

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]  
[REDACTED]  
[REDACTED]

BOARD DATE: 15 May 2024

DOCKET NUMBER: AR20230011954

APPLICANT REQUESTS:

- An upgrade of her under other than honorable conditions (UOTHC) discharge to under honorable conditions (general)
- A personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DA Forms 4187 (Personnel Action) promotion to private first class (PFC) and specialist (SPC)
- U.S. Army Human Resources Command (AHRC) Document
- DA Form 5016 (Chronological Statement of Retirement Points)
- AHRC Document Showing Training Dates
- Letter from Army Review Boards Agency (ARBA)
- Interactive Personnel Electronic Records Management System (IPERMS) Printout
- Bachelor of Science Diploma
- Property Owned Document

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:

a. She was promoted to private/E-2 in 2005. She was promoted by two different company commanders to meritoriously be awarded the rank of PFC on 1 June 2007 and SPC on 1 April 2008, all within a year of her last promotion.

b. She was a great Soldier that was granted a hardship discharge due to her family care plan. This is an honorable discharge.

c. The applicant has continued to excel in the civilian environment and has solely paid off and owns a home and two vehicles. She has also completed her bachelor's degree in Logistics and Supply Chain Management with Embry Riddle Aeronautical and is studying for a Master's Degree in Supply Chain Management. She is physically and mentally fit to join the service and wishes to do so.

3. The applicant provides the following documents:

a. An AHRC document shows the dates she was assigned to her U.S. Army Reserve (USAR) units.

b. DA Form 5016, dated 23 September 2021, shows she was enlisted in the USAR from 3 October 2006 through 8 April 2012. She had three years qualifying for retirement.

c. AHRC document, which shows her training dates.

d. A letter from ARBA, dated 30 November 2016, states a search of the applicant's military records did not contain her discharge packet. In order for the ABCMR to properly adjudicate her application, she must provide a copy of her separation files or discharge packet.

e. IPERMS printout shows the documents that are in her IPERMS with a note stating no separation packet in IPERMS.

f. Her Bachelor of Science in Logistics and Supply Chain Management Diploma dated 31 March 2022.

g. A document, which shows the property the applicant owns.

4. The applicant's service record contains the following documents:

a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows she enlisted in the USAR on 23 September 2006.

b. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant, as a member of the USAR, entered active duty on 3 October 2006 and was honorably released back to her USAR unit on 8 March 2007. She had completed 5 months and 6 days of active-duty service.

d. DA Forms 4187 shows the applicant was promoted to PFC/E-3 on 1 June 2006 and SPC/E-4 on 1 April 2008.

e. The applicant's service record was void of a separation packet showing why she was discharged from the USAR. Orders 12-094-00011 published by Headquarters, 81st Regional Support Command, dated 3 April 2012 reduced the applicant from SPC/E-4 to PVT/E-1 effective 3 April 2012 and discharged the applicant from the USAR with an UOTHC discharge effective 8 April 2012, in accordance with Army Regulation 135-178 (Enlisted Administrative Separations).

f. On 11 August 2016, the applicant petitioned the Army Discharge Review Board (ADRB) for an upgrade of her discharge. The Board noted that her record was void of the specific facts and circumstances concerning the events which led to her discharge from the USAR. Therefore, on 9 November 2017, the ADRB sent the applicant a letter stating after careful review of her application, military records, and all other available evidence, they determined she was properly and equitably discharged. Barring evidence to the contrary, the presumption of government regularity shall prevail, as all the requirements of law and regulation were met, and her rights were fully protected throughout the separation process. Accordingly, her request for a change in the character and/or reason of her discharge was denied.

5. There is no evidence that the applicant provided any separation documentation that reflects how or why she was discharged from the USAR.

#### 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 consideration for requesting upgrade of discharge characterization of service. Upon review of the applicants petition and available military records, the Board determined there is insufficient evidence of in-service mitigating factors for the Board to weigh a clemency determination. The Board noted the applicant's post service achievements of completing her bachelor's degree.

2. However, the Board noted the applicant's record is absent the facts and circumstances surrounding her separation from the USAR. The Board agreed without the circumstances surrounding the applicant's discharge, they are unable to properly assess if there is an error or injustice. This board is not an investigative body. The Board determined despite the absence of the applicant's separation records, they

agreed the burden of proof rest on the applicant, however, she did not provide any supporting documentation and her service record has insufficient evidence to support the applicant contentions of a discharge upgrade. Therefore, the Board denied relief.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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 (AR) 15-185 (ABCMR), prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.
  - a. It 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.
3. AR 635-200 (Personnel Separations-Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel. It states, notwithstanding the notification provisions of Army Regulation 135-178 (Army National Guard and Army Reserve Separation of Enlisted Personnel), Soldiers who are unsatisfactory participants to be discharged, will be given 15 days from the date found on the official mail return receipt, or the date they acknowledged receipt if hand delivered, to respond to notification of initiation of discharge actions.
4. AR 135-178, sets policies, standards, and procedures to ensure the readiness of competency of the U.S. Army while providing for the orderly administrative separation of Army National Guard (ARNG and USAR enlisted Soldiers for a variety of reasons.
  - a. A Hardship exists when, in circumstances not involving death or disability of a member of a Soldier's family, separation from the service would materially affect the care or support of the Soldier's family by materially alleviating undue hardship.
  - b. A married Soldier who becomes a parent by birth, adoption or marriage step parent) and whose children under 18 years of age reside within the household, may apply for separation under hardship. The Soldier must submit evidence that the roles of parent and Soldier are incompatible and that he or she cannot fulfill his or her military obligation.

c. Soldiers who are sole parents and whose children under 18 years of age reside within the household may apply for separation under hardship.

d. When the reason for separation requires the Notification Procedure, the commander will notify the Soldier in writing that his separation has been recommended. The commander will cite specific allegations on which the proposed action is based and the specific provisions of the regulation authorizing separation. The Soldier would be advised of the least favorable characterization of service he could receive. He would be advised of the following rights:

- to consult with counsel
- to submit matters on his own behalf
- to obtain copies of document that would be sent to the separation authority
- to present his case before an administrative separation board if he had more than 6 years of service
- to waive his rights

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/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//