

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 8 March 2024

DOCKET NUMBER: AR20230008673

APPLICANT REQUESTS:

- in effect, an upgrade of his under other than honorable conditions (UOTHC) discharge
- correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty) to show her narrative reason for separation as hardship
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Special Power of Attorney, dated 21 May 1986
- Hardship Discharge Request, including two supporting statements
- Memorandum, subject: Hardship Discharge, dated 15 June 1987
- Four Statements of Support

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 effect, she went through the proper channels to request a hardship discharge. Her first sergeant did not give her situation serious consideration and did not assist in her request.
3. The applicant enlisted in the Regular Army on 10 April 1984 for a 3-year period. Upon completion of initial entry training, she was awarded military occupational specialty 76V (Material Storage and Handling Specialist). The highest grade she attained was specialist/E-4.

4. The applicant's first duty station was Camp Casey, Korea. Her record contains a Special Power of Attorney, dated 21 May 1986, wherein she granted the care, custody, and control of her two minor children to her mother, F.S.B., while she was in Korea.

5. The applicant reenlisted on 5 November 1986 for a 3-year period.

6. On 13 April 1987, the applicant voluntarily requested a waiver of her enlistment commitment entitlement for the Military Police Course (95B). She acknowledged understanding she would be reassigned at the needs of the Army for her remaining enlistment commitment.

7. The applicant's record contains a hardship discharge request wherein she states, in effect:

a. She has been married for 9 years and has two children. She is currently separated from her husband, and he has asked for a divorce. She recently returned from Korea. After a period of leave, which was a nightmare, she went to Military Police advanced individual training. She spoke with her chain of command about her family problems the moment she arrived. These problems preoccupied her to the point that she could not go through with the course.

b. After withdrawing from the course, she was reassigned to Fort Hood, TX. She could no longer fulfill her military obligations and work out her family issues. Her mother had custody of her children while she was in Korea. She has asked too much of her mother and needs to be responsible for her own family. Her children have gotten lost in the shuffle. Her youngest daughter is confused and her oldest daughter is having behavioral issues. She needs to be released from her contract to get their lives back together.

c. The applicant's request includes two letters, dated 4 June 1987, from her mother and mother-in-law, who attest to the family hardship and further state the applicant needs to be released to take care of her family.

8. On 15 June 1987, the Chaplain, 34th Support Battalion, 6th Cavalry Brigade, Fort Hood, TX, recommended approval of the hardship discharge, stating he felt the discharge was in the best interest of the Army and the Soldier.

9. Three DA Forms 4187 (Personnel Action) show the following changes in the applicant's duty status:

- Present for duty (PDY) to Absent without Leave (AWOL) – 14 July 1987
- AWOL to Dropped from Rolls (DFR) – 12 August 1987
- DFR to PDY – surrendered to military authorities on 13 August 1987

10. Court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice on 17 August 1987. The relevant DD Form 458 (Charge Sheet) shows she was charged with being AWOL from on or about 13 July 1987 until on or about 13 August 1987.

11. She consulted with legal counsel on 17 August 1987.

a. She was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice, the possible effects of a UOTHC discharge, and the procedures and rights that were available to her.

b. After receiving legal counsel, she voluntarily requested discharge, for the good of the service, under the provision of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. In her request for discharge, she acknowledged making this request free of coercion. She further acknowledged understanding if her discharge request were approved, she could be deprived of many or all Army benefits, she could be ineligible for many or all benefits administered by the Veteran's Administration (VA), and she could be deprived of her rights and benefits as a Veteran under both Federal and State laws.

c. She was advised she could submit any statements she desired in her own behalf. She elected to provide copies of her hardship discharge request, summarized above.

12. The applicant's immediate and intermediate commanders recommended approval of the request for discharge, further recommending a service characterization of UOTHC.

13. The separation authority approved the request for discharge for the good of the service on 28 September 1987 and further directed reduction to the lowest enlisted grade and the issuance of an UOTHC characterization of service.

14. The applicant was discharged on 10 November 1987, under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service - in lieu of trial by court-martial. Her DD Form 214 shows her characterization of service was UOTHC, with separation code KFS and reentry code RE-3, 3B, 3C. She was credited with 3 years, 6 months, and 2 days of active service, with lost time from 14 July 1987 to 12 August 1987. She was awarded or authorized the Army Service Ribbon, Overseas Service Ribbon, and the Army Achievement Medal.

15. The applicant provides the following:

a. Nine pages of Army Service Records, dated 21 May 1986 to 15 June 1987, which are summarized above.

b. Four statements of support, dated 22 February 2023 to 27 February 2023, wherein the authors attest to the applicant's moral integrity. She is a dedicated, hard-working individual, with a commitment to excellence in both her personal and professional life. She is dedicated to assisting her adult daughter, with developmental disabilities, in achieving her goals. She is also a champion for other individuals with disabilities.

16. Discharges under the provisions of Army Regulation 635-200, Chapter 10, are voluntary requests for discharge for the good of the service, in lieu of a trial by court-martial. An under other than honorable conditions characterization of service is normally considered appropriate.

17. Soldiers may be discharged or released because of genuine dependency or hardship, under the provisions of Army Regulation 635-200, Chapter 6. Hardship exists when in circumstances not involving the death or disability of a Soldier's immediate family member, and separation from service will materially affect the care or support of the family by alleviating undue and genuine hardship.

18. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

1. After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined that relief was warranted.

2. The Board determined based on a preponderance of the evidence, including the applicant's statement, service record at the time of separation, and support of the unit chaplain, the applicant should have been separated under the provisions of AR 635-200, Chapter 6 for hardship.

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

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the DD Form 214 to show in:

- item 24 (Characterization of Service): Honorable
- item 25 (Separation Authority): Army Regulation 635-200
- item 26 (Separation Code): KDB
- item 27 (Reentry Code): 3
- item 28 (Narrative Reason for Separation): Hardship

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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. 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. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. Paragraph 2-11 states applicants do not have the right to a hearing before the ABCMR. The Director of the ABCMR may grant a formal hearing whenever justice requires.

3. Army Regulation 635-5 (Personnel Separations) provides for an additional entry on the DD Form 214 for continuous honorable active service when a Soldier who previously reenlisted without being issued a DD Form 214 was discharged with any characterization of service except honorable.

4. Army Regulation 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

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 6 provides for separation because of dependency or hardship. It states, in pertinent part, Soldiers may be discharged or released because of genuine dependency or hardship. Hardship exists when in circumstances not involving the death or disability of a Soldier's immediate family member, and separation from service will materially affect the care or support of the family by alleviating undue and genuine hardship. A married Soldier who becomes a parent and Soldiers who become sole parents, whose children are under the age of 18 years old, may apply for separation under hardship. Supporting evidence is required. Soldiers will not be separated for dependency or hardship if they are under charges, in confinement, being processed for involuntary separation, being investigated under the military personnel security program, or being processed for physical disability. If the Soldier is beyond entry-level

status, service will be characterized as honorable or under honorable conditions (general), as appropriate.

d. Chapter 10 of the regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

5. 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//