

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 May 2024

DOCKET NUMBER: AR20230010166

APPLICANT REQUESTS: Upgrade of her under honorable conditions (general) discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- U.S. Army Reserve (USAR) discharge orders
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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 she was unfairly given a test. They never considered giving her help since this was her first offense. She was suffering from post-traumatic stress disorder (PTSD) with alcohol and depression. She was going through a lot, having a rough time and easily influenced by older officers and peers. She was very young at the time, and wants a second chance to redeem herself.

3. The applicant enlisted in the U.S. Army Reserve (USAR) on 22 December 1989. She entered active duty for initial active duty for training (IADT), on 17 January 1990. She completed training and was awarded military occupational specialty 766C, Equipment Records and Parts Specialist).

4. She was released from active duty on 5 June 1990, and transferred back to the control of her USAR unit. She was issued a DD Form 214 for this period of service, reflecting an uncharacterized discharge. [see Administrative Notes].

5. The applicant was reported by her USAR unit absent from her scheduled unit training assembly or multiple training assemblies on 17 October 1993, 18 December 1993, and 20 March 1994.

6. On 1 April 1994, the applicant tested positive for cocaine and marijuana from a specimen collected on 19 March 1994.
7. On 11 May 1994, the applicant's commander notified her that he was initiating actions to separate her under the provisions of Army Regulation 135-178 (Army National Guard and Army Reserve – Separation of Enlisted Personnel), Chapter 7, for misconduct. He noted her use of illegal drugs.
8. On 21 May 1994, the applicant acknowledged she had been advised of the basis for the contemplated elimination action. She indicated she desired military legal counsel for consultation be available to assist her on request. She indicated she would submit a statement in her own behalf and she requested retention in the USAR.
9. A Commanding Officers Report, dated 16 August 1994, notes the applicant's commander recommended her retention in the USAR, conditional on her enrollment and completion of a rehabilitation program of her choice and expense.
10. On 26 September 1994, the applicant's commander notified her that he was initiating actions to separate her under the provisions of Army Regulation 135-178, paragraph 7-11, for abuse of illegal drugs.
11. The available record is void of the applicant's election of rights memorandum.
12. Memorandum, issued by 214th Legal Services Organization, Milwaukee, WI, on 18 July 1995, notified the applicant that a board of officers would hold a hearing to determine whether she should be discharged from the USAR for abuse of illegal drugs. A memorandum was sent via certified mail; however, the available record is void of confirmation the applicant received the notification or appeared before the Board.
13. By legal review on 24 June 1997, the applicant's involuntary separation action was found to be legally sufficient for further processing.
14. The applicant's record is void of the separation authority's approval of the recommended separation action.
15. Orders 97A-182-027, issued by Headquarters, 88th Regional Support Command, Fort Snelling, MN on 1 July 1997, discharged the applicant from the USAR effective 25 July 1997, under the provisions of Army Regulation 135-178. Her service was characterized as under honorable conditions (general).
16. The applicant petitioned the Army Discharge Review Board requesting upgrade of her under honorable conditions (general) discharge. On 9 May 2000, the Board voted to deny relief and determined her discharge was both proper and equitable.

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.

18. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting an upgrade of her Under Honorable Conditions (General) characterization of service to Honorable. The applicant contends her behavior was associated with Posttraumatic Stress Disorder (PTSD) and Other Mental Health Issues. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following:

