

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 April 2024

DOCKET NUMBER: AR20230009367

APPLICANT REQUESTS:

- an upgrade of her characterization of service from under other than honorable conditions (UOTHC) to honorable
- restoration of rank

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

- DD Form 293 (Application from the Review of Discharge from the Armed Forces of the United States), 29 May 2023
- self-authored statement
- three DA Forms 4856 (Developmental Counseling Forms), 15 April 2012, 29 June 2012, and 17 January 2013
- memorandum, statement for involuntary transfer to the Individual Ready Reserve (IRR), 174 January 2013
- Orders 13-150-00078, 30 May 2013

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, in effect, her demotion and under other than honorable conditions (UOTHC) discharge was unjust. She references her provided DA Form 4856 (Developmental Counseling Form) stating her contractual obligation date and counseling for transferring into the IRR. Her specific counseling form dated 29 June 2012 stated she was in an overstrength position and was being transferred into the IRR. When she received her orders for discharge, she found she was demoted to private and received a UOTHC discharge. She contacted her unit and submitted an action with the Inspector General about her discharge and demotion. This separation has caused turmoil in her life. She came from a low-income immigrant family; she was the first of her family to lead the way for a better future. She joined the Army, went overseas, has a

degree and a stable career, she graduated as a distinguished honor graduate from her military occupational specialty (MOS) class of 92L. She is proud to be a veteran and has been grateful for the opportunities afforded to her, she feels her discharge labels her a person to whom she is not.

3. The applicant enlisted in the U.S. Army Reserve (USAR) on 23 November 2005, for a period of 8 years. After completion of initial active duty for training her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows:

a. She entered into active duty this period on 30 May 2006 and was released from active duty on 21 September 2007. was awarded the MOS of 92L (Petroleum Laboratory Specialist).

b. She was released from active duty upon completion of required active service, with uncharacterized service (See Administrative Notes). She was transferred back to the control of the USAR.

4. The applicant provides a Developmental Counseling Form, 15 April 2012, showing she was counseled by a noncommissioned officer (NCO) for her decision to separate from the Army Reserve Troop Program Unit. Her contractual obligation is shown as ending on 30 May 2012 and the statutory obligation ended on 22 November 2013.

5. An additional DA Form 4856, 29 June 2012, shows she was counseled due to her unit's decision to involuntarily transfer her into the IRR. It additionally shows her contractual obligation date of 22 November 2013 and her military service obligation of 22 November 2013.

a. The key points state she would be transferred into the IRR because:

- she was being identified as a Soldier in an overstrength position
- there were no valid vacancies within reasonable commuting distance from her home of record

b. Additionally, the plan of action shows:

- she would complete an IRR transfer packet
- she would continue to attend Battle Assembly until her transfer orders were published
- she would find a unit to RST [reschedule training] with
- once her transfer orders were published they would be emailed to her

6. A DA Form 268 (Report to Suspend Favorable Personnel Actions (FLAG)), shows the applicant had a flag imitated on 10 January 2013 for being an unsatisfactory participant.
7. A DA Form 4856 (Developmental Counseling Form), 8 January 2013, shows the command identified the applicant as an unsatisfactory participant for having accrued over 9 unexcused absences within a one-year period. Additionally stating, failure to respond within five working days of receipt of the counseling would result in the initiation of separation from the USAR under Army Regulation (AR) 135-178 (Army National Guard and Army Reserve Enlisted Administrative Separations), Chapter 13 (Unsatisfactory Participation in the Ready Reserve) or Chapter 12 (Misconduct) (b) (A pattern of Misconduct) with a UOTHC characterization of service. A notice sent by certified mail was refused, unclaimed, or otherwise undeliverable. The signed form is void from the applicant's official military personnel file.
8. She provides an additional DA Form 4856, dated 17 January 2013, showing she was counseled on her decision to transfer into the IRR. The plan of action states:
  - She would complete all required documents for IRR transfer packet.
  - She would receive orders assigning her into the IRR within 90 days of packet submission.
  - A copy of the counseling would be sent to the chain of command to assist with her IRR transfer packet.
  - She understood she must continue to attend battle training assembly until transfer orders were published or properly excused by the chain of command.
9. The applicant's official military personnel file is void of an IRR transfer packet signed or submitted by the applicant or the applicant's chain of command.
10. On 25 April 2013, a legal review was completed validating the applicant received a total unsatisfactory count of 26, was not attending battle assembly, and was last paid on 2 February 2013. There was no legal objection for the applicant's separation with a UOTHC discharge.
11. On 1 May 2013, the applicant's intermediate commander recommended the applicant be separated under the provisions of AR 135-178, Chapter 13, for a pattern of misconduct and unsatisfactory participation. He further recommended the applicant receive a UOTHC discharge. Additionally stating, the applicant had 26 unexcused absences and she was notified under administrative board procedures for accruing over 9 unexcused absences via certified mail having been refused, unclaimed, or otherwise undeliverable.

