

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]
[REDACTED]

BOARD DATE: 7 June 2024

DOCKET NUMBER: AR20230010616

APPLICANT REQUESTS:

- an upgrade of her under other than honorable conditions discharge to honorable
- reinstatement of her rank/grade of staff sergeant (SSG)/E-6
- a change to the narrative reason for separation

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

- DD Form 293 (Application for the Army Discharge Review Board)
- Applicant's letter with attachments
- DA Form 1559 (Inspector General Action Request)
- Regional Readiness Command (RRC) Reassignment Orders
- RRC Order to Active Duty
- Soldier Readiness Processing (SRP) Checklist
- DA Form 7425 (Readiness and Deployment Checklist)
- DA Form 4856 (General Counseling Form)
- Letter, subject: Family Care Plan
- Six Facsimile (FAX) Coversheets
- Email Correspondence
- Applicant's Letter to Commander
- 247th Quartermaster Battalion Standard Operating Procedures (SOP) for Family Care Plans
- Applicant's Civilian Arrest Warrant
- Notice to Appear for Initial Appearance
- Civilian Court Minutes/Order – Add-On Initial Appearance
- Memorandum, subject: Request for Discharge in Lieu of Trial by Courts-Martial
- DD Form 458 (Charge Sheet), first page
- Reassignment Orders
- Defense Finance and Accounting Service (DFAS) Notice
- ARPC Form 249-2-E (Chronological Statement of Retirement Points)

- Wireless Phone Bill
- "Names/Phone Numbers of Interest"

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10 (Armed Forces), United States Code (USC), section 1552 (b) (Correction of Military Records: Claims Incident Thereto). 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 served honorably in the U.S. Army Reserve (USAR) for 20 years and is proud of her accomplishments; in December 2003, she was unable to deploy with her unit due to the lack of a family care plan for her two minor children. Subsequently, her requests for transfer to the Retired Reserve went unanswered and her unit instead placed her in an absent without leave (AWOL) status.

a. In June 2007, the Army discharged her from the USAR under other than honorable conditions and reduced her to private (PVT)/E-1; this outcome devastated the applicant. She declares she does not understand why her unit failed to consider her requests to transfer to the Retired Reserve.

b. The applicant offers a detailed timeline:

- November 2003 – orders involuntarily transferred her from a maintenance battalion in MD to a quartermaster company in PA; the purpose of this change was mobilization; despite receiving no orders, the applicant received calls telling her to report for the SRP process at the RRC
- December 2003 – unit faxed transfer/mobilization orders; she left her job and drove to PA for SRP processing; at the end of SRP, her status was "No Family Care Plan/Need Family Care Plan"; she left for home after advising her commander she could not deploy; she had to care for her children
- Week of 8 December 2003 – Sergeant T__ from brigade called saying Mr. W__ was managing the applicant's issue
- December 2003 to March 2004 – the applicant spoke weekly with Mr. W__ and repeatedly asked to be transferred to the Retired Reserve or reassigned to her old unit; her requests were denied, with Mr. W__ simply saying he was discussing the applicant's options with the RRC
- January 2004 – the applicant advised Mr. W__ that she had been receiving active duty pay and this continued until August 2004
- March to July 2004 – the applicant had no contact with Mr. W__; in August 2004, Mr. W__ called about the applicant's active duty pay; after that, Mr. W__ did not contact her again

- April 2005 – the applicant faxed her unit a DA Form 4651-R (Request for Reserve Component Assignment or Attachment), in which she requested transfer to the Retired Reserve; no action was taken
- September 2005 – the applicant again faxed her request for transfer to the Retired Reserve, using a DA Form 4651-R; again, the unit took no action; after this, the applicant had no contact with the USAR for several years
- April 2007 – civilian authority removed the applicant from a cruise ship bound for the Bahamas; they arrested and detained her due to a Federal warrant for military desertion; after this, they extradited her to Fort Knox, KY, where she underwent discharge proceedings

3. In addition to documents from her service record, the applicant provides a letter addressed to Mr. R__ and dated 13 December 2010; the applicant asks Mr. R__ to help her in addressing/rectifying her June 2007 adverse discharge and she attaches the below listed documents in support of her request:

a. A DA Form 1559, dated 13 December 2010, requesting a review of her discharge process.

b. Two sets of RRC Orders. The first transfers the applicant from the maintenance battalion to the quartermaster company, effective 8 November 2003. The second calls the applicant to active duty at Camp Atterbury, IN, with a 10 December 2003 reporting date; the orders mobilized the applicant in support of Operation Iraqi Freedom for a term of 548 days.

