

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 September 2024

DOCKET NUMBER: AR20230011821

APPLICANT REQUESTS: in effect, an upgrade of her under other than honorable conditions (UOTHC) characterization of service.

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

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

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 her work performance was never looked at or evaluated during the discharge process. She had only one bad mark on her record that has followed her all her life. She never smoked what she tested positive for, but she did eat cookies at a spade game. It hurts her to think about her stupid mistake; she wishes it had never happened and that she could take it back. After the incident, she changed her life but went through a lot of mental issues in her incredibly stressful and abusive marriage. She is now divorced, has been clean for years, and is living to see the day her military discharge is upgraded. She believes God forgives mistakes and asks the Board to forgive her past transgressions and grant her relief. On her DD Form 149, the applicant indicated pay and allowance, promotions/rank, decorations/awards, and performance/evaluations/derogatory information are related to her request; however, she provides no further details on these issues. The applicant notes other mental health issues as conditions related to her request.
3. The applicant enlisted in the Regular Army on 3 October 1978 for a period of 3 years. She reenlisted on 30 April 1981 for 3 years. The highest rank/grade she held was sergeant/E-5.

4. The applicant tested positive for Tetrahydrocannabinol (THC) as a result of a command urinalysis conducted on 17 May 1984.
5. On 31 July 1984, the applicant's immediate commander counselled her on her positive urinalysis and possible adverse consequences of drug abuse.
6. A DA Form 2496 (Disposition Form) and DA Form 4465 (ADAPCP (Alcohol and Drug Abuse Prevention and Control Program) Client Intake Record), shows the applicant was referred to, screened, and enrolled in the ADAPCP for her positive THC results. Her ADAPCP client intake record further shows the applicant's usage of cannabis as being her current problem.
7. On 11 October 1984, the applicant's commander notified the applicant of his intent to initiate action to separate her from service under the provisions of Army Regulation 635-200 (Personnel Separations-Enlisted Personnel), Chapter 14 (Separation for Misconduct), paragraph 14-12c for commission of a serious offense. As the basis for his contemplated action, her commander cited the applicant's positive THC test results and her confession to him of hashish use on one occasion.
8. On 15 October 1984, the applicant consulted with counsel on the basis for the contemplated separation action, its effects, and the rights available to her. She requested consideration and personal appearance before a board of officers. She acknowledged understanding she may expect to encounter substantial prejudice in civilian life in the event of a general discharge, additionally she may be ineligible for many or all benefits as a Veteran under both Federal and State laws as a result of a UOTHC discharge. She elected not to submit statements in her own behalf.
9. On an undisclosed date, the applicant's civilian defense counsel requested to delay the Chapter 14 proceedings from 15 April 1985 to 16 May 1985.
10. On 17 April 1985, the applicant was notified to appear before a board of officers on 16 May 1985 to determine whether she should be discharged because of misconduct before the expiration of her term of service.
11. A board of officers was convened on 16 May 1985. The summary of proceedings shows:
 - a. The applicant also tested positive for drugs on 19 March 1985 and 15 April 1985 while enrolled in the ADAPCP as a result of urinalyses conducted on 17 January 1985 and 7 March 1985, respectively.

b. The board found the preponderance of the evidence presented supported the allegations of misconduct due to drug abuse. The board recommended the applicant be discharged from military service for misconduct and issued an UOTHC discharge.

12. On 9 August 1985, the applicant signed a medical examination for separation statement of option wherein she stated she did not desire a separation medical examination.

13. The applicant was discharged accordingly on 15 August 1985, under the provisions of Army Regulation 635-200, paragraph 14-12c, for abuse of illegal drugs, with a UOTHC characterization of service in the grade of E-1. She was credited with 6 years, 10 months, and 12 days of net active service during the period covered.

14. Block 18 (Remarks) of his DD Form 214 contains the entry, "IMMEDIATE REENLISTMENT THIS PERIOD – 781003 TO 810429" (Indicating from 3 October 1978 to 29 April 1981). However, there is no entry specifying the applicant's period of honorable service (see Administrative Notes).