12. The separation authority ordered the applicant be separated with a characterization of service of UOTHC and be reduced to private/E-1 on 4 May 2013.

13. Orders 13-150-00078, issued by the Department of the Army, Headquarters, 63rd Regional Support Group shows the applicant was reduced from the rank/grade of specialist/E-4 to private/E-1 effective 30 May 2013. She was discharged from the USAR effective 6 June 2013 with a UOTHC discharge.

14. The applicant petitioned the Army Discharge Review Board for upgrade of her discharge and restoration of rank. After careful consideration of the applicant's application, military records, and all other available evidence, the ADRB determined she was properly and equitably discharged and denied the request.

15. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence shows during the applicant's service with a troop program unit, her chain of command identified her as an unsatisfactory participant and initiated separation action against her after having received 26 unexcused absences and was not attending battle assembly. The separation authority ordered the applicant be separated with a characterization of service of UOTHC and be reduced to private/E-1. The Board found no error or injustice in her separation processing. Also, the applicant provided no 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 and rank/grade the applicant received upon separation was not in error or unjust.

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:

Except for the correction addressed in Administrative Note(s) below, the Board found 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.



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):

The applicant completed a period of initial active duty for training (IADT). She was awarded a MOS at the completion of training and was transferred back to the USAR. Army Regulation 635-200 provides that when a Reserve Component Soldier successfully completes IADT, the characterization of service is Honorable unless directed otherwise by the separation authority. Please reissue her a DD Form 214 for the period ending 21 September 2007 showing her character of service as Honorable.

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. AR 135-91 (Service Obligations, Methods of Fulfillment, Participation Requirements and Enforcement Procedures) provides guidance governing absences from Ready Reserve training for enlisted personnel.

a. A Soldier becomes an unsatisfactory participant when he has accrued nine or more unexcused absences from scheduled drills during a 1-year period.

b. After accruing four unexcused absences in a 1-year period, the unit commander is required to notify the Soldier via a prescribed letter of instructions – unexcused absence. The delivery of this notice will be either in person or by certified mail, restricted delivery, return receipt requested. After each additional unexcused absence in a 1-year period, the Soldier will receive a similar letter of instructions. Each of these notices will be filed in the Soldier's military personnel records.

3. AR 135-178 sets forth the basic authority for the separation of enlisted Reserve Component personnel.

a. Paragraph 2-9a provides that an honorable characterization of service is appropriate when the quality of the Soldier'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 2-9b provides that a general (under honorable conditions) characterization of service is warranted when significant negative aspects of the Soldier's conduct or performance of duty outweigh positive aspects of the Soldier's military record.

c. Paragraph 2-9c provides that service may be characterized as UOTHC when discharge is for misconduct, fraudulent entry, unsatisfactory participation, or security reasons. When a Soldier is to be discharged UOTHC, the separation authority will direct an immediate reduction to private/E-1, in accordance with AR 600-8-19 (Enlisted Promotions and Reductions).

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. 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. 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//