c. SRP Processing Checklist and DA Form 7425, both dated 4 December 2003 and each indicating the applicant's status as "No Go" due to the absence of a family care plan.

d. A DA Form 4856, dated 5 December 2003, showing the applicant's commander placed the applicant on a 2-day pass to allow the applicant time to get "her affairs together, mainly family care plan for her two children." The commander added that he had advised the applicant she needed to return by noon on the following Monday and that if she did not report, the unit would consider her a deserter from the military.

e. A letter, from the applicant to Mr. W__, dated 18 August 2004; which states she was sending the letter per Mr. W__'s request, and that she did not deploy with her unit because, at the time, she had no family care plan. Over the course of several months, the applicant and Mr. W__ had had several detailed conversations about the foregoing issue and, as of the date of her letter, they had reached no resolution. She asked Mr. W__ to call her at his earliest convenience.

f. Five Fax coversheets, apparently sent between April and September 2005; two of the sheets reference the submission of a DA Form 4651.

g. Applicant's 12 September 2005 letter to her company commander, wherein she describes the events that had transpired since being reassigned to the quartermaster company.

(1) The applicant states she received calls from the quartermaster company advising her she had been reassigned to their unit for mobilization purposes; at the time, the applicant informed the unit that deploying would be a problem because she had to care for her two children.

(2) After speaking with First Sergeant (1SG) B__ and a doctor, they told her she needed to undergo SRP processing; upon receipt of her reassignment and mobilization orders, the applicant left MD and drove to PA to complete SRP processing.

(3) On 5 December 2003, she reported to the quartermaster company commander and turned in her SRP packet; the SRP packet indicated she did not have a family care plan. She explained her child care situation to the commander; the commander gave her a pass to "come up with a solution," after which the applicant left for home. Because she could not resolve her situation, she did not return to the unit, and, based on their lengthy discussions, the applicant believed her commander knew she would not be coming back.

(4) The applicant details her subsequent conversations with Sergeant T__ and Mr. W__; during the last phone conversation with Mr. W__, in March 2004, Mr. W__ told the applicant he was going to the RRC to discuss the applicant's circumstances and would get back with her; she did not speak to him again until August 2004, when Mr. W__ called about the active duty pay she was (mistakenly) receiving.

(5) In April 2005, the applicant tried to submit a request for transfer to the Retired Reserve; Sergeant First Class S__ J__ faxed the applicant a copy of the transmittal sheet from the RRC, which, from what the applicant understood, basically stated, "She can't go until all the paperwork to be done is over with." No one told her what paperwork the RRC was referring to, but the applicant assumed it pertained to the active duty money she owed DFAS. In June 2005, DFAS sent her a Debt Notification Packet, and, as of the date of this letter, the applicant was repaying her debt.

(6) The applicant indicated she wanted to add a few statements:

(a) She enlisted into the USAR in 1984 and already knew then she would be completing 20 years and retiring. Throughout her USAR career, she was a Soldier; she attended drills, annual training, and deployed when necessary. In addition, she

dedicated a lot of her own time to assist when this was needed; whatever needed to be done, she did it. The applicant never envisioned her career would end like this (i.e., being considered AWOL); she was not a deserter.

(b) Upon receiving written notice of her requirement to deploy, she had a genuine issue: a conflict between caring for her children and fulfilling the military's needs. "I just didn't have another choice. I was backed up against the wall. When it was all said and done, as a mother, my first priority was and is to my children. The Army may disagree, but that was the reality of the situation for me then and also now. During Operation Desert Storm. I had no conflicts or issues regarding deployment. I deployed with my unit for 7 months without hesitation or complaint. I've always performed my duties as a Soldier to best of my ability. No matter where the assignment or duty was, I proceeded without fail. I can't dismiss everything I've worked so hard for since 1984. Being categorized as AWOL and as a Deserter is totally unacceptable to me."

h. A copy of the 247th Quartermaster Battalion SOP for Family Care Plans, in which the applicant highlights the following:

- The SOP's references (Army Regulation (AR) 600-20 (Army Command Policy), paragraph 5-5 (Family Care Plans))
- The requirement for commanders to conduct Family Care Plan counseling and to require Soldiers, regardless of grade, to complete a plan when the Soldier is married to another service member
- The statement, "All eligible Soldiers (officer or enlisted) without a valid Family Care Plan are considered non-deployable and will be considered for separation processing"

i. Documents reflecting the applicant's arrest and detention by civil authority for military desertion.

