

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 March 2024

DOCKET NUMBER: AR20230008984

APPLICANT REQUESTS: an upgrade of her under honorable conditions (general) discharge to an honorable discharge.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 293 (Application for the Review of Discharger from the Armed Forces of the United States)
- Illegible DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Department of Veterans Affairs (VA) Summary of Benefits letter
- Character reference 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 she is requesting an upgrade of her discharge so she may have access to her military post. She was charged by the City of Killeen, TX, for writing hot checks in 2003, during this time she was actually deployed to Iraq. She had foolishly trusted a person she should not have with access to her home while she was deployed. This same person was expected to drop off her vehicle to the storage facility while she was on deployment. She returned from Iraq and her home had also been emptied. She smoked weed to keep herself mentally grounded post-deployment because her accounts had been overdrawn and her car had been stolen. Yes, the financial institution made her whole and replaced the funds, but she did not know another way of coping with that many dilemmas simultaneously. She wanted to hurt someone and lash out and be inappropriate through fits of rage. However, she was a Soldier in the face of her circumstances. No one was hurt by her mentally keeping her composure. She has remained in the very same location for nearly 20 years in the shadow of what was treated as being disgraceful. She is a service-connected disabled Veteran as well as a government employee.

3. The applicant enlisted in the Regular Army on 20 November 2001 for a period of 3 years. Upon completion of initial entry training, she was assigned to Fort Hood, TX. She was subsequently reassigned to a unit at Fort Gordon, GA. She was promoted to the rank/pay grade of specialist (SPC)/E-4 on 20 November 2003, the highest rank held.
4. On 13 February 2004, she reenlisted for a period of 5 years.
5. On 15 July 2004, the applicant was counseled for testing positive for marijuana use following a recent urinalysis. She was advised that continued contact of this nature could result in initiation of a bar to reenlistment, administrative action to include her separation from the service, and/or punitive action. She was further advised that continued misconduct could result in action to involuntarily separate her from the service and the potential consequences of such a separation.
6. On 16 July 2004, an administrative flag was imposed against the applicant to prevent her from receiving any favorable personnel actions while she was pending adverse action.
7. On 19 July 2004, the applicant was enrolled in the Army Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) due to her improper use of drugs.
8. On 29 July 2004, the applicant underwent a separation medical examination and was determined to be qualified for service and/or administrative separation actions.
9. On 12 August 2004, the applicant underwent a mental status evaluation, and it was determined that she had no duty limitations due to behavioral health reasons and that she met medical retention standards. She was mentally responsible and could understand and participate in administrative proceedings and appreciated the difference between right and wrong. She was cleared for administrative actions.
10. On 17 August 2004, the applicant accepted field grade nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for violating Article 112a, UCMJ by wrongfully using a controlled substance (marijuana) on or between 23 May 2004 and 22 June 2004. Her punishment included reduction from SPC/E-4 to private first class/E-3; forfeiture of \$748.00 pay per month for 2 months; and extra duty for 45 days.
11. The applicant's immediate commander notified the applicant of his intent to initiate actions to separate her under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14, for commission of a serious offense. She was advised that she was being recommended for a general, under honorable conditions discharge, but the final determination of her characterization of

service would be made by the separation authority. The applicant acknowledged receipt of the proposed separation notification on 12 October 2004.

12. The applicant acknowledged that she was advised of the reasons for separation and of the rights available to her. She consulted with counsel and submitted a conditional election of rights wherein she elected to waive consideration of her case before an administrative separation board. She further elected not to submit statements in her own behalf and requested representation by consulting counsel.

13. The applicant's immediate commander formally recommended her separation prior to the expiration of her term of service under the provisions of AR 635-200, paragraph 14-12c, by reason of commission of a serious offense. The interim commander recommended approval of her separation and that her service be characterized as general, under honorable conditions.

14. On 20 October 2004, the separation authority approved the recommendation for separation, and directed the applicant be issued a general, under honorable conditions discharge.

15. Orders and the applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) show she was discharged from the Regular Army on 2 November 2004, under the provisions of AR 635-200, paragraph 14-12c(2), by reason of Misconduct, with separation code "JKK" and reentry code "4." Her service was characterized as Under Honorable Conditions (General). She was credited with completion of 2 years, 11 months, and 18 days of net active service this period and had no lost time. She was not credited with any foreign service.

16. The applicant provides the following documents which are all available in their entirety for the Board's consideration.

- letter, dated 13 January 2023, which shows the applicant is receiving monthly benefits based upon an 80 percent service-connected disability rating
- character reference letter rendered by a pastor of her church who made favorable comments about her trustworthiness, dependability, and integrity

17. 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:**

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. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation.

a. The evidence shows the applicant committed a serious offense (illegal drugs). Accordingly, her chain of command initiates separation action against her. She was discharged with a general, under honorable conditions characterization of service after completing 2 years and 2 months of active service. The Board found no error or injustice in his separation processing. 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 his 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:

Mbr 1      Mbr 2      Mbr 3

:            :            :            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 SERVICE FROM 20011120 UNTIL 20040212

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 three 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 three-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. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body.

3. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provides that 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. Paragraph 3-7b states 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 establishes policy and prescribes procedures for separating members for misconduct. 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). 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; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

4. 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.

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.

//NOTHING FOLLOWS//