

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 June 2024

DOCKET NUMBER: AR20230012501

APPLICANT REQUESTS: an upgrade to her characterization of service to reflect honorable vice under other than honorable conditions (UOTHC).

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 it has been 42 years since she was discharged with an UOTHC and would like to have it upgraded to an honorable discharge. She was separated due to the physical and mental abuse she received by her drill sergeant. She suffered severely from that abuse, and she acted out of character which caused her relief from the Army. In 1981 enlisted members did not report cases like hers; they were taught to push through and keep quiet of any injustice. That is what she did.
3. The applicant's service record reflects the following:
 - a. DD Form 4 (Enlistment/Reenlistment Document-Armed Forces of The United States) shows she enlisted in the U.S. Army Reserve on 25 February 1981.
 - b. Initial Active Duty Training (IADT) Orders number 41-53 dated 25 February 1981, show:
 - she was to report to Fort Jackson, SC on 18 March 1981
 - her Basic Training beginning date was 27 March 1981
 - her Advanced Individual Training (AIT) beginning date was 15 May 1981
 - her Military Occupational Specialty (MOS) was 75B (Personnel Administration Specialist)

c. She was honorably released from ADT to her Reserve component on 22 July 1981. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was awarded the MOS of 75B and was separated in accordance with paragraph 5-15, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) for completion of ADT. She completed 4 months and 5 days of active service during this period.

d. On 17 November 1981, the applicant's commander notified her that based on the unit's attendance records she was absent two periods on 14 to 15 November 1981 during the Unit's scheduled Unit Training Assembly (UTA) or Multiple Unit Training Assembly (MUTA). Due to her unexcused absences, she could be recommended by a board of officers for transfer to the Individual Ready Reserve or discharged with an UOTHC character of service. Unless these absences were excused, she would have accrued four unexcused absences. Applicant was allotted 15 days from receipt of this notice to provide justification for her absence. Her service record does not reflect, and the applicant does not provide a reply to the commander concerning these absences.

e. On 14 December 1981, the applicant's commander again notified her that based on the unit's attendance records she was absent for two periods on 12 December 1981 and one period on 13 December 1981 during the Unit's scheduled UTA or MUTA. Due to her unexcused absences, she could be recommended by a board of officers for transfer to the Individual Ready Reserve or discharged with a character of service UOTHC. Unless these absences were excused, she would have accrued seven unexcused absences. Applicant was allotted 15 days from receipt of this notice to provide justification for her absence. Her service record does not reflect, and the applicant does not provide a reply to the commander concerning these absences.

f. On 11 January 1982, the applicant's commander continued to notify her that based on the unit's attendance records she was absent for two periods on 9 to 10 January 1982 during the Unit's scheduled UTA or MUTA. Due to her unexcused absences, she could be recommended by a board of officers for transfer to the Individual Ready Reserve or discharged with a character of service UOTHC. Unless these absences were excused, she would have accrued 11 unexcused absences. Applicant was allotted 15 days from receipt of this notice to provide justification for her absence. Her service record does not reflect, and the applicant does not provide a reply to the commander concerning these absences.

g. On 29 January 1982, the commander notified the applicant of his declaration of her unsatisfactory participation and his initiation to separate her for misconduct under the provisions of section VII, chapter 7, Army Regulation (AR) 135-178 (Army National Guard and Army Reserve Separation of Enlisted Personnel). She was now charged with 11 unexcused absences within a one-year period. He further recommended her case be considered by a board of officers to determine whether she should be separated

immediately or delay her discharge until her statutory military service obligation was completed. If separated her service may be characterized as UOTHC. Applicant was allotted 45 days from receipt of this notice to exercise the following privileges, that her service record does not reflect, and the applicant does not provide:

- she could consult with consulting counsel at no expense to the government
- To be represented by appointed counsel for representation, military counsel of choice if available, or civilian counsel at no expense to the government
- She could submit statements in her own behalf
- With the exception of consulting with counsel, to waive the above rights in writing
- To withdraw her waiver and request her case be presented to a board of officers

h. On 16 May 1982 her commander initiated action to separate the applicant from the Army Reserve under the provisions of paragraph 4-11, AR 135-91 for unexcused absences from unit training assemblies.

i. In the unit commander's statement it shows that delivery of notifications was not accomplished as the applicant's whereabouts were unknown. All correspondence was returned unopened indicating they were not delivered.

j. On 14 June 1982 she was reduced in rank from private (E-2) to private (E-1) and was subsequently reassigned to the U.S. Army Reserve (USAR) Control Group (Annual Training) with a characterization of service of UOTHC.

k. Orders Number D-04-901094, dated 23 April 1987 show she was discharged accordingly from the USAR Ready, under the provisions of AR 135-178 with a characterization of service of UOTHC.

4. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, the Army Aeromedical Resource Office (AERO), and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of her under other than honorable conditions characterization of service. She states:

“I separated from the Army due to being physically and mentally abused by my Drill Sergeant. Due to the abuse my mental health suffered severely and I acted out of character and as a result was relieved from duty.”

c. The Record of Proceedings details the applicant’s military service and the circumstances of the case. Discharge orders published by Headquarters, 70th Division (Training) on 23 April 1987 show she was to be discharged with an under other than honorable conditions characterization of service on 23 April 1987 under authority provided in paragraph AR 135-178, Enlisted Administrative Separations. The orders do not cite the authorizing paragraph or chapter.

d. The ROP and supporting documents show the applicant was involuntarily separated from the USAR for unsatisfactory participation.

e. No medical documentation was submitted with the application and her period of service predates the EMR.

f. JLV shows she is an employee of the VA and has no diagnosed mental health conditions and no VA service-connected disabilities.

g. It is the opinion of the ARBA medical advisor that there is no physical or behavioral health condition which would serves as the basis for mitigation. The applicant’s assertion of mental abuse does warrant consideration by the board.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? NO

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A

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 claim of physical and mental abuse and the review and conclusions of the ARBA Medical 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 behavioral 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.

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.

12/19/2024

X

CHAIRPERSON

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 135-91 (Service Obligations, Methods of Fulfillment, Participation Requirements, and Enforcement Procedures), Chapter 4-11 provides the criteria for unexcused absences from unit training assemblies.

a. Unsatisfactory participation. A soldier is an unsatisfactory participant when nine or more unexcused absences from scheduled drills occur during a one-year period.

b. Charging unexcused absences. Unless an absence is authorized, a soldier failing to attend a scheduled single or multiple unit training assembly (MUTA) will be charged with an unexcused absence. When absence involves a MUTA (or any portion of a MUTA), the charge will be one unexcused absence for each four-hour period not attended, but not to exceed four unexcused absences. Unexcused absences will remain charged to the soldier on reassignment or reenlistment in another Reserve Component unit.

c. Establishing the one-year period. For counting unexcused absences, the one-year period will begin on the date of the absence. It will end one year later. Beginning dates will be set from each succeeding unexcused absence. When longer than one-year elapses from the date of an absence, it no longer will be counted. The new one-year period will begin on the date of the later absence, if any.

3. Army Regulation 140-10 (Assignments, Attachments, Details and Transfers), chapter 2-23 proves policy to preclude the loss of potential mobilization assets, Troop Program Unit members whose participation has not been satisfactory as set forth in AR 135-91, chapter 4, may be transferred to the appropriate control group of the IRR to complete their statutory military service obligation or contractual obligation.

4. Army Regulation 135-178 (Army National Guard and Army Reserve Separation of Enlisted Personnel) prescribes the policies, criteria, and procedures which apply to separation of enlisted members of the Army National Guard of the United States (ARNGUS) and the United States Army Reserve (USAR).

a. Chapter 4, provides that members who have demonstrated that they cannot or will not meet acceptable standards required of enlisted personnel in the Army National Guard (ARNG) or Army Reserve (USAR) may be separated after a member has

accumulated more than 8 unexcused absences within one year (12 consecutive months).

b. Policy. To preclude the loss of potential mobilization assets, all members who are separated under this regulation for the following reasons prior to completion of their statutory military service obligation will be screened to insure that only those with no potential to meet mobilization requirements are discharged. All others will be retained as members of the IRR in accordance with the criteria set forth in the referenced provisions of this regulation to complete their statutory military service obligation. These criteria are based upon the probability that, under conditions of full mobilization, such members would be retained in the Service:

- Expeditious Discharge Program
- Dependency
- Hardship
- Inability to perform prescribed duties due
- to parenthood
- Pregnancy
- Secretarial authority
- Sole surviving sons/daughters and surviving
- family members
- Unsuitability-apathy

c. Character of service. The service of members who are transferred to the IRR under the programs cited above will be characterized as honorable or under honorable conditions. This will be based on the member's behavior and performance of duty in the unit, in the same manner as set forth in in this regulation and for type of discharge. The service of members transferred to the IRR under the programs cited above normally will be tentatively characterized as under other than honorable conditions. Reassignment orders transferring the member to the appropriate control group of the IRR will show the specific reason for transfer. Character of service will be entered under Additional Instructions on the orders.

d. Section VII Unsatisfactory Participation of Statutory Obligated Members, chapter 7, provides that all members separated under this section who have not completed their statutory military service obligation will be transferred to the IRR to complete that obligation. When a member of a troop program unit has accrued nine or more unexcused absences during a 12-month period, the unit commander will notify the member in writing of the proposed separation, his/her rights, and the proposed characterization of service allowing 45 days for reply.

5. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

6. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

7. 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. 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. 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.

8. Title 10, U.S. Code, section 1556 requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (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.

9. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. 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.

//NOTHING FOLLOWS//