j. DFAS notice showing, as of April 2007, the applicant's debt for receipt of active duty pay was paid in full.

k. ARPC Form 249-2-E, dated in October 2004 and showing that, between April 2003 and April 2004, the applicant had accumulated 25 inactive duty points, 118 active duty points, and 15 membership points, for a total of 158 creditable points. Counting those additional points, the applicant had accrued 20 years of qualifying service for a non-regular retirement.

l. The applicant's wireless phone bill, in which she highlights dates between December 2003 and June 2005 indicating calls to a phone number in PA.

m. Document with names and phone numbers, to include Mr. W__.

n. Fax coversheet, dated December 2010, indicating the fax intended for Mr. R___ failed to transmit.

4. A review of the applicant's service record shows:

a. On 3 April 1984, the applicant enlisted into the USAR. On 6 August 1984, she entered initial active duty for training and, on 8 December 1984, after the award of military occupational specialty 71L (Administrative Specialist), the Army honorably released her from active duty and transferred her back to the USAR.

b. Through subsequent reenlistments and extensions, the applicant continued her USAR service. Effective 9 February 1999, her command promoted her to SSG. On 23 February 2001, orders reassigned the applicant from a transportation unit at Fort Belvoir, VA to a maintenance battalion in MD.

c. The applicant provides a copy of the RRC orders reassigning her from the maintenance battalion to the quartermaster company, effective 8 November 2003; the additional instructions note the transfer was involuntary and based on the needs of the Army for mobilization. On 3 December 2003, RRC orders directed the applicant to enter active duty status and report to the quartermaster company, on 7 December 2003; the orders further stated that, on 10 December 2003, the applicant was to report to Camp Atterbury and remain on active duty for 548 days, in support of Operation Iraqi Freedom.

d. On 8 December 2003, the 247th Quartermaster Battalion reported the applicant as AWOL, and, effective 15 December 2003, the battalion dropped the applicant from its unit rolls (DFR). On 5 May 2004, the U.S. Army Human Resources Command (HRC) advised the applicant, via memorandum, that she had completed the required years of qualifying USAR service and was eligible for retired pay at age 60.

e. On 26 February 2005, the 247th Quartermaster Battalion commander signed a DD Form 553 (Deserter/Absentee Wanted by the Armed Forces), confirming the dates for the applicant's AWOL and DFR statuses.

f. On 27 April 2007, the U.S. Army Personnel Control Facility (PCF) at Fort Knox reported that, on 23 April 2007, civilian authority arrested the applicant and returned her to military control.

g. On 26 April 2007, after consulting with counsel, the applicant voluntarily requested discharge in-lieu of trial by court-martial under Chapter 10 (Discharge in Lieu of Trial by Court-Martial), AR 635-200 (Active Duty Enlisted Administrative Separations). In her request, she stated no one subjected her to coercion and counsel had advised her of the implications of her request; she further acknowledged she was guilty of the

charge of AWOL from 8 December 2003 to 23 April 2007. She elected not to submit statements in her own behalf.

h. On 30 April 2007, the PCF preferred court-martial charges against the applicant for having been AWOL, from 8 December 2003 to 23 April 2007. On 30 May 2007, the separation authority approved the applicant's separation request and directed the applicant's under other than honorable conditions discharge; additionally, the separation authority ordered the applicant's reduction from SSG to PVT. On 13 June 2007, orders discharged the applicant accordingly.

i. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she completed 1 month and 22 days of active duty and 19 years, 4 months, and 1 day of prior inactive service. Her DD Form 214 also shows in:

- Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized):
 - Army Achievement Medal
 - Army Reserve Components Achievement Medal (4th Award)
 - National Defense Service Medal
 - Army Service Ribbon
 - Armed Forces Reserve Medal
 - Army Reserve Component Overseas Training Ribbon

- Item 25 (Separation Authority) – AR 635-200, chapter 10
- Item 26 (Separation Code (SPD)) – "KFS"
- Item 27 (Reentry (RE) Code) – RE-4 (nonwaivable disqualification)
- Item 28 (Narrative Reason for Separation) – "In Lieu of Trial by Court-Martial"

j. On 13 October 2023, based upon the applicant's request for retired pay, HRC placed the applicant on the Army of the United States Retired List, effective 24 April 2023.

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

applicant was charged with being absent without leave from 8 December 2003 to 23 April 2007, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, she consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. Based on a preponderance of the evidence, the Board concluded that the characterization of service and narrative reason for separation the applicant received upon separation were appropriate.

