

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 July 2024

DOCKET NUMBER: AR20230013635

APPLICANT REQUESTS: reconsideration of her prior request for correction of her records to show she was honorably discharged with a corresponding separation code and narrative reason for separation.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:  
Self-authored statement.

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20220006527 on 19 January 2023.

2. The applicant states that the information is incorrect, and she is not sure where the ABCMR received the information.

a. She has never in her 62 years, been admitted to a hospital for anything. She did not file with the ABCMR within the three years because she was not aware she was given a "dishonorable discharge." Her separation was based on erroneous information and that she never lied to anyone about her medical status at the time of enlistment. There was no request made on an update of her medical issue because there was not an issue. The doctor thought she had a cyst on her ovaries and sent her for an ultrasound and MRI and no cyst was found. As a result, no surgery was needed. The circumstances were related to her menstrual cycle and had pain on one side for two weeks.

b. She did not lie about her medical records and is requesting that ABCMR send her copies of the medical record used to make the decision. She currently resides in Monroe, GA., and went to the hospital to ask for records ABCMR is claiming and there were no records found. She asserts she has never been under a doctor's care for this problem and would have never been absent from active duty because she would have been afraid of going absent without leave (AWOL). She is writing to receive what is due to her at her late age. She believes she should have some kind of retirement benefits since she was on payroll for one year and petitions the Board to reconsider her request.

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

a. She enlisted in the U.S. Army Reserve (USAR) on 17 May 1980.

b. On 8 February 1980, the applicant was admitted to a civilian hospital for treatment and possible surgery with a diagnosis of pain in the lower back and lower abdomen for about two to three weeks prior to her admission. Her final diagnosis was "suspected pelvic mass." She was discharged from the hospital on 12 February 1980, "to go to another facility for an ultrasound and never returned for follow-up."

c. On 17 May 1980, the applicant underwent a medical examination in preparation for her enlistment into the U.S. Army Reserve (USAR). The applicant's medical evaluations indicated she was generally in good health. A vaginal pelvic exam was completed, and she was marked qualified for enlistment.

- Standard Form (SF) 88 (Report of Medical Examination)
- SF 93 (Report of Medical History)

d. The applicant's commander documented three Letters of Instruction (LOI)-Unexcused Absences indicating she was notified about her absence from multiple unit training assembly (MUTA) and when the next unit training would be, on the following dates:

- LOI dated: 10 July 1980 for 4 MUTA's on 28-29 June 1980
- LOI dated: 30 July 1980 for 2 MUTA's on 27 July 1980
- LOI dated: 26 August 1980 for 2 MUTA's on 23 August 1980

e. The aforementioned LOIs informed the applicant of the following:

- under the provisions of Army Regulation 135-91 (Army National Guard and Army Reserve – Service Obligations, Methods of Fulfillment, Participation Requirements, and Enforcement Procedures), she was required to attend all scheduled unit training assemblies and annual training periods
- she was required to participate in a satisfactory manner regarding proper military appearance and performance of assigned duties
- absences from training could be excused only for reasons of sickness, injury, emergency, or other circumstances beyond her control
- if her absences were due to one of the stated reasons, she should have
- furnished the unit an appropriate affidavit or certification by a doctor, medical officer, or other person(s) having specific knowledge of the emergency or circumstances, requesting they be excused
- her absences could not be excused unless her request and affidavit or certificate were received within 15 days of the dates, she received the LOIs

- if she accumulated nine unexcused absences within a one-year period, she could be declared an unsatisfactory participant
- if she were to be declared an unsatisfactory participant, a board of officers would be convened to consider the circumstances and to make appropriate recommendations
- the board could have recommended immediate discharge under other than honorable conditions (UOTHC) or transfer to the Individual Ready Reserve for the balance of her statutory service obligation at which time, she would be discharged, normally UOTHC

f. On 7 November 1980, the Recruiting commander requested administrative action; of cancellation of initial active duty training (IADT) for the applicant and an investigation into the applicant's medical status. The commander noted the applicant reported for shipment for IADT as required but could not ship because she reported she was under the care of a physician. The applicant was instructed to obtain medical records to support her alleged medical condition and return it to the Armed Forces Examining and Entrance Station (AFEES), as soon as possible. She failed to return or produce the requested documents.

g. On 6 March 1981, the applicant's enlistment packet was returned due to her temporary medical disqualification for attendance at IADT. An attendance waiver for IADT was required since 270 days had elapsed since her initial enlistment. Immediate action was directed to initiate contact with the applicant and ascertain her medical status.

h. On 15 April 1981, the applicant's commander sent a letter notifying the applicant of circumstances of failure to comply with the following instructions would result in her being declared an unsatisfactory participant and action would be taken to separate her from the unit. If separated her service may be characterized as under other than honorable conditions.