15. The applicant petitioned the Army Discharge Review Board (ADRB) for upgrade of her service characterization. On 7 October 1988, she was informed that after careful consideration, the ADRB determined she was properly and equitably discharged.

16. Regulatory guidance in effect at the time provided a discharge UOTHC was normally considered appropriate for Soldiers discharged under the provisions of Army Regulation 635-200, Chapter 14. However, the separation authority could direct a general discharge if such were merited by the Soldier's overall record.

17. The Board should consider the applicant's argument and evidence, along with the overall record, in accordance with the published equity, injustice, or clemency determination guidance.

18. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to her characterization of service: under other than honorable conditions (UOTHC). She contends she experienced an undiagnosed mental health condition that mitigates her misconduct.

b. 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 into the Regular Army on 3 October 1978 and reenlisted on 30 April 1981.

- The applicant tested positive for THC on 17 May 1984 and was referred to the ADAPCP. In October 1984 she was notified of her commander's pursuit to discharge her for this misconduct. She was notified on 17 April 1985 to appear before a board of officers on 16 May 1985. A transcript of the proceedings are contained in the ROP, and this includes the applicant's testimony related to the incidents of positive drug screens. The board recommended discharge for the misconduct with an UOTHC characterization.
- The applicant was discharged on 15 August 1985 and was credited with 6 years, 10 months, and 12 days of net active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts she was going through a very stressful time in her marriage and ate a cookie that had marijuana in it. There were no medical or mental health records provided. There was insufficient evidence that the applicant was diagnosed with any psychiatric condition while on active service.

d. The VA's Joint Legacy Viewer (JLV) was also reviewed and showed no history of mental health related treatment or diagnoses.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a condition or experience that mitigates her misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts she had an undiagnosed mental health condition at the time of the misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts she was experiencing a mental health condition while on active service. However, there were no records of a mental health condition, both while in-service and after discharge.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition while on active service. However, the applicant contends she was experiencing mental health condition or an experience that mitigated her misconduct, and per Liberal Consideration her contention is sufficient for the board's consideration.

BOARD DISCUSSION:

The Board carefully considered the applicant's request, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, her record of service, the frequency and nature of her misconduct, and the reason for her separation. The Board considered the applicant's mental health claim and the review and conclusions of the ARBA Behavioral Health Advisor. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding her misconduct not being mitigated by a mental health condition. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust. The Board concurred with the correction described in Administrative Note(s) below.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

Other than the corrections addressed in Administrative Note(s) below, the Board determined 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 otherwise insufficient as a basis for correction of the records of the individual concerned.

3/6/2025

X [REDACTED]

CHAIRPERSON

[REDACTED]

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):

A review of the applicant's record shows her DD Form 214, for the period ending 15 August 1985, is missing an important entry that may affect her eligibility for post-service benefits. As a result, amend the DD Form 214 by adding the following entries in item 18 (Remarks):

- CONTINUOUS HONORABLE ACTIVE SERVICE: 781003 - 810429
- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE

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. Title 10, U.S. Code, Section 1556, 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.

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. The regulation provides that 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. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing.

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. Chapter 14 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

b. 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.

c. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

5. Army Regulation 635-5 (Personnel Separation Documents), in effect at the time, did not provide for an additional entry for continuous honorable active service, when a Soldier who previously reenlisted without being issued a DD Form 214 was discharged with any characterization of service except honorable. However, an interim change, published on 2 October 1989 does provide for such an entry. A revision to this regulation was published on 15 September 2000 to provide for an additional mandatory entry, "Soldier (has) (has not) completed first full term of service," when a soldier reenlisted before the end of their initial contracted period of service. If a soldier completed or exceeded their initial enlistment when comparing their terms of enlistment to the net service in block 12c of the DD Form 214, enter "has."

6. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records

(BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder; traumatic brain injury; sexual assault; or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences.

7. 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//