2. Additionally, the applicant requested reinstatement of her rank/grade to staff sergeant (SSG)/E-6. The Board noted the applicant attained the rank/grade of SSG/E-6; however, when the applicant voluntarily requested a discharge in lieu of court-martial and the separation authority approved the applicant's request, he directed she be reduced to private/E-1 prior to the execution of her discharge in accordance with Army Regulation 600-8-19, paragraph 7-1e. On 1 June 2007, she was reduced from SSG/E-6 to PVT/E-1 as directed by the commander, effective 30 May 2007.

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, USC, 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 635-200, in effect at the time, prescribed policies and procedures for enlisted administrative separations.

a. Paragraph 3-7a (Honorable Discharge). An honorable discharge was separation with honor; separation authorities issued an honorable discharge certificate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty or was otherwise so meritorious that any other characterization would clearly be inappropriate. Where there were infractions of discipline, commanders were to consider the extent thereof, as well as the seriousness of the offense. The Soldier could receive an honorable discharge when subsequent honest and faithful service over a greater period outweighed disqualifying entries in the Soldier's military record. It was the pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.

b. Paragraph 3-7b (General Discharge). A general discharge was a separation under honorable conditions and applied to those Soldiers whose military record was satisfactory, but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 5-3 (Secretarial Plenary Authority) stated the separation of enlisted personnel was the prerogative of the Secretary of the Army and was to be executed per the Secretary's authority, on a case-by-case basis. It was ordinarily used when no other provision applied, and early separation was clearly in the best interests of the Army. Soldiers being separated for the convenience of the Government will be awarded a character of service of honorable, under honorable conditions, or an uncharacterized description of service, if in entry-level status. No Soldier was to be awarded a character of service under honorable conditions unless the Soldier was notified of the specific factors in his/her service record that warranted such a characterization.

d. Chapter 10 applied to Soldiers who had committed an offense or offenses for which the punishment under the UCMJ included a punitive (i.e., bad conduct or dishonorable) discharge. Soldiers could voluntarily request discharge once charges had been preferred; commanders were responsible for ensuring such requests were personal decisions, made without coercion, and following being granted access to counsel. Commanders were to give the Soldier a reasonable amount of time to consult with counsel prior to making his/her decision. The Soldier made his/her request in

writing, which certified he/she had been counseled, understood his/her rights, could receive an under other than honorable conditions character of service, and recognized the adverse nature of such a character of service. Consulting counsel was to sign the request as a witness.

3. Manual for Courts-Martial, in effect at the time, showed punitive discharges were among the maximum punishments for violations of Article 86 (AWOL), UCMJ.
4. AR 600-8-19 (Enlisted Promotions and Reductions), in effect at the time, prescribed policies and procedures for enlisted promotions and reductions. Chapter 10 (Reductions in Grade) stated Soldiers approved for an under other than honorable conditions discharge were to be reduced to the lowest enlisted grade.
5. AR 635-5 (Separation Documents), in effect at the time, prescribed policies and procedures for DD Form 214 preparation.

- a. The regulation stated SPD and the narrative reason for separation were tied to the Soldier's regulatory separation authority. The regulation directed DD Form 214 preparers to consult AR 635-5-1 (SPD) for the appropriate entries in items 26 and 28.

- b. As to RE codes for item 27, the preparer was to review AR 601-210 (Regular Army and Army Reserve Enlistment Program) to determine Regular Army and USAR reenry eligibility and appropriate RE codes.

6. AR 635-5-1, in effect at the time, stated Soldiers separated in accordance with chapter 10, AR 635-200 were to receive the SPD of "KFS" and have, "In Lieu of Trial by Court-Martial" entered in item 28 of their DD Form 214.

7. AR 601-210, in effect at the time, prescribed policies and procedures for the reenlistment of current and former Soldiers.

- a. Table 3-1 (U.S. Army Reentry Eligibility (RE) Codes) showed the following:

- RE-1 – Fully qualified for immediate reenlistment
- RE-3 – Not eligible for immediate reenlistment unless waiver consideration is permissible and is granted
- RE-4 – Not eligible for reenlistment. Nonwaivable disqualification

- b. Paragraph 4-13 (Prior Military Service) stated, after a 24-month waiting period, an enlistment waiver could be submitted for any applicant who was separated or discharged for the good of the service (i.e., in lieu of trial by court-martial).

8. 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, 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//