- if the alleged medical condition still exists, you must provide medical records to support its existence and return to AFEES no later than 29 April 1981
- if the medical condition no longer exists, you must begin participating in unit training assemblies until you can be rescheduled for IADT. The next drill was 2 May 1981, 0730 hours and the commander expected the applicant to be present

i. On 5 May 1981, the applicant's commander documented LOI-unexcused absences indicating she was notified about her absence (on 2-3 May 1981) from MUTA and when the next unit training would be for the next month.

j. On 6 May 1981, the commander requested counsel be appointed for the applicant and on 7 May 1981 received telephonic confirmation of counsel's name.

k. The immediate commander submitted a request for separation under the provisions of Army Regulation (AR) 135-178 (Army National Guard and Army Reserve – Enlisted Administrative Separations), Chapter 7, for misconduct due to unsatisfactory participation. The applicant signed for the document thru certified mail on 8 May 1981, however, there is no indication she responded to the notification.

l. On 14 May 1981, the applicant's commander sent a Notice of Unsatisfactory Participation to the applicant and formally recommended her for separation. The available service record is void of separation authority's signed approval.

m. Orders Number 240-4, released the applicant from her unit for unsatisfactory participation, and assigned her to the USAR Control Group. Her service was characterized as under other than honorable conditions (UOTHC).

n. Orders Number D-07-908471 dated 26 July 1986, discharged the applicant from the USAR Control Group (Annual Training) under the provisions of AR 135-178. Her service was characterized as UOTHC.

5. On 19 January 2023, the ABCMR rendered a decision in Docket Number AR20220006527. The Board found insufficient evidence of in-service mitigating factors and the applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. Based on a preponderance of evidence, the Board determined the character of service the applicant received upon separation and the reason for her separation were not in error or unjust.

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

7. By regulation (AR 135-178), a Soldier may be discharged for misconduct when it is determined that the Soldier is unqualified for further military service by reason of one or more of the following circumstances:

- minor disciplinary infractions
- a pattern of misconduct
- commission of a serious offense
- conviction by civil authorities

8. In reaching its determination, the Board can consider the applicant's petition and her service record in accordance with the published equity, injustice, or clemency determination guidance.

**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 applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. Discharge upgrade: Deny. The evidence shows the applicant enlisted in the U.S. Army Reserve (USAR) on 17 May 1980. She was absent from unit training assembly on several occasions and was declared an unsatisfactory participant. As such, her chain of command initiated separation action against her, for misconduct due to unsatisfactory participation. She was separated from the USAR for unsatisfactory participation, and her service was characterized as under other than honorable conditions. The Board found no error or injustice in his separation processing. The Board was not persuaded by her argument, and she does not provide new evidence that shows her discharge was in error. Also, the applicant provided insufficient evidence of post-service achievements or letters of reference of a persuasive nature, and that outweigh his misconduct, in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

b. Separation code and Narrative Reason for Separation: No action. Unlike a DD Form 214, separation orders from the USAR do not list the narrative reason for separation or the separation code.

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 to amend the decision of the ABCMR set forth in AR20220006527 on 19 January 2023.

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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 135-178 (Enlisted Administrative Separations), sets policies, standards, and procedures to ensure the readiness and competency of the U.S. Army while providing for the orderly administrative separation of Army National Guard of the United States (ARNGUS) and U.S. Army Reserve (USAR) enlisted soldiers for a variety of reasons.

a. An honorable characterization is appropriate when the quality of the Soldier'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. If a soldier's service has been honest and faithful, it is appropriate to characterize that service as under honorable conditions. Characterization of service as general (under honorable conditions) is warranted when significant negative aspect of the Soldier's conduct or performance of duty outweighs positive aspects of the Soldier's military record.

c. Chapter 7 (Misconduct) states a Soldier may be discharged for misconduct when it is determined that the Soldier is unqualified for further military service by reason of one or more of the following circumstances:

- minor disciplinary infractions – a pattern of misconduct consisting solely of minor disciplinary infractions
- a pattern of misconduct – consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline
- commission of a serious offense – a serious military or civilian offense, if the specific circumstances of the offense warrant discharge and a punitive discharge would be authorized for the same or a closely related offense under the Uniform Code of Military Justice (UCMJ)
- conviction by civil authorities – self explanatory

3. 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 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.

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//