

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 March 2024

DOCKET NUMBER: AR20230008890

APPLICANT REQUESTS:

- in effect, an upgrade of her under honorable conditions (General) discharge
- in effect, restoration of her rank/grade

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 28 April 1989

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. On 22 October 1986, the applicant enlisted in the Regular Army.
3. The AF Form 1890 (Urinalysis Custody and Report Record) completed on 5 December 1988, shows the applicant tested positive for cocaine.
4. On 28 February 1989, the applicant accepted nonjudicial punishment (NJP) under Article 15, Uniform Code of Military Justice for wrongful possession of cocaine, on or about 10 and 17 November 1988. Her punishment consisted of reduction to private/E-1, forfeiture of \$349.00 for 2 months, one month suspended for 180 days; and 45 days extra duty.
5. The applicant appealed and submitted two statements that show in part:
 - a. On 17 November 1988, during the company urinalysis there were no labels on the specimen bottles that were provided to her. The unit alcohol and drug coordinator (UADC) gave her a bottle and after she had the bottle in her hand the UADC said,

“that’s not your bottle” and gave her another bottle. After completing the urinalysis, she initialed the label.

b. She was informed that she had an appointment with drug and alcohol on 6 January 1989. Prior to her appointment she reported to her unit’s 8:45 formation; and waited around for Staff Sergeant (SSG) [REDACTED] and missed her appointment. She had another appointment the same day at 1:00 pm, she was supposed to meet with SSG [REDACTED] but the sergeant was not there, so she went to her appointment at 1:05 pm.

6. On 6 March 1989, the applicant was notified that her appeal was disapproved.

7. A disposition form shows a request for elimination under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14-12c, commission of a serious offense, abuse of cocaine between 17 October and 17 November 1988.

8. On 20 March 1989, the applicant's immediate commander notified the applicant of his intent to initiate separation action against her under the provisions of AR 635-200, paragraph 14-12c, for commission of a serious offense. The reason for his proposed action was for wrongfully using an illegal drug. He recommended a general, under honorable conditions characterization of service and advised the applicant of her rights. The applicant acknowledged receipt on the same date.

9. On 20 March 1989, the applicant consulted with counsel who advised her of the basis for the contemplated action to separate her under AR 635-200, Chapter 14-12c, and its effect; of the rights available to her; and the effect of any action taken by her in waiving her rights. She acknowledged/elected:

a. She voluntarily waived consideration of his case by an administrative separation board contingent upon him receiving a general discharge.

b. She understood that she may, up until the date the separation authority orders, directs, or approves her separation, withdraw this waiver and request that an administrative separation board hear her case.

c. She understood that if the separation authority refuses to accept this conditional waiver of a hearing before an administrative separation board her case, would be referred to an administrative separation board.

d. She understood she may expect to encounter substantial prejudice in civilian life if a discharge/character of service any less favorable than honorable is issued to her and she understood that, as the result of issuance of a discharge certificate/ character of service which is less than honorable, she may make application to the Army

Discharge Review Board or the Army Board for Correction of Military Records for upgrading; however, she realizes that consideration by either board does not automatically imply upgrading. She also understood that she is ineligible to apply for enlistment in the U.S. Army for a period of two years after discharge.

10. On the same day, the applicant's immediate commander-initiated separation action against the applicant under chapter 14-12c of AR 635-200 for commission of a serious offense. She recommended a (general) under honorable conditions discharge. The intermediate commander recommended approval.

11. On 13 April 1989, Lieutenant Colonel [REDACTED] the Deputy Commander submitted a statement after hearing the Article 15 appeal of the [applicant]. He stated the battalion commander did a thorough investigation of the procedures during the urinalysis. He believes the statement of Sergeant [REDACTED] the female observer and was convinced the single positive urinalysis sample did in fact belong to the [applicant].

12. On 17 April 1989, consistent with the chain of command recommendations, the separation authority approved her discharge under the provisions of AR 635-200, paragraph 14-12c, and directed the issuance of a general, under honorable conditions discharge certificate.

13. On 28 April 1989, the applicant was discharged, in the rank/grade of private/E-1, under the provisions of Army Regulation 635-200, paragraph 14-12c, for misconduct – commission of a serious offense. Her DD Form 214 shows her rank/grade as PVT/E-1, a separation code of "JKQ," And a reentry code of "3 and 3 C." The applicant completed 2 years, 6 months, and 7 days of active service and she was awarded or authorized the Army Service Ribbon, Sharpshooter Marksmanship Qualification Badge with Rifle Bar, and the Expert Marksmanship Qualification Badge with Grenade Bar.

14. There is no indication that the applicant requested an upgrade of her discharge from the Army Discharge Review Board within its 15-year statute of limitations.

15. By regulation (AR 635-200), Chapter 14 states action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline), commission of a serious offense, and convictions by civil authorities. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter.

16. Also by regulation, the DD Form 214 is a summary of the Soldier’s most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of discharge. I

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

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. Upon review of the applicant’s petition and available military records Board found insufficient evidence of in-service mitigating factors to overcome the misconduct of drug use. The Board noted, the applicant provided insufficient evidence of post-service achievement or character letters of support that attest to her honorable conduct that might have mitigated the discharge characterization.

2. The Board noted, 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. In addition, the Board determined the applicant’s record is absent sufficient evidence that would warrant restoration of her rank/grade. Therefore, the Board denied relief.

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:

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.

3/19/2024

X

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.

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 635-200 (Personnel Separations) sets forth the basic authority for the separation of enlisted personnel. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline), commission of a serious offense, and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter.

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 (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. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military 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.

4. Army Regulation 635-8 (Separations Processing and Documents), currently in effect, provides for the preparation and distribution of the DD Form 214. It states for:

a. item 4a - Verify that active-duty grade or rank and pay grade are accurate at time of separation.

b. item 13 - List all federally recognized awards and decorations for all periods of service.

//NOTHING FOLLOWS//