- The applicant enlisted in the U.S. Army Reserves (USAR) on 22 December 1989. She was on active duty for initial active duty training (IADT) 17 January 1990 through 05 June 1990.
- As detailed in the ROP, the applicant was reported absent from her scheduled unit training assemblies on 17 October 1993, 18 December 1993 and 20 March 1994. Records note the applicant was counseled in February 1993 specifying she needed to improve her performance as well as respect to section and squad non-commissioned officers (NCOs).
- On 01 April 1994, the applicant tested positive for cocaine and marijuana from a specimen collected on 19 March 1994. On 11 May 1994, the applicant's commander notified her that he was initiating actions to separate her under the provisions of Army Regulation (AR)135-178 (Army National Guard and Army Reserve-Separation of Enlisted Personnel), Chapter 7, for misconduct. The commander noted her use of illegal drugs. The applicant acknowledged she had been advised of contemplation of the elimination action on 21 May 1994.
- A Commanding Officers Report dated 16 August 1994 noted the applicant's Commander recommended her for retention in the USAR conditional on her enrollment and completion of a rehabilitation program of her choice and expense. On 26 September 1994, the applicant's Commander notified her that he was initiating actions to separate her under AR 135-178, paragraph 7-11, for abuse of illegal drugs.
- The applicant was discharged under AR 135-178, paragraph 7-11, for abuse of illegal drugs from the USAR effective 25 July 1997 under honorable conditions (general).
- The applicant previously petitioned the Army Discharge Review Board requesting upgrade of her under honorable conditions (general) discharge. On 09 May 2000, the Board denied relief, determining that her discharge was both proper and equitable.

b. Review of Available Records Including Medical: The VA electronic medical record (JLV), MEDCHART, ROP and casefiles were reviewed. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. No BH-related military records were provided for review. A review of JLV and MEDCHART was void of any treatment history for the applicant and she does not have a service-connected (SC) disability. No civilian BH-related records were provided for review.

c. The applicant requests reconsideration of a request to upgrade her Under Honorable Conditions (General) discharge to Honorable. She contends her misconduct was related to PTSD and Other Mental Health Issues. A review of records was void of any BH diagnosis or treatment history for the applicant during or after service and she provided no medical documentation supporting her assertion of PTSD or Other Mental Health Issues. In absence of documentation supporting her assertion there is insufficient evidence to establish her misconduct was related to or mitigated by PTSD or Other Mental Health Issues and insufficient evidence to support an upgrade based on BH medical mitigation.

d. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence that the applicant had a condition or experience during her time in service that mitigated her misconduct. However, she contends her misconduct was related to PTSD and Other Mental Health Issues, and per liberal guidance her assertion is sufficient to warrant the Board's consideration.

e. Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes, the applicant contends her misconduct was related to PTSD and Other Mental Health Issues.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of the records was void of any BH diagnosis or treatment history for the applicant during or after service and she provided no medical documentation supporting her assertion of PTSD or Other Mental Health Issues. In absence of documentation supporting her assertion there is insufficient evidence to establish her misconduct was related to or mitigated by PTSD or Other Mental Health Issues and insufficient evidence to support and upgrade based on BH medical mitigation.

**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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The applicant served in the USAR from 22 December 1989 to 25 July 1997. During her USAR service, she was reported by her USAR unit absent from her scheduled unit training assembly or multiple training assemblies on multiple occasions and she also tested positive for cocaine and marijuana. Accordingly, her chain of command initiated separation action against her. She was ultimately discharged from the USAR for misconduct and her service was characterized as under honorable conditions (general). The Board found no error or injustice in her separation processing. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the reviewing medical official. The Board concurred with the medical official's finding insufficient evidence to support the applicant had a condition or experience that mitigated her misconduct. 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 the applicant received upon separation was not in error or unjust.

2. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is completed to more accurately depict the military service of the applicant.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	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 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 IADT. She was awarded a military occupational specialty at the completion of training and returned to the control of 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 5 June 1990 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. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by ARBA be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.
3. Army Regulation 135-178 sets forth the basic authority for the separation of enlisted Reserve Component personnel.
  - a. 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. 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. Chapter 7 (Misconduct) prescribed the procedures to discharge Army National Guard and USAR Soldiers for misconduct by reason of one or more of the following: minor disciplinary actions; a pattern of misconduct; commission of a serious offense; or conviction by civil authorities.
4. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Navy Records (BCM/NR), on 3 September 2014, to carefully consider the revised PTSD criteria, detailed medical considerations, and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian

healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs 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, 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//