

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 May 2024

DOCKET NUMBER: AR20230010449

APPLICANT REQUESTS: Upgrade of her under honorable conditions (general) discharge. Additionally, she requests personal appearance before the Board via video/telephone.

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

DD Form 149 (Application for Correction of Military Record)

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 has been clean and sober for years and she is a responsible citizen. She has not abused drugs since her discharge. She is committed to her sobriety and strongly regrets her negative behavior towards herself and the Army. She would be proud to say she has an honorable discharge, serving in the Army was the most positive choice she ever made, and regrettably the saddest.
3. On 23 July 1981, the applicant enlisted in the Regular Army, for 4 years. Upon completion of training, she was awarded military occupational specialty 75E (Personnel Actions Specialist).
4. On 20 April 1984, the applicant received nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for failing to go at the time prescribed to her appointed place of duty, on or about 7 April 1984. Her punishment included reduction to E-3, and 15 days extra duty.
5. The applicant received formal counseling on 13 September 1984, for failing to report to a mandatory physical training formation.

6. A letter, dated 17 October 1984, from the applicant's commander to the residential treatment facility (RTF) Clinical Director, officially confirmed his support of the hospitalization of the applicant. The commander noted the applicant's problem demanded the leadership's assistance if success was to be attained in restoring her to effective duty.
7. On 28 October 1984, the applicant was enrolled in the Alcohol and Drug Abuse Prevention and Control Program for alcohol abuse by her commander.
8. A letter, dated 13 November 1984, from an RTF counselor to the applicant's commander, noted a disposition Board had convened to consider the nature of the applicant's inability or unwillingness to fully engage herself in the treatment program. The Board decided to discharge the applicant immediately to duty.
9. A letter, dated 28 December 1984, from the 30th Field Hospital Commander to the applicant's commander, noted the applicant appeared in the emergency room (ER) on 26 December 1984 in a highly intoxicated state from abuse of alcohol. She was extremely agitated and hostile requiring restraint from two military policemen and five medics. She was also verbally abusive and combative to ER personnel. He judged her a treatment failure and recommended her immediate elimination from the Army.
10. A letter dated 10 January 1985, from a mental health physician to the applicant's commander, provided a report on the applicant's psychiatric evaluation. The physician noted the applicant was admitted to the ward on 27 December 1984 after she had attempted suicide by cutting her left wrist while under the influence of alcohol. The applicant showed no motivation to stop drinking. She had several opportunities to obtain help but seemed not to see her drinking as a problem. Her abuse of alcohol interfered with her ability to function effectively in a military environment at all times.
11. On 14 January 1985, the applicant received NJP under Article 15 of the UCMJ for disobeying a lawful order by visiting with a male in a female room after 2200 hours on or about 24 December 1984. Her punishment included reduction to E-3, suspended for 6 months; forfeiture of \$100.00 a month for two months, and 45 days extra duty and restriction.
12. The applicant received formal counseling on 7 February 1985, for reporting to work with a strong smell of alcohol on her breath.
13. On 26 February 1985, the applicant underwent a medical examination. The attending physician noted she had two suicide attempts within the previous four months. She was deemed medically qualified for administrative separation.

14. On 27 February 1985, the applicant received NJP under Article 15 of the UCMJ, for wrongfully using marijuana on or about 6 December 1984. Her punishment included reduction to E-1, forfeiture of \$310.00 a month for two months, and 45 days extra duty and restriction.

15. On 1 March 1985, the applicant underwent a mental status evaluation. She was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.

16. The applicant's commander notified the applicant on 15 March 1985, that she was being recommended for discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 9, for continued alcohol abuse.

17. The applicant consulted with counsel on 18 March 1985, and was advised of the basis for the contemplated actions to separate her and of the rights available to her. She further acknowledged her understanding and elected not to submit a statement in her own behalf.

18. The applicant's commander formally recommended the applicant's separation from service under the provisions of Army Regulation 635-200, Chapter 9, by reason of drug rehabilitation failure.

19. The separation authority approved the recommended discharge on 21 March 1985, and directed the applicant be issued an under honorable conditions (general) discharge.

20. The applicant was discharged on 28 March 1985. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms she was discharged under the provisions of Army Regulation 635-200, Chapter 9, for alcohol abuse – rehabilitation failure. Her service was characterized as under honorable conditions (general). She was assigned Separation Code JPD and Reentry Codes 3 and 3C. She completed 3 years, 8 months, and 6 days of net active service this period.

21. 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:

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, and published Department of Defense guidance for liberal and clemency

determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition and available military record, the Board determined there is insufficient evidence of in-service mitigating factors of the applicant's discharge. The applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination.

2. The Board determined the applicant was discharge for alcohol abuse – rehabilitation failure and was provided an under honorable (general) conditions characterization of service. The Board found 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. Therefore, the Board denied relief.

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. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the 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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.

a. Paragraph 2-9 states 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.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

4. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

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. Chapter 9 contained the authority and outlined the procedures for discharging Soldiers because of alcohol or other drug abuse. A member who had been referred to the Alcohol and Drug Abuse Prevention and Control Program for alcohol/drug abuse

could be separated because of inability or refusal to participate in, cooperate in, or successfully complete such a program if there was a lack of potential for continued Army service and rehabilitation efforts were no longer practical. Nothing in this chapter prevented separation of a Soldier who had been referred to such a program under any other provisions of this regulation. Initiation of separation proceedings was required for Soldiers designated as alcohol/drug rehabilitation failures. The service of Soldiers discharged under this chapter would be characterized as honorable or under honorable conditions unless the Soldier was in an entry-level status.

5. 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.

//NOTHING FOLLOWS//