-service personnel records

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 it was her dream to retire from the Army. She deeply regrets ever getting into trouble and causing pain to anyone involved. Since her discharge, she has lived a decent life and made better decisions. If given a second chance, she would have done things completely different.
3. The applicant enlisted in the Regular Army on 19 June 2001. Upon completion of training, she was awarded military occupational specialty 42A (Human Resources Specialist). She reenlisted on 1 July 2004, in pay grade E-4.
4. Before a general court-martial on 22 June 2005, at Headquarters, U.S. Army Infantry Center and Fort Benning, Fort Benning, GA, the applicant was found guilty of one specification of stealing deposit account funds of a value of \$141.15, from another Soldier; one specification of wrongfully stealing a letter enclosed with a debit card from the mail room, which was addressed to another Soldier; one specification of conspiring with two other Soldiers to steal basic trainee debit cards, mail and deposit account funds; and three specifications of making false statements, with the intent to deceive.

5. The court sentenced her to a BCD, reduction in grade to E-1, forfeiture of \$1,235.00 pay per month for 24 months, and confinement for two years. The sentence was approved on 10 February 2006, however, except for that part of the sentence extending to the BCD would be executed. The adjudged forfeiture of \$800.00 pay per month was deferred and the record of trial was forwarded for appellate review.
6. On 22 June 2007, the applicant was placed on excess leave.
7. On 26 June 2008, the U.S. Army Court of Criminal Appeals affirmed the findings of guilty of the Specification of Charge III and Charge III, as amended, and the remaining findings of guilty. The sentence was affirmed.
8. General Court-Martial Order 255, issued by Headquarters, U.S. Army Fires Center of Excellence and Fort Sill, Fort Sill, OK on 22 December 2009, noted that the applicant's sentence had been affirmed and ordered the BCD duly executed.
9. The applicant was discharged on 15 April 2010. Her DD Form 214 (Certificate of Release from Active Duty) confirms she was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), Chapter 3, as a result of court-martial. Her service was characterized as bad conduct. She was assigned Separation Code JJD and Reentry Code 4. She completed 6 years, 9 months, and 28 days of net active service this period with 729 days of time lost.
10. Additionally, her DD Form 214 shows she was awarded or authorized the Army Achievement Medal (2nd Award), Army Good Conduct Medal, National Defense Service Medal, Global War on Terrorism Service Medal, and the Army 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. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, U.S. Code, Section 1552, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction. Rather, it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

13. 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. The Board carefully considered the applicant's request for an upgrade of her BCD to a general characterization of service, her statement, the evidence or record, and the applicable Army Regulations, Statutory guidance, and the published Department of Defense guidance for consideration of discharge upgrade requests based upon clemency, and found relief was not warranted.

2. The applicant's record outlines a history of misconduct, which includes stealing mail, deposit account funds, and a debit card belonging to other Soldiers, conspiring with other Soldiers to steal basic trainee debit cards, mail and deposit account funds, and making false statements, with the intent to deceive. The primary target appeared to be basic trainees, the most vulnerable personnel in the Army.

a. Other than her statement that she is feel remorse for her actions, she has not provided any evidence such as letters of support or recommendation, evidence of post service accomplishments upon which the Board can apply a clemency consideration.

b. The evidence of record indicates the applicant reason for discharge the narrative reason for her discharge are appropriate based the reason for her discharge.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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 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.

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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.

ADMINISTRATIVE NOTE(S): correct item 18 (Remarks) of The DD Form 214 ending 15 April 2010 to add following entries:

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
- CONTINUOUS HONORABLE SERVICE FROM 010619 UNTIL 040630

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. 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 3, Section IV provided that a member would be given a BCD pursuant only to an approved sentence of a general or special court-martial, after completion of appellate review, and after such affirmed sentence has been ordered duly executed.
4. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, U.S. Code, Section 1552, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction. Rather, it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.
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 (BCM/NR), on 25 July 2018 [Wilkie Memorandum], 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//