

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 July 2024

DOCKET NUMBER: AR20230012778

APPLICANT REQUESTS: an upgrade of her under honorable conditions (General) discharge.

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 that she was discharged under the "Don't Ask, Don't Tell" act and a discharge upgrade would greatly help her to purchase her first home and finding more community.
3. A review of the applicant's service record shows:
 - a. She enlisted in the Regular Army on 18 January 2006.
 - b. On several occasions during August 2006 the applicant was counseled on DA Form 4856 (Developmental Counseling Form) for failure to report at the time prescribed on 2, 8, 13, 18, and 29 August 2006.
 - c. DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice), dated 15 September 2006, shows the applicant accepted nonjudicial punishment (NJP) for violating Article 86 (AWOL) of the UCMJ, by failing to report on three occasions and being found drunk on duty. Her punishment included reduction to private/E-1.
 - d. On 13 December 2006, she was tried by Summary Court-Martial (SCM) and plead guilty to and was found guilty of two specifications of failure to report, four specifications of disobeying a lawful order, and one specification of malingering.

e. On 5 January 2007, the applicant was notified by her immediate commander of his intent to separate her under the provisions of Chapter 14, Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) for a pattern of misconduct. His reason for the proposed action was due to the Article 15 she received on 15 September 2006 and the SCM proceedings of 6 December 2006.

f. She acknowledged receipt of the notification of separation on 5 January 2007.

g. On 8 January 2007, the applicant waived her right to be seen again by counsel at Trial Defense Service.

h. On 11 January 2007, the separation authority directed separation with a General, Under Honorable Conditions Discharge Certificate.

i. The applicant was discharged from active duty on 17 January 2007 with an under honorable conditions (General) characterization of service. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she completed 1 year and 2 days of active service. She was assigned separation code JKA and the narrative reason for separation listed as "Pattern of Misconduct," with a reentry code of 3.

4. There is no evidence the applicant applied to the Army Discharge Review Board for review of her discharge within that board's 15-year statute of limitations.

BOARD DISCUSSION:

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 Department of Defense 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 separated for patterns of misconduct with the commander citing her record of nonjudicial punishment for failing to be at her appointed place of duty and being drunk on duty in addition to her summary court-martial for failing to report, disobeying lawful orders, and malingering. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board noted the applicant provided no documentation to support her request, including post-service achievements or letters of reference to support clemency. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

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 635-5 (Separation Documents) states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

3. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge is a separation with honor. 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 14 of the regulation states a member may be separated when it is determined that he or she is unqualified for further military service because of minor disciplinary infractions. The service of members separated because of misconduct will be characterized as under other than honorable conditions, or general, under honorable conditions as warranted by their military record.

//NOTHING FOLLOWS//