

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 May 2024

DOCKET NUMBER: AR20230010311

APPLICANT REQUESTS: an upgrade of her under other than honorable conditions character of service.

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

- DD Form 149 (Application for Correction of Military Record)
- self-authored statement

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 is requesting an upgrade of her discharge from military service, citing extenuating circumstances that affected her performance and conduct during her tenure. She believes her discharge was unfair due to the harassment she endured at the hands of her first sergeant (1SG) and chain of command.

a. The applicant notes she faced consistent mistreatment and harassment from 1SG N__. The hostile environment created by his actions significantly impacted her well-being and ability to fulfill her duties to the best of her abilities. Despite her attempts to handle the situation through the proper channels, the harassment persisted, leading to a decline in morale and overall performance. Additionally, following her military service, she dedicated 8 years as a contractor for ManTech, specializing in route clearance operations in Iraq and Afghanistan, working side by side with the Special Forces and obtaining a Secret Clearance. She has continued to consistently demonstrate commitment, professionalism, and dedication to the mission.

b. An investigation was conducted into the allegations of misconduct against 1SG N__ and the allegations were founded that he had in an inappropriate relationship with one of the Soldiers under his command. The investigation's findings provide substantiation for the claims she made regarding the unfair treatment endured during

her time of service. This revelation not only supports her assertions but also exposes the negative impact it had on her military experience. The applicant further notes she would like to request that Master Sergeant (MSG) S__ B__ (telephone number provided in DD Form 149) be allowed to provide a testimony on her behalf. MSG B__ served as her supervisor and witnessed firsthand the difficulties she faced due to the harassment from the 1SG. MSG B__'s testimony will shed light on the detrimental effect this mistreatment had on her ability to perform her duties and maintain a positive mindset. She believes the circumstances surrounding her discharge warrant special consideration for an upgrade.

3. She enlisted in the Regular Army on 27 October 2004.
4. The applicant's record contains limited documentation; however, the following paragraphs reference some of the missing documentation, to include her record of nonjudicial punishment, her conviction by a summary court-martial, and portions of her separation packet.
5. The applicant's immediate commander notified the applicant of his intent to separate her under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-12c, for commission of a serious offense. The reason for his proposed action were for the applicant receiving three Article 15's and a vacation of suspension for failure to be at her appointed place of duty, disobeying a lawful order, contempt or disrespect to a senior noncommissioned officer (NCO), false official statement, and communicating a threat. Additionally, the applicant was found guilty in a summary court-martial trial of disrespect to a superior commissioned officer, willful disobedience of a superior commissioned officer, contempt or disrespect toward an NCO, failure to obey a lawful order, and loss of military property. The applicant acknowledged receipt on 26 July 2007.
6. After consultation with legal counsel, she acknowledged:
 - the rights available to her and the effect of waiving said rights
 - she may encounter substantial prejudice in civilian life if an other than honorable conditions discharge was issued to her
 - she may be ineligible for many or all benefits as a Veteran under both Federal and State laws
 - she may apply to the Army Discharge Review Board or the ABCMR for upgrading
7. The available service record is also void of the initiation of separation action against the applicant under the provisions of AR 635-200, Chapter 14-12c, for commission of a serious offense and the chain of command recommendations.

8. On 5 August 2007, the separation authority approved the discharge recommendation for immediate separation under the provisions of AR 635-200, Chapter 14, paragraph 14-12c for commission of a serious offense. She would be issued an under other honorable conditions discharge.

9. On 23 August 2007, she was discharged from active duty with an under other than honorable conditions characterization of service. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she completed 2 years, 9 months, and 27 days of active service. Block 18 (Remarks) shows she served in Iraq from 1 October 2006 through 10 November 2007. She was assigned separation code JKQ and the narrative reason for separation listed as "Misconduct (Serious Offense)," with reentry code 3. It also shows she was awarded or authorized:

- Army Commendation Medal
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Iraq Campaign Medal
- Army Service Ribbon
- Overseas Service Ribbon

10. On 15 March 2024, the U.S. Army Criminal Investigation Division (CID) provided information for the processing of this case. CID conducted a search of the Army criminal files indexes regarding the applicant's claims and no records were found.

11. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

12. By regulation (AR 635-200), action will be taken to separate a Soldier for misconduct, such as commission of a serious offense, when it is clearly established that despite attempts to rehabilitate or develop them as a satisfactory Soldier, further effort is unlikely to succeed.

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

BOARD DISCUSSION:

1. The applicant's contentions, the military record, and regulatory guidance were carefully considered. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted.

2. The applicant requested the ABCMR contact MSG B___'s to collect their testimony by phone. However, the ABCMR is not an investigative Agency; it is the applicant's responsibility to provide the Board with any documentation or evidence they want the Board to review.

3. The Board carefully considered the applicant's request for an upgrade of her characterization of service based on her claim of mistreatment and harassment by her 1SG.

a. The applicant contends there was an investigation into the first sergeant, and there was an inappropriate relationship, however, CID found no records regarding the applicant's claim after conducting a thorough search of the Army criminal files.

b. The evidence of record shows her commander initiated separation actions against her because she received three Article 15's and a vacation of suspension for failure to be at her appointed place of duty, she disobeyed a lawful order, she behaved with contempt or disrespect toward a senior noncommissioned officer (NCO), she made a false official statement, and she communicated a threat. Additionally, she was convicted by a summary court-martial of disrespect to a superior commissioned officer, willful disobedience of a superior commissioned officer, contempt or disrespect toward an NCO, failure to obey a lawful order, and loss of military property.

c. The applicant did not provide any evidence to support her claims of harassment that would mitigate her misconduct and warrant an upgrade of her characterization of discharge nor did she provide evidence of post service accomplishment to warrant clemency.

4. The Board determined, the applicant's reason for separation and characterization of service were appropriate.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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.

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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, 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 (Active Duty Enlisted Administrative Separations), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge is a separation with honor. 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 member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 of the regulation states action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop them as a satisfactory Soldier, further effort is unlikely to succeed.

3. 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/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 based on 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//